

EXPLANATORY MEMORANDUM

SHORT-TERM RENTAL ACCOMMODATION BILL 2024

Overview of Bill

The Short-Term Rental Accommodation Bill 2024 (Bill) will require all short-term rental accommodation (STRA) in Western Australia that falls within the scope of the definition of STRA in the Bill to be registered. If a property is not registered, the operator will not be permitted to advertise or enter into a short-term rental arrangement.

The provisions in the Bill provide for, among other things, the following:

- Defining “short-term rental accommodation”. This definition frames the application of the Bill, specifying the accommodation arrangements that will be included within the scope of the legislation. The Bill is intended to capture residential premises that are let on a short-term basis (where no guest is accommodated for more than a total of three months within a 12-month period). It will not cover traditional forms of short-term tourist accommodation such as hotels, motels and caravan parks because these are already regulated under other legislation and under land use planning schemes.

Bed and Breakfast accommodation will fall within the definition of STRA (as “hosted accommodation”). The *Planning and Development (Local Planning Schemes) Regulations 2015* currently define and import into local planning schemes the term ‘Bed and Breakfast’ when providing for development approval requirements in respect of that existing land use category. It is intended that this type of accommodation arrangement will be treated as hosted STRA going forward, as it effectively offers the same service and has the same impact on the local community.

The Bill will apply to STRA irrespective of the purpose of the proposed use (e.g., holiday or tourism, business, medical, relocation or other purposes), unless the premises has a dedicated purpose of providing a specified type of emergency or crisis accommodation and will apply to both un-hosted and hosted STRA arrangements.

- Provisions establishing the STRA register and registration process, including:
 - conferral of registration and other related functions on the Commissioner for Consumer Protection (Commissioner) as the administrator of the register;
 - specification of the information to be provided by STRA owners when registering a STRA property; and
 - provision for issuing registration numbers upon registration.

Local Government Authorities (LGAs) will retain primary responsibility through their planning schemes for determining development approval requirements to apply to STRA as a distinct land use category.

- Provisions imposing a requirement to register STRA and to display a registration number in any STRA advertisement. The obligation to ‘conspicuously’ display a registration number when advertising will be imposed on both the owner/operator of the STRA, and any advertising publications or booking platforms on which the property is offered for rent (including platforms such as Airbnb or Stayz).

- Definitions of 'booking platform' and 'advertising platform'. Booking platforms provide a dual function of advertising a property (or part of a property) for rent and providing a means to make a rental booking in respect of that property (and may include property management agencies or other analogous businesses, in addition to sites such as Airbnb or Stayz). Advertising platforms only perform the first of these two functions.
- Limited public access to the STRA register information for the purpose of either:
 - ascertaining whether a specific premises is registered as STRA through a search of the address or registration number via the online portal; and
 - ascertaining the concentration of STRA premises registered in a specific local area (via a "heat map").
- Provisions authorising disclosure of information held on the register, and an ability for the Commissioner to impose conditions upon any such disclosure. Information may be disclosed to:
 - State government agencies and local governments (e.g., for the purposes of investigation of a suspected offence or to allow for performance of functions specified in legislation); and
 - prescribed entities for the purposes of research or policy development.
- Provisions requiring STRA owners or operators, and booking and advertising platforms, to provide information in respect of STRA premises (e.g., the number of nights that a premises has been booked and/or number of persons accommodated in each booking).
- Establishing compliance mechanisms, including monetary penalties and a power of the Commissioner to suspend or cancel registration. The Commissioner will have the power to suspend or cancel a registration in the following circumstances:
 - the premises cannot lawfully be used for STRA;
 - there has been a contravention of prescribed act or local law;
 - registration was granted in error;
 - failure of the STRA to comply with the requirements of the *Building Act 2011* (WA);
 - where registration is contrary to the requirements of the *Strata Titles Act 1985* or *Community Titles Act 2018*;
 - where a tenant is not entitled to use a premises as STRA;
 - use of premises does not comply with development approval;
 - premises are no longer used as STRA;
 - there is a change in ownership or tenancy of the STRA to which the registration relates;
 - the accommodation provider of the premises has applied for the registration to be cancelled; or
 - in other circumstances prescribed by regulation.

- Providing for certain procedural fairness requirements to apply to decisions of the Commissioner, including:
 - requiring the Commissioner to consider any submission from an accommodation provider whose registration is liable to be suspended or cancelled prior to making a final decision;
 - where the Commissioner is making a decision that relies on an evidentiary certificate issued by another agency, requiring that the operator has been provided with an opportunity to address relevant issues prior to the issue of the certificate;
 - providing the State Administrative Tribunal (SAT) with jurisdiction to review decisions of the Commissioner; and
- Standard statutory protections from liability, such as those relating to the exercise by officers of their functions in good faith.

A clause-by-clause commentary of the Bill is as follows:

PART 1 – PRELIMINARY

Clause 1 Short Title

This clause provides for the short title of the *Short-Term Rental Accommodation Act 2024* (WA) (Bill).

Clause 2 Commencement

This clause provides that Part 1 will commence on Royal Assent and the remaining sections on a day fixed by proclamation and different days may be fixed for different provisions.

Upon commencement there will be a six-month transition period, within which offence provisions in Part 2 of the Bill will not apply. Upon expiration of that period, the provisions will be effective and registration under the scheme will be mandatory.

Clause 3 Terms Used

This clause sets out definitions for terms used in the Bill.

It defines terms used in the Bill including the following key terms:

- “accommodation provider” – An owner or tenant of a residential premises used as STRA or their agent. This will be the person who has a right to offer the property for use as STRA, either as the owner of freehold title, or a person authorised to do so by that owner under a lease or agency agreement.
- “advertising publication”: Includes a website, online platform or other online facility, newspaper, magazine or other publication, notice or service containing advertisements.
- “booking platform”: An online platform, website or other online facility that facilitates the:
 - display of multiple residential premises as STRA; and
 - enables the booking of STRA.
- “booking platform provider”: Being a booking platform that, in return for payment of a fee (or other consideration), enables the making of short-term rental arrangements.
- “prohibited advertisement”: Being an advertisement for STRA that relates to unregistered premises, does not conspicuously display a registration number or contains a false registration number.

- “short-term rental accommodation”: Limiting the scope to residential premises used as STRA on a commercial basis.

The reference to commercial basis is intended to capture residential premises provided as STRA, for value, in arms-length transactions. This would capture premises offered, or capable of being offered, to the public for financial reward, regardless of whether the use of the property for STRA is occasional, or part of an ongoing business activity.

Definitions of “advertising publication”, “booking platform” and “booking platform provider” have been drafted as broadly as possible with the intention of capturing all physical and on-line publications and platforms that may conduct these activities.

Clause 4 Short-term rental arrangements

This clause defines a “short-term rental arrangement” as an arrangement under which a residential premises is offered for occupation to the same person or persons for periods not exceeding a total of three months in a 12-month period (and includes “hosted accommodation”). This definition is consistent with the definition proposed in amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* and makes it clear that STRA arrangements are distinct from rental arrangements under the *Residential Tenancies Act 1987* (WA).

This clause makes provision for the exclusion of prescribed arrangements or arrangements of a prescribed class.

Clause 5 Hosted accommodation

“Hosted accommodation” refers to STRA where an accommodation provider or agent ordinarily resides on the premises during the short-term rental accommodation arrangement. Un-hosted accommodation is not defined upon the basis that it is intended that un-hosted accommodation will be *all* accommodation captured by the definition of STRA in the Bill that does not come within the definition of “hosted accommodation”. Hosted accommodation is treated differently to un-hosted accommodation for development approval purposes because it is considered that use and amenity issues are less likely to arise, and are more easily dealt with, if the operator is present at the premises.

Clause 6 Premises to which Act does not apply

This clause provides for numerous premises/facilities that are specifically excluded from the operation of the Bill. These premises/facilities were excluded on the basis that:

- they are not “residential premises” let commercially on a short-term basis, but are intended for exclusive use for crisis accommodation (e.g. refuge, emergency or respite accommodation); or
- they are regulated under other legislation (e.g. hotels, motels or caravan parks); or
- the relevant accommodation arrangement is incidental to another commercial relationship between the parties (e.g. accommodation provided for employees by an employer or accommodation provided for students by an educational institution).

There is flexibility within the Bill to prescribe additional premises or classes of premises that may be excluded from the operation of the Bill if it is determined appropriate.

Bed and Breakfast accommodation is not excluded from the operation of the Bill, on the basis that it is intended to be captured as STRA under the “hosted accommodation” definition. Further, under proposed amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015*, the Bed and Breakfast land use category will be phased out and current associated approvals will not be required at a local government level, rather the premises will be treated as hosted STRA for land use purposes.

Clause 7 Act binds Crown

This clause provides that the proposed Bill will bind the Crown.

Clause 8 Application of Act outside Western Australia

This clause applies the requirements of the STRA registration scheme to acts, matters or things occurring or existing outside Western Australia.

This provision will potentially have effect in respect of the requirements imposed on the activities of accommodation providers, advertising publications or booking platforms, who may be operating, advertising or renting accommodation located in Western Australia, but are domiciled either outside of Western Australia or outside of Australia (see, for example, clauses 10, 11, 12, 13, 14, 15 and 36).

This extraterritorial effect is necessary given the volume of STRA operating in Western Australia that are advertised and managed via advertising publications or booking platforms that are not registered, or located, in Western Australia or Australia.

PART 2 — REQUIREMENTS FOR SHORT-TERM RENTAL INDUSTRY PARTICIPANTS

Clause 9 Short-term rental accommodation must be registered

This clause makes it an offence to enter into, or seek to enter into, an arrangement to provide an unregistered residential premises as STRA.

Fundamental to the operation of the register, and the principle of information gathering underpinning its development and implementation, is the requirement that all STRA (within the meaning of the Bill) must be registered.

A penalty of \$20,000 applies for individuals or \$100,000 for corporations (higher penalties apply to fines throughout the Bill for corporations as a result of the operation of s40(5) of the *Sentencing Act 1995* (WA)).

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise accommodation providers to register their STRA against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the Australian Consumer Law (ACL)/*Fair Trading Act 2010* (WA) (FTA), the need to disincentivise corporate and individual offending, implications for small scale STRA operators and the level of criminality involved in the offence.

The potential penalties accruing for non-compliance, coupled with a streamlined application process, will appropriately incentivise compliance with the registration requirement.

Clause 10 Prohibited advertisements by accommodation providers and agents

This clause makes it an offence for an accommodation provider or their agent to publish an advertisement prohibited by the Act. An advertisement will be a prohibited advertisement if it relates to an unregistered residential premises, does not contain a conspicuously displayed registration number or contains a false registration number.

This offence will, in addition to supporting the operation of clause 9 in respect of having implications for unregistered premises, ensure that users of STRA are able to ascertain that a premises is registered and that accommodation providers are disincentivised from using false registration numbers in their advertising.

Penalty of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise accommodation providers to advertise only registered premises, against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate and individual offending, implications for small scale STRA operators and the level of criminality involved in the offence.

Clause 11 Prohibited advertisements in advertising publications

Clause 11 creates an offence where an advertising publication (or its agent) causes the publication of a prohibited advertisement (i.e., the advertisement relates to an unregistered residential premises, does not contain a registration number or contains a false registration number).

Given that advertising publications will not necessarily monitor the content of advertisements and may not be immediately aware that an advertisement is a prohibited advertisement, it is a defence that the offending advertisement was removed from public display as soon as the advertising publication became aware of the prohibited advertisement.

This offence will serve to incentivise advertising publications to actively police the content of advertisements in respect of STRA to ensure that they comply with the registration requirements under the Bill.

Penalty of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise advertising publications to advertise only registered premises against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate offending and the level of criminality involved in the offence.

Clause 12 Prohibited advertisements on booking platforms

Clause 12 creates an offence where a booking platform (or its agent) causes the publication of a prohibited advertisement (i.e., the advertisement relates to an unregistered residential premises, does not contain a registration number or contains a false registration number).

Given that booking platforms will not necessarily monitor the content of advertisements and may not be immediately aware that an advertisement is a prohibited advertisement, it is a defence that the offending advertisement was removed from public display as soon as the booking platform became aware of the prohibited advertisement.

This offence will serve to incentivise booking platforms to actively police advertisements in respect of STRA to ensure that they comply with the registration requirements under the Bill.

Penalty of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise booking platforms to not advertise prohibited advertisements against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate or individual offending and the level of criminality involved in the offence.

Clause 13 Removal of prohibited advertisements from advertising publications

This clause provides for a situation in which the Commissioner becomes aware of a prohibited advertisement being displayed by an advertising publication. It permits the Commissioner, by written notice, to provide the advertising publication with an opportunity to remove the offending advertisement in lieu of being fined for non-compliance with the Commissioner's notice.

As with clause 11, clause 13 recognises that advertising publications may not otherwise become aware that a prohibited advertisement is being displayed and provides a reasonable opportunity to remove it from display without penalty.

Penalty of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise advertising publications to comply with a direction from the Commissioner against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate offending and the level of criminality involved in the offence.

Clause 14 Removal of prohibited advertisements from booking platforms

This clause provides for a situation in which the Commissioner becomes aware of a prohibited advertisement being displayed by a booking platform. It permits the Commissioner, by written notice, to provide the booking platform with an opportunity to remove the offending advertisement in lieu of being fined for non-compliance with the Commissioner's notice.

As with clause 12, clause 14 recognises that booking platforms may not otherwise become aware that a prohibited advertisement is being displayed and provides a reasonable opportunity to remove it from display without penalty.

Penalty of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise booking platforms to comply from the Commissioner against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate offending and the level of criminality involved in the offence.

Clause 15 Nomination of agents for purposes of take-down notices

This clause provides that a booking platform provider or the owner of an advertising publication must, if requested to do so by the Commissioner, nominate and provide details of a local agent in order to give effect to the service of notices issued under clauses 13 and 14.

This clause recognises that most booking platforms and advertising publications are domiciled outside of Western Australia or Australia and facilitates effective service of notices from the Commissioner so that the Commissioner can work with the relevant parties to ensure that they are compliant.

Non-compliance with the Commissioner's written notice is an offence, with penalties of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise advertising platforms and booking platforms to remove prohibited advertisements against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate offending and the level of criminality involved in the offence.

Clause 16 False representations relating to registration

This clause provides that it is an offence to make a false representation in relation to registration details. This applies to the provision of false information pertaining to the registration status of a premises or a false registration number. It is also an offence under this clause to knowingly display, or cause to be displayed, a false registration number.

A key aspect of the Bill is to ensure that all STRA to which the legislation applies are registered. This offence is a means of incentivising compliance with the Bill's registration requirements and disincentivising deliberate contraventions of the requirements.

Penalty of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to disincentivise the deliberate contravention of registration requirements against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate and individual offending and the level of criminality involved in the offence.

Part 3 — Registration of short-term rental accommodation

Division 1 — Applications for registration

Clause 17 Persons who may apply for registration of residential premises

This clause provides that either an owner or a tenant of a residential premises may register STRA.

The Act provides for registration by a tenant, recognising that a person who has the right to occupy a property pursuant to a residential tenancy agreement may be permitted by that agreement to sub-lease the property. Whilst this is rare, residential tenancy agreements may allow for the use by a tenant of the premises as STRA.

This clause also requires that, if a premises contains multiple self-contained accommodation units, each self-contained accommodation unit is required to be separately registered and has its own registration number. Registration of each self-contained unit will provide for a clearer picture as to the types and amount of STRA being offered in Western Australia.

Clause 18 Applications

This clause provides for the requirements for an application for registration (i.e. form, information to be provided and fees).

It specifies the information that must be included in an application. Importantly, this includes (amongst other information):

- whether or not the STRA is hosted accommodation;
- whether or not the STRA is self-contained accommodation; and
- evidence of planning approval to operate as STRA in the form of provision of a development approval number.

The data collected via the application process will provide important information as to the size of the STRA industry in Western Australia, the types of properties being utilised as STRA, the extent to which multiple self-contained STRA are comprised within a single premises, the number of people that may be accommodated and the extent to which STRA properties are being managed by a person other than the owner or tenant. It will also provide the information required by LGAs to monitor the scale and impact of STRA and to undertake compliance activities.

Clause 19 Granting of registration applications

This clause provides that, if an application is made in accordance with the requirements of clause 18, the Commissioner must grant the application.

Consistent with the light touch approach proposed by Government, it is not intended that an assessment of the merits of each application will be made at the point of application. This is consistent with the intention that LGAs will have responsibility for determining whether it is appropriate for premises to be used for STRA, and the conditions, if any, that should apply to that use.

Accommodation providers will be issued with a registration number and will be able to legally commence taking bookings immediately following completion of the registration process. Information in respect of each registered property will be provided to the relevant LGA and in the event that the operator is not legally entitled to offer their property as STRA, enforcement action can be effected via the LGA.

Clause 20 Commissioner may accept certain applications for registration

Clause 20 provides for applications for registration to be made to the Commissioner in situations where (a) an application is not accepted because, in the course of the application it is rejected by the automated system (for example, because of an incorrect entry or system error) or (b) an application for registration is made within three years of a registration having been cancelled in a case where the applicant believes that the three year prohibition on re-applying should not apply.

This clause provides the Commissioner with the capacity to register premises in circumstances where (a) it appears that an application should not have been rejected or (b) where it is appropriate that an application be granted notwithstanding an earlier cancellation.

Further, this provision also supports fairness in the application process in respect of applicants who are entitled to be, or otherwise should be, registered.

Clause 21 Registration numbers

This clause provides for the requirement for the Commissioner to issue a registration number to each residential premises and, if applicable, each self-contained accommodation unit within that premises.

This requirement has the effect of:

- facilitating and incentivising compliance with the provisions of the Bill that require use and display of a valid registration number;
- enabling advertising publications and booking platforms to verify that a premises is properly registered (and support compliance with their respective requirements under the Bill); and
- assisting accommodation providers with demonstrating their premises' compliance with registration requirements to prospective users of STRA.

Clause 22 Duration of registration

This clause provides that each registration will be in force for 1 year unless otherwise cancelled or extended (whilst awaiting renewal).

Requiring the annual renewal of registration ensures that information regarding each registration is as up to date as possible. This will have the benefit of ensuring that the information comprised in the register is accurate and current. This will provide the best basis for accurate and informed future policy decisions in respect of the sector and support enforcement functions in respect of STRA at a local and State level.

Clause 22 will operate, in addition to clause 28, to achieve this result.

Clause 23 Renewal of registration

This clause provides that a renewal may be applied for not more than two months prior to expiry and not more than 28 days after expiry.

Requiring the annual renewal of registration is to ensure that information regarding each registration is as up to date as possible. This will have the benefit of ensuring that the information comprised in the register will allow for accurate and informed future policy decisions in respect of the sector and supporting enforcement functions in respect of STRA at a local and State level.

Division 2 — Suspension or cancellation of registration

Clause 24 Suspension or cancellation generally

This clause provides for circumstances where the Commissioner may suspend or cancel an accommodation provider's registration.

The Commissioner's power to suspend or cancel a registration is discretionary.

There are numerous reasons for the Commissioner to exercise this discretionary power, including:

- preventing the unlawful use of residential premises as STRA, including by reason of:
 - o premises utilised as STRA in contravention of a written law, including laws prescribed under the Bill;
 - o premises utilised as STRA in breach of contract (e.g., breach of residential tenancy agreement);
- supporting compliance with applicable State and local laws, including laws relating to building safety, health, governance and amenity;
- supporting the administrative functions of the Commissioner by:
 - o correcting errors made in registration;
 - o cancelling registrations where no longer required; and
 - o cancelling registrations upon request.

This clause includes a power to prescribe additional grounds for cancellation or suspension if the need arises.

It is noted that, based on the potential implications of non-compliance with the Bill or other relevant legislation, cancellation or suspension of registration is an effective means of incentivising compliance with legal requirements.

The Act contains provisions to ensure that, in making a decision to cancel or suspend a registration, the affected accommodation provider is afforded procedural fairness in the decision-making process.

Clause 25 (see below) provides that the Commissioner must provide the affected accommodation provider with a show cause notice, detailing the basis on which suspension or cancellation is proposed and providing an opportunity for the accommodation provider to respond to the show cause notice, which must be considered by the Commissioner before making the final decision.

Further, clause 26 (see below) provides that, in deciding to cancel or suspend a registration, a notice to this effect issued by the Commissioner must advise the accommodation provider of their right to appeal the decision to the SAT under clause 30.

Clause 25 Notice to show cause

This clause sets out the procedural fairness requirements that the Commissioner must follow in determining to suspend or cancel a registration. Key elements to a notice to show cause issued by the Commissioner include:

- outlining the proposed decision to suspend or cancel registration;
- the basis on which the decision to suspend or cancel was made (i.e. the nature of the alleged non-compliance);
- in the case of a suspension, any conditions attaching to a proposed suspension;
- the extent to which a decision to suspend or cancel was made on the basis of a certificate issued under clause 29 (i.e., via information in respect of an alleged offence provided by a prescribed third party);
- advising the recipient of their right to make submissions to the Commissioner arguing against an adverse decision; and
- requirement that the Commissioner consider a responsive submission by the accommodation provider prior to a final decision being made.

This clause requires the Commissioner, in deciding to suspend or cancel a registration, to apply principles of procedural fairness. In addition to providing for a fair process, this clause is also an implicit acknowledgement that the suspension or cancellation of registration can have significant financial implications for an accommodation provider and, therefore, needs to be supported by an appropriately fair process.

Clause 26 Notice of cancellation or suspension of registration

This clause requires the Commissioner to provide written notice to an accommodation provider if a decision is made to cancel or suspend their registration.

Consistent with principles of procedural fairness, the written notice given by the Commissioner must advise the accommodation provider of their right to appeal the Commissioner's decision to the SAT in accordance with clause 30.

Clause 27 Effect of suspension or cancellation

Clause 27 describes the effect of the Commissioner's decision to suspend or cancel registration.

If registration is suspended, registration is deemed not to be in force during the period of suspension and the affected accommodation provider is unable to advertise or take *new* bookings.

Cancellation of registration is for a period of three years and will be applied in respect of serious or repeated contraventions of the Bill or other relevant law. This clause may be subject to a decision of the Commissioner to grant a new registration within the period of three years (per clause 20).

An accommodation provider will, despite a decision to suspend or cancel their registration, be entitled to honour existing bookings but will be precluded from legally taking bookings for the duration of the period of suspension or cancellation. This approach has been taken to minimise any collateral impacts that consumers may suffer as a result of a decision to cancel or suspend a registration.

For practical reasons there are necessary carve outs to the application of the three-year cancellation period. For example, it is appropriate that in circumstances where a STRA property is sold (and registration cancelled as a result), the new owner of the STRA property be able to apply for a new registration for the property immediately.

Further, it is also appropriate that, in circumstances where an accommodation provider cancels their registration of their own volition (i.e., cancellation is not effected by the Commissioner due to a contravention of the Bill or other relevant act), they be entitled to re-register that STRA at their discretion (i.e., there is no three year period of preclusion from registration).

Clause 28 Accommodation provider to notify Commissioner of certain events

This clause requires an accommodation provider to advise the Commissioner upon the occurrence of certain events that will affect the capacity of the residential premises to be used as STRA. These include:

- it no longer being lawful for the residential premises to be used as STRA;
- the residential premises no longer complying with development approval requirements pertaining to use as STRA;
- proceedings brought against an accommodation provider relating to contravention of a prescribed act.

Additionally, this clause seeks to ensure that registration information is as up to date as possible by requiring accommodation providers to update register information upon there being any changes.

The inclusion of notification requirements relating to the lawful use of properties as STRA serves a dual purpose. Firstly, this provision will support and incentivise the lawful use of properties as STRA, which will have implications for building safety, health, governance, and amenity. Secondly, these provisions, in addition to those requiring up to date registration information, will ensure that, to the extent possible, register data will be accurate and able to best inform future policy decisions and compliance and enforcement activity.

Whilst this clause requires the update of some material information in respect of a registration, it also requires the update of prescribed application particulars. It is for this reason that the penalty under this clause has been limited to \$5,000. Further, material matters not addressed in accordance with this clause can be addressed via clauses 24 and 40.

Division 3 — Miscellaneous

Clause 29 Certificate evidence of certain matters may be relied on by Commissioner

This clause provides that, in deciding to suspend or cancel a registration, the Commissioner may rely on a certificate from a “designated officer” outlining that the use of a residential premises as STRA is or is not lawful for the purposes of a planning act, development approval requirement or a prescribed act.

A “designated officer” may be an officer of a local government authority, planning authority or other public sector body.

State government agencies or local government authorities will be policing compliance with the relevant planning approval and legislative requirements and, but for this activity, the Commissioner would not otherwise be aware of any unlawful activity. This provision will support the lawful use of residential premises as STRA.

Further, direct evidence, provided in an approved form, will mean that investigations by the Commissioner are expedited and less resource intensive. In deciding to suspend or cancel registration, the Commissioner will not be required to re-investigate allegations of non-compliance with laws administered by other agencies.

This clause addresses procedural fairness considerations by way of a requirement that a designated officer must not issue an evidentiary certificate without having provided the relevant accommodation provider with written notice of the proposed issue of a certificate and having considered any submission made by an accommodation provider in response to the notice.

Clause 30 Review of certain decisions

This clause sets out the right of an accommodation provider who is aggrieved by a decision of the Commissioner to refuse registration, refuse renewal of registration, or suspend or cancel their registration to appeal that decision to the SAT.

This clause supports the maintenance of procedural fairness in the decision-making function of the Commissioner. The clause brings the STRA Act within the established framework of administrative law and justice in WA.

Part 4 — Register

Clause 31 Register of premises

This clause provides that the Commissioner must maintain a register of premises that are used for STRA.

In practice, the register will be maintained via an online portal administered by the Commissioner.

The maintenance of a register is a fundamental aspect of the STRA registration scheme. A key purpose of the scheme is to collect data regarding the nature and scale of the use of residential premises as STRA in Western Australia. Data collected from the register will be used to inform policy decision making in respect of the STRA sector and other affected policy areas (e.g., housing).

Further, the application requirements of registration will provide important information as to the size of the STRA industry in Western Australia, the types of properties being utilised as STRA, the extent to which multiple self-contained STRA are comprised within a single premises, the number of people that may be accommodated and the extent to which STRA properties are being managed by a person other than the owner or tenant.

Clause 32 Disclosure of Register information

This clause details the extent to which the Commissioner must disclose register information to the public.

Register information will be disclosed in two limited ways:

- by way of a public search function via which STRA registration can be confirmed (either by way of inputting an address or registration number); and
- by way of a “heat map” showing the concentration of STRA premises within a specific local government area.

These disclosures will (a) provide the public with the capacity to determine whether a residential premises being used or advertised as STRA is registered and (b) provide the public with the capacity to determine the concentration of STRA premises within a local government area as such information may affect decisions regarding, for example, the purchase or rental of residential premises.

Additionally, the Commissioner may provide information regarding the registration, or otherwise, of residential premises to booking platforms, advertising publications and agents of accommodation providers for the purposes of ensuring registration of relevant premises and, as a result, support compliance with their obligations under the Bill.

The Commissioner also has the power to disclose register information in circumstances that are prescribed.

Part 5 — Functions of Commissioner

Clause 33 General functions of Commissioner

This clause details the functions of the Commissioner as administrator, as being:

- to promote the operation and effect of the Bill;
- to investigate and research matters relating to STRA and the operation of the Bill;
- to publish reports and information relating to STRA and the operation of the Bill; and
- to perform other functions associated with the operation or enforcement of the Bill.

Reflecting the objectives, the Commissioner will have responsibility for enforcing compliance with the requirements of the Bill, as well as the collection and dissemination of information that will be used to support regulation of the sector and development of housing policy.

These functions are broadly consistent with those effected by the Commissioner under other legislation administered by Consumer Protection.

Clause 34 Exchange of information

This clause provides that the Commissioner may provide information from the register to government agencies, local governments, planning authorities or prescribed bodies to assist with regulatory functions or research/policy development.

This clause also provides for the discretionary provision of information from a relevant agency to the Commissioner for the purposes of supporting the exercise of the Commissioner's functions.

The capacity for the reciprocal sharing of information with relevant agencies is an important principle underpinning the implementation of the registration scheme, as it will assist wholistic responses to issues arising from the use of residential premises as STRA.

Further, given that local STRA registration schemes will be invalid upon commencement of the Bill, the information sharing will assist local government authorities to affect their regulatory, compliance and enforcement functions that would otherwise be supported by local registration schemes.

The Bill includes protections in clauses 37 and 39 in respect of the disclosure of register information. Specifically, under clause 37 the Commissioner may condition the disclosure of any information in order that it be appropriately protected when disclosed.

Clause 35 Disclosure of information by Commissioner relating to certain actions

Clause 35 provides that the Commissioner may disclose information obtained in the administration of the Bill for the purpose of making the public aware of investigations into the conduct of an accommodation provider or disciplinary action taken in respect of a registered premises.

This power is consistent with the Commissioner's powers to make the same disclosures under the FTA and supports the Commissioner's overarching responsibility for consumer protection matters.

Clause 36 Commissioner may require information to be provided

This clause provides the Commissioner with the ability to request information from accommodation providers, booking platforms and advertising publications by provision of a written notice.

The clause will ensure that, in addition to the information that must be provided by an accommodation provider at the point of registration and/or renewal, there is a mechanism to require information to be supplied in response to a request from the Commissioner. This will assist in resolving any situation where information is incomplete or unclear or where the Commissioner is considering whether to undertake an investigation.

Non-compliance with a request is permitted in circumstances where it would be reasonable to do so.

Penalty for non-compliance with a request of \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise compliance, where reasonable, against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise corporate and individual offending and the level of criminality involved in the offence.

Clause 37 Additional restrictions on disclosure of information

This clause provides for the imposition of additional restrictions on disclosure of information from the register.

The Commissioner may, when disclosing information to a third party, place conditions on how the information is used, managed or stored.

On the basis that the register will contain significant amounts of personal information, it is appropriate that any disclosure of that information be appropriately conditioned and protected.

Clause 38 Application of certain enforcement provisions and defences under *Fair Trading Act 2010*

This clause details the application, and exclusion, of certain provisions under the FTA that relate to criminal and civil proceedings under that act.

As the legislation will be administered and enforced by the Commissioner and staff of the Consumer Protection Division of the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS), it is appropriate that investigation and enforcement provisions applicable under the ACL(as set out in the FTA), which apply in respect of a range of legislation administered by the Commissioner, should be applied.

The Bill will be listed at Schedule 2 to the FTA as a registration act for the purposes of section 88A of the FTA. As a result of that listing, the Commissioner will have the functions described in section 57A of the FTA in respect of listed licensing, registration and certification schemes and will have access to the investigation powers set out in Part 6 of that Act, and the additional powers in Part 6 Division 4A that apply in respect of licensing and registration schemes (with the exception of the power of entry without warrant at section 88E which has been expressly excluded by clause 54).

Clause 38 provides for the application of appropriate parts of Part 7 to manage the initiation and conduct of any proceedings. It provides for consistency with how proceedings are conducted by the Commissioner over a range of legislation administered and enforced by Consumer Protection.

Clause 38 also excludes various provisions of the FTA from the Bill on the basis that they are not relevant to its operation or that different provisions have been made to deal with the issue in other clauses (see sections 94A, 95, 98, 100 and 108 and Division 4).

Part 6 - Miscellaneous

Clause 39 Disclosure of information to relevant agencies and others

This clause provides that information obtained in the course of administration or execution of the Bill must not be disclosed except in certain specified circumstances.

With necessary amendments, this clause reflects the disclosure requirements set out in section 112 of the FTA and provides for consistency in the execution of administration, compliance and enforcement functions of the Commissioner with respect to the disclosure of register information.

Penalty of \$25,000.

This penalty is the maximum that may be imposed by a court and was developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia and the ACL/FTA.

Clause 40 False or misleading information

This clause makes it an offence to knowingly provide false or misleading information, or knowingly omit to provide material information, in respect of a requirement under the Bill.

This offence provision incentivises truthful compliance with the informational requirements under the Bill. As previously noted, the key aspect underpinning the registration scheme is the collection of data and this provision seeks to ensure that the data collected is, to the extent possible, true and accurate. This will better support policy decisions flowing from the data and the effective management of STRA by LGAs.

It also ensures that accurate data will support the Commissioner in carrying out designated functions.

Penalty for a contravention is \$20,000 for individuals or \$100,000 for corporations.

These penalties are the maximum that may be imposed by a court for individuals and corporations and have sought to balance the need to incentivise the provision of true and accurate information against the level of criminality involved in the commission of the offence.

These penalties were developed in the context of the assessment of penalties in other STRA registration schemes, other registration schemes operated in Western Australia, the ACL/FTA, the need to disincentivise individual and corporate offending and the level of criminality involved in the offence.

Clause 41 Infringement notices and *Criminal Procedure Act 2004*

It is intended that the Bill, if enacted, will be prescribed for the purposes of the *Criminal Procedure Act 2004* (WA), allowing less serious offences to be dealt with by way of the issue of an infringement notice.

Clause 41 provides for the modification of the *Criminal Procedure Act 2004* (WA) to allow additional time for the service of a notice – permitting the collection of sufficient information to support an allegation.

An infringement notice will be required to be served within 21 days of the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation, and no more than six months after the date of commission of the offence.

Clause 42 Liability of officers for offence by body corporate

This clause details the application of section 39 (criminal liability of officers of a body corporate) of the *Criminal Code* to certain offences under the Act.

Given that there are several offences that apply to corporations, it is appropriate that liability for commission of these offences extends, if appropriate, to the officers of corporations.

Accordingly, clause 42 imports the application of section 39 of the *Criminal Code*, such that if an officer of a body corporate fails to take reasonable steps to prevent the commission of an offence by a body corporate, that officer will also be guilty of the offence.

Clause 43 No liability for disclosing information in good faith

This clause provides that, where information is disclosed by a person under the Bill, no civil or criminal liability should attach to the person provided that the disclosure was made in good faith.

It is appropriate, and consistent with legislation administered by DEMIRS, that in the exercise of functions under the Act that protection of the Commissioner, delegate or officer of Consumer Protection from liability extends to only “good faith” acts or omissions.

Clause 44 Protection from liability for wrongdoing

This clause provides protection from tortious liability for persons and the State in respect of the performance of functions under the Bill.

It is appropriate, and consistent with legislation administered by DEMIRS, that in the performance of functions under the Act that protection from tortious liability is afforded for acts or omissions to those performing the functions, together with the State (on behalf of whom the functions were performed).

Clause 45 Certificate evidence of certain matters

This clause provides that a certificate signed by the Commissioner (or a prescribed officer) certifying offences against provisions requiring registration may be utilised in civil or criminal proceedings under the Bill or the FTA.

Clause 45(2) provides that a certificate signed by, or on behalf, of the Commissioner may be used as evidence in respect of proceedings regarding the registration status, of a premises; whether there was a suspension, or otherwise, of a premises; or the assignment, or otherwise, of a registration number at a specified time.

The provision avoids the requirement for the Commissioner, or another DEMIRS officer, to attend proceedings to give evidence in person, in order to provide information that has been drawn directly from the register, and where there is, therefore no personal knowledge which could be added or tested by the parties.

Clause 46 Making applications and giving notice, information and other documents

This clause permits regulations to be made in respect of the making of applications and the provision of notice, information and other documents.

The intent of this clause is to provide the registration scheme with flexibility and adaptability in the procedural aspects of administration of the Act. It is intended that the scheme proposed under the Bill will be administered by way of an online portal through which applications are made, notices are delivered and information is disseminated. A power to make regulations in support of this is necessary to maintain the scheme's flexibility and adaptability as the online facility is developed and implemented.

Clause 47 Relationship of Act to local laws

This clause provides that a local law will be inoperative to the extent that it provides for a registration scheme for residential premises used as STRA.

The intent of the scheme proposed under the Bill is to provide a single consistent system of registration of STRA properties, State-wide. This proposed scheme will enable Government to determine the size and scope of the STRA industry in Western Australia and will provide essential data to develop policies aimed at the regulation of the industry, and myriad related issues, moving forward. It also provides a consistent approach to information collection and recording across LGAs.

The existence of registration schemes at a local government level would undermine the efficacy of the scheme proposed by Government and would lead to unnecessary cost and duplication, most of which, will be borne by accommodation providers.

Whilst local government registration schemes are not widespread within the State, they currently provide a means of identifying STRA within a local government area and support compliance and enforcement functions in some areas where amenity issues associated with STRA have arisen.

The Bill has mechanisms in place (see clause 34) to ensure that affected LGAs will have ongoing access to data pertaining to registered premises within their area to support their regulation of STRA.

Clause 47 does not preclude local governments from implementing and enforcing local laws related to the regulation of STRA (such as laws in respect of amenity, health, traffic/parking and requirements for development approval) provided that an appropriate head of power is available to support the local laws. It does, however, prevent local laws from being used to require STRA to register with the LGA and any such registration requirements will, as a consequence of this clause, be inoperative to the extent that they duplicate registration requirements in the Bill, or are otherwise inconsistent with the requirements of the Bill.

Clause 48 Recovery of unpaid fees

This clause provides that the Commissioner may recover an unpaid fee as a debt via a court of competent jurisdiction.

Fees are payable on registration and renewal of registration under the Bill and, while it is unlikely that an issue will often arise in respect of payment because most application fees will be collected automatically as part of an online application process, it is appropriate, and consistent with other legislation administered by DEMIRS, that the Commissioner has a mechanism to recover unpaid fees.

Clause 49 Code of conduct

This clause provides that regulations may be made introducing a code of conduct that will regulate the conduct of those involved in the STRA industry. The clause has been drafted to have a broad application to permit a code to apply to all potential industry participants, including operators and their agents, and those utilising STRA accommodation.

It is the Government's intention to utilise data from the scheme to, amongst other things, determine whether it is appropriate/necessary to implement a code of conduct and, if so, what it should cover and which industry participants it should apply to. This approach will avoid unnecessary regulation, together with the associated costs.

Some local government areas already have arrangements in place to deal with amenity and conduct issues in STRA, while others do not believe that STRA specific controls are required. Prescribing a single code to operate state-wide could have significant impact on operators, and on the capacity of local government areas to manage amenity for their residents in a targeted way. Additional evidence as to the requirement for a code is therefore necessary before a decision can be made.

Clause 50 Regulations

This clause provides that regulations may be made in respect of matters required or permitted to be prescribed under the Bill or necessary or convenient to give effect to the Act.

Given that the regulation of STRA, particularly in Australia, has a limited history and is an industry that will continue to evolve quickly over time, it is necessary that there are regulation making powers within the Bill that enable the legislation to adapt to changing conditions and regulatory requirements.

Clause 51 Review of Act

This clause provides for a review of the operation and effectiveness of the Bill following the third anniversary of the Bill coming into operation.

It is proposed that a review be undertaken three years from commencement upon the basis that the legislation needs to operate for a reasonable period of time before there is sufficient data to assess whether it is operating effectively.

Part 7 — Transitional provision

Clause 52 Transitional period for compliance with advertising and registration obligations

This clause provides that, for the purpose of supporting the STRA industry to alter its current practices to comply with the requirements of the Act, the advertising and registration requirements detailed in Part 2 of the Bill will not apply for a period of six months after commencement.

Given that the Bill represents the first state-wide regulation of STRA properties it is important that there is a period of transition built into the legislation in order to facilitate industry participants', particularly accommodation providers, compliance in advance of commencement.

Part 8 —*Fair Trading Act 2010* amended

Clause 53 Act amended

This clause provides that Part 8 of the Bill amends the FTA.

Clause 54 Section 88E amended

This clause amends section 88E(1A) of the FTA to include reference to the *Short-Term Rental Accommodation Act 2024*.

Section 88E of the FTA provides that an “authorised person”, for the purposes of that act, may enter the premises of a regulated person (without a requirement for a search warrant) for the purposes of conducting investigations and inquiries, seizing things or obtaining information.

88E(1A) provides that this power does not apply to specified acts, and it is intended that the power should not apply to this legislation.

On the basis that premises used as STRA are residential (as defined by the Bill), and may be people’s homes, it is not considered that it is either necessary or appropriate for powers of entry without warrant provided for under the FTA in respect of other regulated business premises to be applied in the context of the STRA registration scheme, irrespective of whether the residential premises is used as hosted or un-hosted accommodation.

Should a search of premises be required during an investigation, it will be possible for a search warrant to be sought under the relevant applied provisions of Part 6 of the FTA.

Clause 55 Schedule 2 amended

This clause amends Schedule 2 of the FTA to include reference to the *Short-Term Rental Accommodation Act 2024*.

Given that the legislation is proposed to be administered by the Commissioner, and imposes a registration requirement on STRA operators, the proposed amendment to Schedule 2 of the FTA is necessary and appropriate to give effect to the Commissioner's powers of enforcement of licensing and regulatory provisions.