

# **TRAVELLER ACCOMMODATION PROVIDERS (LIABILITY) BILL 2001**

## **EXPLANATORY NOTES**

### **Objectives of the Bill**

The Bill will reform the law relating to the rights and duties of providers of traveller accommodation and their guests, in particular, to give such accommodation providers protection from strict liability.

### **Reasons for the Bill**

At common law, operators of establishments that provide accommodation for travelling purposes are made strictly liable for the property of guests under the innkeeper's doctrine.

Prior to 1992 the *Liquor Act 1912* provided some relief for the providers of the accommodation from the harshness of the doctrine by limiting the strict liability in certain cases. The relief relied upon the innkeepers displaying a notice to guests regarding the limited liability. The *Liquor Act 1992* removed this provision and returned the law in Queensland to the common law position of strict liability.

The Bill is intended to mitigate the harshness of the common law doctrine. Protections are provided for both traveller accommodation providers and guests. This will ensure that Queensland maintains substantial uniformity with the rules applying nationally and internationally.

### **Estimated Cost of Government Implementation**

There will be no expenditure associated with the introduction of the Bill.

### **Fundamental Legislative Principles**

The Bill infringes fundamental legislative principles in that the modification of the common law is an immunity from proceedings

conferred on the accommodation provider for amounts above the prescribed amount.

The continuation of the common law right of an innkeeper to take a lien over a guest's property in certain circumstances also infringes fundamental legislative principles.

The Government considers that these infringements are justified in the circumstances. It considers that the existing common law position is unduly harsh. The limited liability regime introduced by this Bill represents a balanced approach, providing some protection to both accommodation providers and guests and maintaining uniformity with the rules applying nationally and internationally. In the case of the right to take a lien over a guest's property the Bill merely continues the existing common law right.

### **Consultation**

The policy in the Bill has been discussed in detail with industry bodies, insurance companies and the Queensland Law Society. In particular the following industry groups have been consulted regarding the provisions of the Bill:

Tourism Council Australia  
Queensland Hotels Association  
Hotel Motel and Accommodation Association of Queensland  
Independent Backpacker Association

The following Government Departments have been consulted during development of the Bill:

Department of the Premier and Cabinet  
Department of Justice and the Attorney General  
Department of Equity and Fair Trading  
Department of State Development  
Department of Employment, Training and Industrial Relations  
Department of Primary Industries

### **Notes on Clauses**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation. This will allow sufficient time between the Bill receiving

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assent and the commencement date for traveller accommodation providers to alter their operations in order to comply with the provisions regarding notification to guests.

*Clause 3* sets out the purposes of the Act.

*Clause 4* of the Bill specifies that the Act binds all persons including the State and as far as possible the Commonwealth and the other states.

*Clause 5* specifies that the dictionary in schedule 2 defines particular words used in the Act.

*Clause 6* provides a meaning for the phrase “traveller accommodation”. Traveller accommodation is accommodation provided for use by members of the travelling public as part of a commercial transaction and includes certain specified types of accommodation. The definition is intentionally broad and meant to cover a variety of types of accommodation.

Subsection (3) specifies that payment for the accommodation is not a determining factor in deciding whether accommodation is traveller accommodation. The accommodation provided must be part of a commercial transaction. This provision reflects that providers of accommodation may operate the business in a variety of ways. Some transactions may be of a promotional nature and not involve a specific charge such as the examples given in the section.

Subsection (4) provides that traveller accommodation must include an accommodation unit. “Accommodation unit” is defined in schedule 2 as meaning an area of traveller accommodation that is designed to be used by a guest of the accommodation provider for sleeping.

*Clause 7* specifies that an “accommodation provider” is the person who operates a business that includes providing traveller accommodation. It is intended that the person who has day to day control of the business be the accommodation provider. This may not always be the owner of the premises. This recognises commercial practice in that many owners of premises engage others to operate businesses upon those premises.

*Clause 8* specifies the meaning of “innkeepers liability” and “innkeepers lien”. At common law, the innkeeper’s doctrine comprises a set of rules that govern the rights and obligations of common innkeepers. These special rights and duties apply between innkeepers and their guests and are as follows:

- duty to receive and entertain guests;
- duty to take reasonable care for guest’s safety;

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- duty to receive and look after guest's means of transport;
  - duty to safeguard a guest's property;
- and
- a right to set Rules of the House; and
  - a right to a lien over property.

This provision specifies that innkeeper's liability is the strict liability imposed, at common law, on an innkeeper for failing to safeguard property of a guest that is brought to the inn.

At common law, there is some doubt as to whether loss includes damage to or destruction of property. To remove doubt the provision specifies that for the purposes of this Act loss does include such things. The provision further specifies that for the Act, "innkeeper's lien" is the common law right allowing an innkeeper to take possession of property brought to the inn by the guest and to keep it until payment is made for accommodation, beverages, food and other services provided to the guest.

Subclause (4) specifies an accommodation provider is an innkeeper and that traveller accommodation is an inn. As the definitions in the Act are broad this is not a restrictive provision.

*Clause 9* provides that a guest is a person to whom and for whom traveller accommodation is provided by an accommodation provider. A person is a guest only on a day on which the person is provided with the use of an accommodation unit at the traveller accommodation.

The clause provides, in subclause (3), that a person who is at the traveller accommodation merely to obtain a meal or drink or to visit someone else is not a guest for the purposes of this Act. This provision reflects the changing nature of services offered by accommodation providers. Innkeeper's liability is only imposed with respect to guests.

Similarly, a guest does not include a person who usually lives at the traveller accommodation. Innkeeper's doctrine at common law does not apply to residents so there is no need to limit the strict liability.

*Clause 10* set out the meaning of "property" of a guest. Property of a guest is the property brought to the traveller accommodation or its precinct by or for the guest. This section recognises that on occasion guest's property is brought to the accommodation by a third party, for example, a tour organiser. Property does not include a motor vehicle or property left in or on a motor vehicle.

*Clause 11* specifies the application of part 3 which deals with liability of accommodation providers. Clause 11 specifies that the part applies to the property of a guest after the accommodation provider or the provider's agent, knows or is told about the arrival of a guest or the guest's property at the traveller accommodation or its precincts. This ensures that an accommodation provider is not held liable for loss or damage to property that the provider was unaware was on the premises.

*Clause 12* imposes a limitation on the strict liability that an accommodation provider has under the common law doctrine of innkeeper's liability for the loss of the guest's property. Loss is defined in the dictionary as including damage to, or destruction of, the property. The liability for the loss is limited to \$250 for each accommodation unit provided for the use of the guest on the day of the loss. This is despite the amount of the loss or the number of guests who are using the unit and suffer a loss. Some detailed examples are set out in clause 12 to demonstrate the operation of this section.

Subsection (3) specifies that an accommodation provider may avail himself or herself of the defences available at common law for an innkeeper, including what are known as the perils of travel defences. These classic defences (which also apply to common carriers) are:

- act of God – natural forces which could not reasonably have been foreseen or guarded against, such as earthquake and lightning;
- act of the Queen's enemies – acts of the state's enemies or seizure by public authorities (for example customs);
- inherent vice – an inherent fault or defect in the property, such as faulty packing or labelling or perishable goods; or
- the guest's fault.

*Clause 13* sets out the circumstances when the \$250 limitation does not apply. These include circumstances where the loss of the property is caused by the fault of the accommodation provider or the provider's agent; the loss happened after the accommodation provider or the provider's agent accepts the property for depositing in safe custody facilities; or the loss happens while the property is left at a particular place, other than the accommodation unit, at the invitation of the accommodation provider or the provider's agent. In these circumstances the limitation does not apply and the innkeeper is strictly liable in accordance with the rules at common law.

Subsection (2) sets out further circumstances where the limitation does not apply including where the accommodation provider did not conspicuously display a notice in the reception area or main entrance to the premises specifying the matters set out in schedule 1. The intention is that guests be notified about the modification to the common law which applies.

Section 13 (2)(b) further specifies that during the whole of the period the guest is provided with the use of an accommodation unit, a notice under schedule 1 must be displayed in the accommodation unit or there must be a system in place where a guest is given a copy of the notice or notified at the time of checking in about the notice. The requirements with respect to notification of guests are set out in section 15 of the Act.

*Clause 14* provides for circumstances where an accommodation provider has safe keeping facilities on the premises other than in the accommodation unit. The section applies to make the accommodation provider liable for the loss of the guest's property if it happens after the provider or his or her agent accepts the property for depositing in the safe custody facility.

Subsection (3) provides that liability for the loss is limited to \$50,000 for each accommodation unit provided for the use of the guest on the day of the loss despite the amount of the loss on the day or the number of guests using the accommodation who suffer a loss of property.

Subsection (4) provides that the limitation on the accommodation provider's liability under subsection (3) does not apply if before, or at the time, the property is accepted for depositing in the safe custody facilities, the guest, in writing, declares the value of the property is more than \$50,000 and, if asked to do so, pays or agrees to pay a fee for the accommodation provider accepting the property in depositing safe custody facilities. This provision reflects the insurance arrangements which exist currently in the industry where additional premiums are required for property valued in excess of \$50,000.

Subsection (5) specifies that an accommodation provider or his or her agent may require a guest who is depositing property in the safe custody facilities to place the property in a container and fasten or seal the container. This allows accommodation providers to protect themselves from fraudulent claims with regard to property deposited.

Subsection (6) requires that an accommodation provider must accept a guest's property for depositing in safe custody facilities except in certain circumstances including where a guest refuses to pay the fee required or refuses to place the property in a container and fasten or seal it. This subsection also allows a provider to refuse a deposit where the

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accommodation provider reasonably considers it would be unreasonable having regard to the property's nature, size or value and the type of accommodation and tariff charged for the accommodation unit. This paragraph of subsection 6 is necessary having regard to the extensive nature and different standards of accommodation which will be affected by this Act. What may be a reasonable requirement of a five star establishment in Brisbane would not be reasonable of a three star operation in a small country town.

Subsection (7) clarifies that the section does not require an accommodation provider to provide safe custody facilities. Safe custody facilities for the purposes of this Act is not confined to a purpose built safe. In some establishments a locked cupboard in an area not accessible to the public may constitute safe custody facilities.

*Clause 15* sets out the requirement for an accommodation provider to ensure that guests are notified about the modification of the common law which this Act effects. The Act does this by requiring a notice be displayed in the reception area or main entrance. Additionally a notice must be displayed in the accommodation unit or drawn to the guest's attention in some other way. Individual operators may care to notify guests in different ways, for example, by having notices in the written material provided in the room or by way of a notice on the key tag. However if these alternatives to displaying the notice are used, the Act requires that the accommodation provider draw the guest's attention to the information at the time of check in.

*Clause 16* continues the common law right of an innkeeper's lien to be taken over the guest's property in circumstances where the bill for accommodation, food, beverages and other services has not been paid. This common law right is extended to accommodation providers under this Act. The lien gives the accommodation provider the right to retain possession of the property until the guest's account is paid. It is only a right to obtain possession, not a power of sale.

*Clause 17* deals with transitional matters. The section is a balance of the rights of persons who are using accommodation at the date of the commencement of the Act and to whom no notice has been given and the rights of the innkeepers to take advantage of the benefits of this Act. If a guest stays for a period of 7 days after the commencement of the Act, and he/she is given a notice in accordance with schedule 1 and written notice about any safe custody facilities provided, then the limitation on liability will apply. This provision should allow accommodation providers to

ensure a smooth transition without unduly impinging on the rights of guests.

Schedule 1 sets out the notice that is displayed and given under Section 15. This notice is intended to operate as a warning to guests rather than as a full explanation of the provisions of the Act.

Schedule 2 provides for the dictionary to the Act.