



# **Traveller Accommodation Providers (Liability) Act 2001**

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Queensland

# Traveller Accommodation Providers (Liability) Act 2001

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# Traveller Accommodation Providers (Liability) Act 2001

**An Act to limit the strict liability of accommodation providers for the property of their guests, and for related purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Traveller Accommodation Providers (Liability) Act 2001*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Purpose of Act**

- (1) The purpose of this Act is to benefit the Queensland tourism industry.
- (2) The purpose is to be achieved mainly by mitigating some of the harsh consequences of innkeeper's liability and by allowing accommodation providers to exercise an innkeeper's lien.

### **4 Act binds all persons**

This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## Part 2 Interpretation

### 5 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 6 Meaning of *traveller accommodation*

- (1) ***Traveller accommodation*** is accommodation provided for use by members of the travelling public as part of a commercial transaction.
- (2) Without limiting subsection (1), traveller accommodation includes the following types of accommodation—
  - (a) backpacker;
  - (b) bed and breakfast;
  - (c) hotel;
  - (d) motel;
  - (e) resort;
  - (f) serviced apartment.
- (3) Accommodation is traveller accommodation even if the accommodation is provided without charge as long as the accommodation is provided as part of a commercial transaction.

*Examples of accommodation supplied as part of a commercial transaction—*

- 1 Resort holidays supplied to purchasers of electrical goods from retail outlets.
  - 2 Accommodation supplied to members of the travel industry or the public generally for promoting the accommodation.
- (4) Despite subsections (1) to (3)—
    - (a) accommodation is not traveller accommodation unless it includes an accommodation unit; and

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- (b) accommodation in or on something, that is a means of transportation, is not traveller accommodation if the particular thing is being used, or is ordinarily used, for transportation.

## 7 **Meaning of *accommodation provider***

- (1) An *accommodation provider* is the person who operates a business that includes providing traveller accommodation.
- (2) To remove doubt, it is declared that the owner of traveller accommodation is not necessarily the accommodation provider.

### *Example of accommodation provider—*

The letting agent for, or the manager of, serviced apartments is the accommodation provider and not the owner of the apartments.

## 8 **Meaning of *innkeeper's liability* and *innkeeper's lien***

- (1) For this Act, *innkeeper's liability* is innkeeper's liability under the common law but only in relation to the strict liability imposed on an innkeeper for failing to safeguard property of the innkeeper's guests that is brought to the innkeeper's inn.
- (2) To remove doubt, it is declared that, for innkeeper's liability, loss of a guest's property includes damage to, or destruction of, the property.
- (3) For this Act, an *innkeeper's lien* is the common law right allowing an innkeeper—
- (a) to take possession of the property of the innkeeper's guests that is brought to the innkeeper's inn; and
  - (b) to keep the property until the innkeeper receives payment for accommodation, beverages, food and other services provided to the guest.
- (4) For innkeeper's liability and an innkeeper's lien, it is declared that—
- (a) an accommodation provider, and only an accommodation provider, is an innkeeper; and

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- (b) traveller accommodation, and only traveller accommodation, is an inn.

## 9 Meaning of *guest*

- (1) A *guest* is a person to whom, or for whom, traveller accommodation is provided by an accommodation provider.
- (2) However, the 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.
- (3) A *guest* does not include a person—
  - (a) who is at the traveller accommodation merely to obtain beverages or food or to visit someone else; or
  - (b) who usually lives at the traveller accommodation.

## 10 Meaning of *property of guest*

- (1) *Property* of a guest is the property brought to the traveller accommodation or its precincts by or for the guest.
- (2) However, property of a guest does not include—
  - (a) a motor vehicle brought to the traveller accommodation or its precincts by or for the guest, or other things owned by the guest left in or on the motor vehicle; or
  - (b) property taken from the traveller accommodation or its precincts by or for the guest.

# Part 3 Liability of accommodation providers

## 11 Application of pt 3

This part applies to the property of a guest after the accommodation provider, or the provider's agent, knows or is



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told about the arrival of the guest or the guest's property at the traveller accommodation or its precincts.

## **12 Limitation on strict liability under innkeeper's liability**

- (1) This section applies to an accommodation provider's liability under innkeeper's liability for a loss of the guest's property.
- (2) 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, despite—
  - (a) the amount of the loss on the day; or
  - (b) the number of guests who, on the day, are provided with the use of the accommodation unit and suffer a loss of property.

*Examples of subsection (2)—*

- 1 The room occupied by a married couple is robbed and the husband's loss is a \$200 camera and the wife's loss is a \$200 bag. If the accommodation provider is liable, the accommodation provider's liability is limited to a total of \$250 for both losses.
  - 2 Four backpackers occupy a room. Travellers cheques worth \$500 are stolen from 1 backpacker and a watch worth \$40 is stolen from another backpacker. The other 2 backpackers suffer no losses. If the accommodation provider is liable, the accommodation provider's liability is limited to a total of \$250 for the 2 backpackers who have suffered a loss.
  - 3 On day 1, a guest's wallet is taken from the guest's room, together with the \$300 in the wallet. On day 3, the guest's \$60 bag is stolen from the room. If the accommodation provider is liable, the accommodation provider's liability is limited to a total of \$310—\$250 for loss of the wallet and its contents on day 1 and \$60 for the loss of the bag on day 3.
- (3) Despite the limitation on the liability to \$250, the accommodation provider's liability is subject to the defences available at common law for an innkeeper, including the perils of travel defences.

### **13 Circumstances when \$250 limitation does not apply under s 12(2)**

- (1) The limitation on the accommodation provider's liability under section 12(2) does not apply if the loss of a guest's property—
  - (a) is caused by the fault of the accommodation provider or the provider's agent; or
  - (b) happens after the accommodation provider, or the provider's agent, accepts the property for depositing in safe custody facilities; or
  - (c) happens while the property is left, at the invitation of the accommodation provider or the provider's agent, at a particular place outside of the accommodation unit provided to the guest.
- (2) Also, the limitation on the accommodation provider's liability under section 12(2) does not apply if—
  - (a) at the time the guest is provided with the use of an accommodation unit, the accommodation provider did not comply with section 15(1)(a); or
  - (b) during the whole of the period the guest is provided with the use of an accommodation unit, the accommodation provider did not do one of the following—
    - (i) display the notice set out in schedule 1 in the accommodation unit as required under section 15(1)(b);
    - (ii) have a system in operation as mentioned in section 15(2).

### **14 Safe custody facilities**

- (1) This section applies if an accommodation provider, or the provider's agent, accepts a guest's property for safe keeping in facilities controlled by the accommodation provider or the provider's agent (*safe custody facilities*), other than facilities located in an accommodation unit for the safe keeping of property.

- (2) The accommodation provider is liable for the loss of the guest's property if it happens after the accommodation provider, or the provider's agent, accepts the property for depositing in the safe custody facilities.
- (3) However, the accommodation provider's liability for the loss is limited to \$50000 for each accommodation unit provided for the use of the guest on the day of the loss, despite—
  - (a) the amount of the loss on the day; or
  - (b) the number of guests who, on the day, are provided with the use of the accommodation unit and suffer a loss of property.
- (4) The limitation on the accommodation provider's liability under subsection (3) does not apply if before or at the time the accommodation provider or the provider's agent accepts the property for depositing in the safe custody facilities—
  - (a) the guest, in writing given to the accommodation provider or the provider's agent, declares the value of the property is more than \$50000; and
  - (b) if asked to do so by the accommodation provider or the provider's agent—the guest pays, or agrees to pay, a fee for the accommodation provider accepting the property for depositing in the safe custody facilities.
- (5) An accommodation provider, or the provider's agent, may require a guest who asks to use safe custody facilities for the guest's property to place the property in a container and fasten or seal the container.
- (6) If the accommodation provider provides safe custody facilities, the accommodation provider must accept a guest's property for depositing in the safe custody facilities unless—
  - (a) the guest refuses to pay, or refuses to agree to pay, a fee for the accommodation provider accepting the property for depositing in the safe custody facilities, as mentioned in subsection (4); or

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- (b) the guest does not place the property in a container and fasten or seal it, in response to a requirement under subsection (5); or
  - (c) the accommodation provider reasonably considers that depositing the property in the safe custody facilities 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.
- (7) This section does not require an accommodation provider to provide safe custody facilities.

## **15 Notice about this Act**

- (1) An accommodation provider must cause the notice set out in schedule 1 to be conspicuously displayed so it may be easily read by a person when the person is—
- (a) in the reception area for, or main entrance to, the traveller accommodation; and
  - (b) in an accommodation unit.
- (2) However, subsection (1)(b) does not apply if the accommodation provider has a system in operation under which—
- (a) for each accommodation unit provided for the use of a guest— the guest is given a copy of the notice, including, for example, as part of the key tag or access card for, or in the compendium in, the accommodation unit; and
  - (b) the guest is told about the notice and where it is located at the time the guest checks in to the traveller accommodation.

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## Part 4 Innkeepers' liens

### 16 Innkeeper's lien

- (1) This section applies if a person is a guest of an accommodation provider and the guest's actions would, if the accommodation provider were an innkeeper at common law, give rise to an innkeeper's lien for the guest's property.
- (2) The accommodation provider may exercise an innkeeper's lien for the guest's property.

## Part 5 Transitional

### 17 Application of Act if accommodation provided before commencement day

- (1) If a person is provided with the use of an accommodation unit at traveller accommodation before the commencement day and continues to use it on and after the commencement day, the limitation under section 12(2) does not apply.
- (2) However, the limitation does apply if—
  - (a) the person continuously uses the accommodation unit for 7 days after the commencement day; and
  - (b) during the 7 days but before the person suffers a loss of property, the accommodation provider gives to the person—
    - (i) the notice set out in schedule 1; and
    - (ii) written notice about any safe custody facilities provided at the traveller accommodation.
- (3) In this section—

*commencement day* means the day this section commences.

## Schedule 1      Notice

section 15

### Notice about loss of guest's property

#### *Traveller Accommodation Providers (Liability) Act 2001*

The *Traveller Accommodation Providers (Liability) Act 2001* changes the common law about *innkeeper's liability*.

Under the Act, an *accommodation provider* may be liable to make good any *loss* of a *guest's property* in certain circumstances even though the loss is not caused by the *fault* of the accommodation provider, or the provider's *agent*.

The strict liability of the accommodation provider under the Act—

- applies only to a guest of the accommodation provider on a day when an *accommodation unit* is *provided* for the use of the guest
- is limited to \$250 for each accommodation unit provided for the use of the guest on the day, unless the guest's property was placed in *safe custody facilities*
- does not cover *motor vehicles* and things owned by the guest left in or on motor vehicles.

**Note:** Words appearing in italics and bold have a special meaning under the *Traveller Accommodation Providers (Liability) Act 2001*.

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## Schedule 2 Dictionary

## section 5

*accommodation provider* see section 7.

*accommodation unit* means an area of traveller accommodation that is designed to be used by a guest of the accommodation provider for sleeping.

*agent*, of an accommodation provider, includes—

- (a) an employee of the accommodation provider; and
- (b) an apparent agent or employee of the accommodation provider.

*fault* means negligence or another act or omission giving rise to a liability.

*guest* see section 9.

*innkeeper's liability* see section 8(1).

*innkeeper's lien* see section 8(3).

*loss*, of property, includes damage to, or destruction of, the property.

*motor vehicle* includes a boat, caravan and trailer attached to a motor vehicle.

*property*, of a guest, see section 10.

*provide*, relating to traveller accommodation, includes offering to provide the traveller accommodation.

*safe custody facilities* see section 14(1).

*traveller accommodation* see section 6.