



NORFOLK ISLAND

TOURIST ACCOMMODATION (OWNERSHIP) ACT 1989

Act No 2 of 1989

An Act relating to the ownership of tourist
accommodation houses

[Assented to 21 April 1989]

BE IT ENACTED by the Legislative Assembly of Norfolk
Island as follows -

Short title

1. This Act may be cited as the Tourist Accommodation
(Ownership) Act 1989.

Commencement

2. This Act shall be deemed to have come into
operation on 7 December 1988.

Interpretation

3. In this Act, unless the contrary intention
appears -

"accommodation unit" means an accommodation unit,
referred to in subsection 4(1) of the Tourist
Accommodation Act 1984, that is part of a
tourist accommodation house;

"corporation" means a body corporate incorporated
in accordance with a law of Norfolk Island or
another place;

"dominant market share" means the same as in
subsection 7(1);

"entity" means the same as in subsection 5(2);

"foreign owner" means the same as in subsection 10(1);

"holding corporation" means the same as in subsection 5(3);

"person" means a natural person;

"relevant application" means an application -

(a) under subsection 7(1) of the Tourist Accommodation Act 1984 for registration of a tourist accommodation house; or

(b) under subsection 7(6) of the Tourist Accommodation Act 1984 for approval of a change of ownership of a tourist accommodation house;

"single owner" means the same as in subsection 5(1);

"subsidiary corporation" means the same as in subsection 5(3);

"tourist accommodation house" means a tourist accommodation house registered, or required to be registered, under the Tourist Accommodation Act 1984;

"trigger market share" means the same as in subsection 6(1).

Disposal of relevant applications

4. (1) Subject to section 12, where the executive member receives a relevant application, the executive member shall consider whether the application relates to a single owner who might have, or might have if the application were granted, more than a trigger market share.

(2) If the executive member concludes that the application relates to a single owner who might have, or might have if the application were granted, more than a trigger market share, the executive member shall -

(a) inform in writing the applicant of the executive member's conclusion;

- (b) give the applicant a reasonable opportunity of making representations to the executive member about that conclusion; and
- (c) consider any such representations.

(3) If, after considering any such representations, the executive member concludes that the application does not relate to a single owner who has, or would have if the application were granted, more than a trigger market share, the executive member shall deal with the application in accordance with the Tourist Accommodation Act 1984.

(4) If, after considering any such representations, the executive member concludes that the application relates to a single owner who has, or would have if the application were granted, more than a trigger market share, the executive member shall -

- (a) inform in writing the applicant of the executive member's conclusion;
- (b) give the applicant a reasonable opportunity of making representations to the executive member about whether the market share that the single owner has, or would have if the application were granted, constitutes a dominant market share; and
- (c) after giving such an opportunity, refer the application, together with any representations made under paragraph (b), to the Legislative Assembly.

(5) On such a referral, the Legislative Assembly shall consider the application, and any representations made under paragraph (4)(b), and shall -

- (a) if it is satisfied that the application relates to a single owner who has, or would have if the application were granted, a dominant market share - by resolution direct the executive member to refuse to grant the application; or
- (b) if it is not so satisfied - by resolution direct the executive member to deal with the application in accordance with the Tourist Accommodation Act 1984.

(6) If the Legislative Assembly, within 60 days after the referral to it of an application, does not pass a resolution under subsection (5), the Assembly shall be taken to have resolved to direct the executive member to deal with the application in accordance with the Tourist Accommodation Act 1984.

(7) The executive member shall comply with a direction made, or taken to have been made, under this section.

Single owner

5. (1) An entity shall be taken for the purposes of this Act to be a single owner owning one or more tourist accommodation houses if the entity -

- (a) has a legal or equitable interest in the house or houses; and
- (b) because of that interest is in a position to control the management of the house or houses.

(2) In subsection (1), "entity" means -

- (a) a person;
- (b) a corporation;
- (c) two or more persons, two or more corporations, or one or more persons together with one or more corporations, who or which agree, or are bound, to act in conformity with the terms of a partnership agreement, trust instrument or other arrangement between them in connection with one or more tourist accommodation houses;
- (d) a holding corporation and one or more of its subsidiary corporations; or
- (e) two or more subsidiary corporations of the same holding corporation.

(3) For the purposes of subsection (2), if a corporation -

- (a) controls the composition of the board of directors of another corporation;

- (b) is in a position to cast, or control the casting of, more than half of the maximum member of votes that might be cast at a general meeting of another corporation;
- (c) holds more than half of the allotted share capital of another corporation (including any part of the allotted share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (d) under paragraph (a), (b) or (c) controls a corporation that itself, under any of those paragraphs, controls (whether directly, or indirectly by means of interposing corporations) another corporation,

the corporation is a holding corporation of the other corporation, and the other corporation is a subsidiary corporation of the first-mentioned corporation.

(4) Where an interest in a tourist accommodation house is subject to a mortgage, the person or corporation having the equity of redemption is deemed for the purposes of this Act to be the person in whom, or corporation in which, is vested the interest that is the subject of the mortgage.

(5) Subsection (4) does not apply to an interest in respect of which a mortgagee has taken possession under the terms of the mortgage.

Trigger market share

6. (1) A single owner has more than a trigger market share for the purposes of this Act if the owner -

- (a) owns more than the prescribed percentage of -
 - (i) tourist accommodation houses;
 - (ii) tourist accommodation houses included in a prescribed class or type of tourist accommodation houses; or
 - (iii) accommodation units; or

- (b) owns accommodation units in which more than the prescribed maximum number of guests may lawfully be accommodated.

(2) Regulations made for the purposes of subsection (1) have no effect unless, before the making of the regulations -

- (a) a copy of the proposed regulations has been laid before the Legislative Assembly; and
- (b) the Legislative Assembly has passed a resolution approving the proposed regulations.

(3) Section 41 of the Interpretation Ordinance 1979 does not apply to regulations made for the purposes of subsection (1).

Dominant market share

7. (1) A single owner has a dominant market share for the purposes of this Act if the owner -

- (a) has more than a trigger market share; and
- (b) is in a position to dominate -
 - (i) the market for the provision of tourist accommodation in Norfolk Island; or
 - (ii) in the case of an owner who has more than a trigger market share of tourist accommodation houses included in a prescribed type or class of tourist accommodation houses - the market for the provision of tourist accommodation in Norfolk Island of that type of class,

or both.

(2) In considering whether a single owner is in a position to dominate a market referred to in subparagraph (1)(b)(i) or (ii), the following factors shall, so far as is relevant in a particular case, be taken into account -

- (a) the number of single owners in the market, and the degree of market concentration;

- (b) the capacity of the single owner to whom a relevant application relates to determine prices for the owner's services in the market without being consistently inhibited by the marketing practices of other single owners operating in the market;
- (c) the ease or difficulty with which new single owners may enter the market; and
- (d) the extent to which services provided in the market are different from each other.

Rulings in advance of acquisition

8. (1) A person or corporation may make a hypothetical application to the executive member for a ruling on how a relevant application would be dealt with under this Act.

(2) A hypothetical application shall take the form of a relevant application, but may be made even though circumstances do not exist which would require, or enable, the making of a relevant application.

(3) The executive member and, if the hypothetical application is referred to the Legislative Assembly under section 4, the Legislative Assembly, shall deal under this Act with a hypothetical application as if it were a relevant application, except that, instead of making a decision on the application, the executive member shall give a ruling on how the application would have been dealt with under this Act if it had been a relevant application.

(4) In spite of section 4, if, after such a ruling has been given, a relevant application is made which is consistent with the hypothetical application on which the ruling was given, the executive member shall deal with the relevant application consistently with the ruling.

Appeals

9. (1) Where a relevant application has been refused under section 4, the applicant may, within 30 days after notice of the refusal has been provided to the applicant, appeal to the Supreme Court against the refusal.

(2) The Supreme Court has jurisdiction to hear and determine such an appeal.

(3) The executive member shall be the respondent to such an appeal.

(4) If, on hearing such an appeal, the Supreme Court is satisfied on the balance of probabilities that the application that is the subject of the appeal relates to a single owner who has, or would have if the application were granted, a dominant market share, the Supreme Court shall dismiss the appeal.

(5) If the Supreme Court is not so satisfied, the Court shall set aside the refusal of the application that is the subject of the appeal.

(6) If the Supreme Court sets aside the refusal of the application that is the subject of the appeal, the executive member shall deal with the application in accordance with the Tourist Accommodation Act 1984.

Foreign owners

10. (1) In this section, "foreign owner" means -

(a) a person other than -

(i) an Australian or New Zealand citizen;
or

(ii) a resident, or person who is the holder of a general entry permit, under the Immigration Act 1980;

(b) a corporation in which a person who is a foreign owner holds a controlling interest;
or

(c) a corporation in which two or more persons who are foreign owners hold in the aggregate a controlling interest,

who or which has a legal or equitable interest in one or more tourist accommodation houses and, because of that interest, is in a position to control the management of the house or houses.

(2) For the purposes of subsection (1), a person, or two or more persons in the aggregate, hold a controlling interest in a corporation if -

- (a) the person or persons are in a position to cast, or control the casting of, more than half of the maximum number of votes that might be cast at a general meeting of the corporation;
- (b) the person or persons hold more than half of the allotted share capital of the corporation (excluding any part of the allotted share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) the corporation is a subsidiary corporation of a holding corporation, and the person or persons, under paragraph (a) or (b), control the holding corporation.

(3) Subject to section 12, where the executive member receives a relevant application, the executive member shall consider whether the application might, or might if the application were granted, relate to a foreign owner.

(4) If the executive member concludes that the application might, or might if the application were granted, relate to a foreign owner, the executive member shall -

- (a) inform in writing the applicant of the executive member's conclusion;
- (b) give the applicant a reasonable opportunity of making representations to the executive member about that conclusion; and
- (c) consider any such representations.

(5) If, after considering any such representations, the executive member concludes that the application does not, or would not if the application were granted, relate to a foreign owner, the executive member shall deal with the application in accordance with the Tourist Accommodation Act 1984.

(6) If, after considering any such representations, the executive member concludes that the

application does, or would if the application were granted, relate to a foreign owner, the executive member shall -

- (a) inform in writing the applicant of the executive member's conclusion;
- (b) give the applicant a reasonable opportunity of making representations to the executive member about whether the granting of the application would be contrary to the public interest; and
- (c) after giving such an opportunity, refer the application, together with any representations made under paragraph (b), to the Legislative Assembly.

(7) On such a referral, the Legislative Assembly shall consider the application, and any representations made under paragraph (6)(b), and shall -

- (a) if it is satisfied that the application relates to a foreign owner and that the granting of the application would be contrary to the public interest - by resolution direct the executive member to refuse to grant the application; or
- (b) if it is not so satisfied - by resolution direct the executive member to deal with the application in accordance with the Tourist Accommodation Act 1984.

(8) If the Legislative Assembly, within 60 days after the referral to it of an application, does not pass a resolution under subsection (7), the Assembly shall be taken to have resolved to direct the executive member to deal with the application in accordance with the Tourist Accommodation Act 1984.

(9) The executive member shall comply with a direction made, or taken to have been made, under this section.

Divestment

11. (1) The executive member may apply to the Supreme Court for an order to be made under this section.

(2) If, on such an application, the Supreme Court is satisfied that -

- (a) a relevant application has been refused under section 4 or 10; and
- (b) in the case of a refusal under section 4 -
 - (i) notice of the refusal was provided to the applicant not less than 30 days before the making of the application under subsection (1); and
 - (ii) an appeal against the refusal has not been instituted under section 9, or, if an appeal has been instituted, the appeal has been determined and dismissed,

the Supreme Court may, by order, give directions for the purpose of securing the disposal by a single owner or foreign owner in relation to whom the application is made so much of the assets of the single owner or foreign owner as is necessary to comply with the terms of the refusal.

Saving for transactions occurring before commencement date

12. In dealing with a relevant application under section 4 or 10, the executive member and Legislative Assembly and, in an appeal under section 9, the Supreme Court, shall not have regard to a transaction that occurred before 7 December 1988, except to the extent that the transaction, taken together with a transaction occurring on or after that date, is relevant to a matter to be determined under section 4 or 10.

Regulations

13. The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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Deemed to have commenced 7 December 1988 (section 2)

Printed on the authority of the Administrator