

Gold Coast City Council



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Local Law No. 8

(Rental Accommodation) 1999

Consolidated Version

Annotations

REPEALED (GAZETTE 19/12/08)

Gazettal Notice

REPEALED (GAZETTE 19/12/08)

Certification

It is hereby certified that this is a true and correct copy of *Local Law No. 8 (Rental Accommodation) 1999* made, in accordance with the *Local Government Act 1993*, by the Gold Coast City Council.

Dale Dickson
Chief Executive Officer

REPEALED (GAZETTE 19/12/08)

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Local Law No. 8
(Rental Accommodation) 1999**

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Gold Coast City Council Local Law No. 8 (Rental Accommodation) 1999

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 8 (Rental Accommodation) 1999*.

2 Object

The object of this local law is to ensure that short and long term rental accommodation provides high standards of public health and safety for human habitation.

3 Definitions

In this local law—

accommodation to which this local law applies - see section 4.

Act means the *Local Government Act 1993*.

authorised person means a person authorised by the local government to exercise the powers of an authorised person under this local law.

bed includes a bunk and folding bed, or lounge used as a bed.

budget accommodation building has the meaning given in the *Building Act 1975*.

compliance notice means the written notice given pursuant to section 18(1) (Compliance notices) of this local law.

development approval has the meaning given in the *Integrated Planning Act 1997*.

operator means a person who provides accommodation to which this local law applies (whether as a business or not) and includes—

- (a) a person who makes the application for registration of premises; and
- (b) in any other case, a person who is the owner or who is the agent for the principal or the person who—
 - (i) appears to have effective management and control of premises; or

- (ii) allocates accommodation to, or receives any payment from, a person who is accommodated at premises; or
 - (iii) receives or is entitled to share in the rents or profits of premises; or
 - (iv) resides at premises pursuant to a requirement under a subordinate local law or under the condition of registration of the premises; and
- (c) a person who is entitled to share in the rents or profits of premises; and
- (d) a person who resides at premises pursuant to a requirement under a subordinate local law or under the conditions of registration of the premises.

planning scheme has the meaning given in the *Integrated Planning Act 1997*.

premises means premises at which accommodation to which this local law applies is, or is to be, provided.

Examples—

(Subject to section 4 (Application of local law) of this local law): motels; hotels providing residential accommodation; serviced rooms or apartments; hostels; backpacker inns; bed and breakfast premises; flats; residential dwellings (whether single unit dwelling houses, duplexes, attached housing; building unit lots; group title lots or any other form of residence).

residential service has the meaning given in the *Residential Services (Accreditation) Act 2002*.

sleeping room includes any bedroom, dormitory, room or place where sleeping accommodation is provided.

4 Application of local law

- (1) Subject to section 4(2) (Application of local law) of this local law, this local law applies to all accommodation provided for payment at premises within the area other than employer provided accommodation.
- (2) However, this local law does not apply to—
 - (a) accommodation in premises excluded from the application of this local law under a subordinate local law; or
 - (b) a residential service.

5 Relationship to other laws

The powers given by this local law must be exercised in a way that is not

inconsistent with all Acts (including subordinate legislation) including—

- (a) the *Local Government Act 1993*; and
- (b) the *Integrated Planning Act 1997*; and
- (c) the *Building Act 1975*; and
- (d) the *Standard Building Regulation 1993*; and
- (e) the *Residential Services (Accreditation) Act 2003*; and
- (f) the *Fire and Rescue Service Act 1990*.

Part 2 Registration of Premises

6 Requirement for registration

A person must not provide accommodation to which this local law applies at premises within the area unless the premises are registered under this Part.

Maximum penalty—50 penalty units.

7 Application for registration

- (1) An application for registration must include or be accompanied by the information and documents required under a subordinate local law.
- (2) An applicant for registration must be—
 - (a) an operator; or
 - (b) a person who—
 - (i) has contracted to purchase the premises, or to purchase a business conducted at the premises or a right to use the premises; and
 - (ii) will be an operator on completion of the purchase.
- (3) If an applicant for registration is not the owner of the premises for which the application is made, the application must be accompanied by the written consent of the owner.

8 Registration

- (1) The local government may grant registration if satisfied that—

- (a) the premises can be lawfully used to provide the accommodation¹; and
 - (b) the use of the premises for providing the accommodation is consistent with the provisions of a subordinate local law.
- (2) In determining whether to grant registration, the local government is not obliged to look beyond—
- (a) the application for registration and accompanying documents; and
 - (b) other information about the premises (if any) actually in the local government's possession.
- (3) Upon granting registration, the local government must give a certificate of registration to the applicant.

9 Particular requirements may be specified by a subordinate local law

The local government may, under a subordinate local law—

- (a) specify requirements with which—
 - (i) accommodation to which this local law applies, or a particular class of accommodation to which this local law applies; and
 - (ii) operators of accommodation to which this local law applies, or a particular class of accommodation to which this local law applies; and
 - (iii) persons on premises or particular classes of premises, must comply; and
- (b) provide for exemption from the relevant requirements if there are adequate reasons for the exemption in a particular case.

10 Compliance with subordinate local law

- (1) Subject to section 10(2) (Compliance with subordinate local law) of this local law, an operator must ensure that requirements specified under a subordinate local law are complied with (whether or not the operator is the applicant for registration²).

¹ This will involve consideration of the local government's planning scheme, the extent of compliance with conditions of any relevant development approval and relevant provisions of other local laws, *the Building Act 1975*, the *Building Fire Safety Regulation 1991* and any other relevant legislation.

² The applicant must be an operator, but other persons (eg a non-resident owner) may also be an operator as defined in section 3 (Definitions) of this local law.

Maximum penalty for subsection (1)—40 penalty units.

- (2) If a requirement under a local law provides for a person other than an operator to do or refrain from doing anything³—
- (a) a person to whom the requirement applies must comply with that requirement; and
 - (b) the operator must ensure that a person to whom the requirement applies complies with the requirement; and
 - (c) if a person to whom the requirement applies does not comply with the requirement when requested by the operator so to do, the operator must direct the person to leave the premises; and
 - (d) a person must not refuse or fail to comply with a direction under subsection (2)(c).

Maximum penalty for subsection (2)—40 penalty units.

- (3) Sections 10(2)(c) and (d) (Compliance with subordinate local law) of this local law apply despite any contract relating to accommodation that would otherwise entitle a person to remain upon the premises.

11 Period of registration

- (1) Registration takes effect on the date of grant of registration and expires—
- (a) on the date specified in a subordinate local law as the expiration date for registration under this local law (the expiration date); or
 - (b) when the applicant for registration ceases to be an operator of the rental accommodation,
- whichever first occurs.

12 Conditions of registration

- (1) Registration may be granted on conditions the local government considers appropriate.
- (2) The conditions of registration may, for example—
- (a) limit the number of persons for whom accommodation may be provided in the premises, or a specified part of the premises;
 - (b) limit the number of beds which may be provided in the premises or a specified part of the premises;

³ For example, a subordinate local law may specify that smoking is prohibited in the whole or specified parts of premises.

- (c) require that specified modifications or alterations for health or amenity reasons, other than building work as defined in the *Integrated Planning Act 1997*, be carried out within a specified period;
 - (d) require the regular maintenance of the premises (including internal and external paintwork);
 - (e) require that specific provision, other than building work as defined in the *Integrated Planning Act 1997*, be made for electrical and fire safety in rental accommodation other than a budget accommodation building;
 - (f) require the provision and maintenance of specified facilities;
 - (g) require the provision and maintenance of specified furniture and equipment;
 - (h) require the regular cleaning of the premises;
 - (i) require fumigation or other treatment of the premises to keep the premises free of vermin and insects;
 - (j) if relevant to the type of accommodation provided - require the regular provision of clean linen and towels;
 - (k) require the provision of services of specified kinds (for example, the safe custody of valuables) for the persons using the accommodation;
 - (l) require that the operator or a representative of the operator approved by the local government reside on the premises;
 - (m) require the operator to keep specified records.
- (3) The local government may, by subordinate local law, prescribe conditions that must be imposed on registration or that will ordinarily be imposed on registration.
- (4) For avoidance of doubt—
- (a) conditions of registration may deal with the same subject matter as requirements under a subordinate local law made pursuant to section 9 (Particular requirements may be specified by a subordinate local law) of this local law; and
 - (b) if a condition of registration is inconsistent with a requirement under a subordinate local law, the condition prevails to the extent of the inconsistency.

13 Amendment or renewal of registration

- (1) The holder of a certificate of registration may make an application to the local government to—
 - (a) amend the registration; or
 - (b) renew the registration.
- (2) An application to amend or renew registration must be—
 - (a) made by the holder of the certificate of registration; and
 - (b) made in the prescribed form; and
 - (c) accompanied by the prescribed fee and such other information as is requested by the local government.
- (3) The local government may renew registration—
 - (a) where the operation of the rental accommodation complies with the conditions of the registration and the provisions of this local law and any relevant subordinate local law; and
 - (b) subject to such conditions the local government considers appropriate.
- (4) The local government may amend a registration—
 - (a) where the operation of the prescribed activity complies with the provisions of this local law; and
 - (b) subject to such conditions the local government considers appropriate.
- (5) For the purposes of determining whether the criteria specified in sections 13(3)(a) and 13(4)(a) (Amendment or renewal of registration) of this local law have been satisfied, the local government is not obliged to look beyond—
 - (a) any information or materials submitted to the local government in respect of the application; and
 - (b) any other information held by the local government which is relevant to the application.

14 Renewal of registration

- (1) Where the local government gives a written notice regarding the renewal of the certificate of registration to the holder of the certificate of registration, the local government is deemed to have requested an application for renewal of the certificate of registration.

- (2) Unless the local government is notified otherwise by the holder of the certificate of registration within 30 days of the date of issue of the written notice under section 14(1) (Renewal of registration) of this local law, the holder of the certificate of registration is deemed to have made an application to renew the certificate of registration.
- (3) The local government may renew a certificate of registration—
- (a) if the provision of accommodation complies with the conditions of the registration and the provisions of this local law and any relevant subordinate local law; and
 - (b) subject to the conditions of the registration unless otherwise determined by the local government; and
 - (c) if satisfied that any requirements specified in the written notice given by the local government pursuant to section 14(1) (Renewal of registration) of this local law have been complied with; and
 - (d) subject to such conditions as the local government considers appropriate.
- (4) For the purposes of determining whether the criteria specified in section 14(3)(a) (Renewal of registration) of this local law have been satisfied, the local government is not obliged to look beyond—
- (a) any information or materials submitted to the local government in respect of the renewal of the licence; and
 - (b) any other information held by the local government which is relevant to the renewal of the licence.
- (5) If the local government renews a certificate of registration subject to conditions pursuant to section 13(3)(b) (Amendment or renewal of registration); section 14(3)(c) (Renewal of registration) or 14(3)(d) (Renewal of registration) of this local law, the local government must—
- (a) when giving the holder of the certificate of registration a notice pursuant to section 14 (Renewal of registration) of this local law, give the holder of the certificate of registration a written notice stating—
 - (i) the proposed conditions of the registration; and
 - (ii) that the holder of the certificate of registration may make written representations to the local government about the proposed conditions of the registration; and
 - (iii) the time (at least 15 business days after the notice is given to the holder of the certificate of registration) within which the representations may be made; and

- (b) consider any written representations made by the holder of the certificate of registration within the time stated in the notice; and
- (c) after considering any written representation made by the holder of the certificate of registration, give to the holder of the certificate of registration—
 - (i) if the local government is satisfied the condition is not necessary – a written notice stating that it has decided not to impose the condition; or
 - (ii) if the local government is satisfied that the condition is necessary – a written notice stating that it has decided to impose the condition.

15 Compliance with conditions of registration

An operator must ensure that the conditions of registration are complied with (whether or not the operator is the applicant for registration⁴).

Maximum penalty—40 penalty units.

16 Notice to local government of ceasing to provide accommodation

An applicant who has obtained registration of premises and who ceases to be an operator for those premises⁵ must notify the local government of that fact within 7 days of ceasing to be an operator.

Maximum Penalty—20 penalty units.

Part 3 Enforcement

Division 1 Inspection Division

17 Inspection of premises

- (1) An authorised person may inspect premises⁶ used to provide accommodation to which this local law applies to find out whether the premises comply with—

⁴ The applicant must be an operator, but other persons (eg a non-resident owner) may also be an operator as defined in section 3 (Definitions) of this local law.

⁵ Which means that the registration expires pursuant to section 11(1)(b) (Period of registration) of this local law.

⁶ This local law does not confer a power of entry. To enter the premises, the authorised officer must comply with section 1070 (Entry on land for local government purposes) of the *Local Government Act 1993*.

- (a) the requirements of this local law and a subordinate local law; and
 - (b) if the premises are registered - conditions of registration.
- (2) An authorised person may require a person apparently in charge of the premises to produce for inspection records that are required under this local law.
- (3) A person must not refuse or fail to comply with a requirement under section 17(2) (Inspection of premises) of this local law.

Maximum penalty for subsection (3)—50 penalty units.

Division 2 Compliance notices and closure of premises

18 Compliance notices

- (1) If a provision of this local law⁷ or a condition of registration⁸ is contravened, an authorised person may give to an operator for the premises written notice (a **compliance notice**) requiring the operator to take specified action, within a specified period, to remedy the contravention.
- (2) A person to whom a compliance notice is given must comply with the notice.
- Maximum penalty for subsection (2)—40 penalty units.
- (3) If a person takes the action required by a compliance notice, the person cannot be later prosecuted for an offence arising from the contravention in respect of which the notice was given.

19 Power to carry out works

- (1) If a person contravenes section 18(2) (Compliance notices) of this local law, the local government may itself take the action required by the compliance notice.⁹
- (2) Section 19(1) (Power to carry out work) of this local law applies whether or not there has been a prosecution for an offence.
- (3) If the person who contravened section 18(2) (Compliance notices) of this local law is the owner of the relevant land the amount properly and

⁷ Including section 10 (Compliance with subordinate local law) of this local law which obliges persons to comply with, or ensure compliance with, requirements specified in a subordinate local law.

⁸ See section 12 (Conditions of registration) of this local law.

⁹ The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

reasonably incurred by the local government in taking the action is recoverable (together with interest) under section 1066 (Performing work for owner or occupier), section 1067 (Cost of work recoverable as a rate) and section 1068 (Cost of work a charge over land) of the *Local Government Act 1993*.

- (4) If the person who contravened section 18(2) (Compliance notices) of this local law is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person, together with interest on the same basis as applies to an owner of land under section 1067 (Cost of work recoverable as a rate) of the *Local Government Act 1993*.

20 Closure of premises

- (1) If—
- (a) premises which are not registered under Part 2 of this local law are being used to provide accommodation to which this local law applies; or
 - (b) a person to whom a compliance notice is given fails to comply with the notice,

the local government may, by written notice given to the operator, prohibit use of the premises for providing accommodation to which this local law applies.

- (2) Section 20(1) (Closure of premises) of this local law applies whether or not there has been a prosecution for an offence.
- (3) If the premises were registered, a notice under section 20(1) (Closure of premises) of this local law cancels the registration.
- (4) A person must not use premises to provide accommodation to which this local law applies knowing that the local government has given a notice under this section.

Maximum penalty for subsection (4)—100 penalty units.

- (5) However, if the local government revokes the notice and grants registration of the premises, the premises may be again used for providing accommodation to which this local law applies.

21 Summary closure to prevent nuisance etc.

- (1) If in the local government's opinion, it is urgently necessary to stop the use of premises for accommodation to which this local law applies because of a serious risk to health or safety, the local government may, by written notice

given to an operator for the premises, prohibit use of the premises for providing accommodation to which this local law applies.¹⁰

- (2) If the premises were registered, a notice under this section cancels the registration.
- (3) A person must not use premises to provide accommodation to which this local law applies knowing that the local government has given a notice under this section.
- (4) However, if the local government revokes the notice and grants registration for the premises, the premises may be again used for providing accommodation to which this local law applies.

22 Notice of closure

- (1) Where use of premises is prohibited under section 20 (Closure of premises) or section 21 (Summary closure to prevent nuisance etc.) of this local law, the local government may affix to those premises a notice advising of the prohibition in a form specified by a subordinate local law.
- (2) A person must not take down, obscure or otherwise interfere with a notice affixed to premises pursuant to section 22(1) (Notice of closure) of this local law unless—
 - (a) registration is granted for the premises; or
 - (b) the local government otherwise gives its written consent to removal of the notice.

Maximum penalty for subsection (2)—100 penalty units.

Division 3 Particular offences and related matters

23 Misdescription of premises

- (1) A person must not—
 - (a) display on premises which are not registered any sign or notice indicating that the premises are registered under this local law; or
 - (b) in any manner or by any means describe premises which are not registered as being registered under this local law.

Maximum penalty for subsection (1)—20 penalty units.

¹⁰ Where it is urgently required to stop the use of the premises for providing accommodation, notice will not be issued under this section where an enforcement notice, issued under section 22 of the *Building Act 1975*, could be issued.

- (2) For the purposes of this section, a display or description that indicates that premises are registered (without referring to any particular law) is taken to be an indication or statement that the premises are registered under this local law.

24 Passageways and common use areas must be kept clear

An operator must ensure that no furniture, fitting or other matter or thing is placed on or in a—

- (a) stairway;
- (b) stair landing;
- (c) fire escape;
- (d) passageway; or
- (e) other area intended for common use,

within premises so as to obstruct the free passage of persons occupying or using the premises.

Maximum penalty—100 penalty units

25 Effect of certain convictions

- (1) This section applies if a person is found guilty of 3 or more offences against any provision of this local law committed within a period of 2 years.
- (2) Any registration of premises (including, but not limited to, premises to which the offences relate) for which that person is or was an operator¹¹ is cancelled—
- (a) if the person appeals against the 3rd conviction the appeal being dismissed, struck out or discontinued; or
 - (b) if the person does not appeal against the 3rd conviction the end of the time fixed by law within which an appeal must be started.
- (3) The person is not entitled to apply for registration of any premises under this local law for a period of 2 years following the cancellation.
- (4) Further, the person must not be an operator of accommodation to which this local law applies for a period of 2 years following the cancellation.

¹¹ Note that the person must be an operator for the premises, but may not necessarily be the applicant for registration. This subsection nevertheless cancels the registration for the premises. It allows effective action to be taken where, for example, an owner is persistently providing substandard accommodation, but is using an employee or agent as a front to hold the registration.

Maximum penalty for subsection (4)—200 penalty units.

- (5) However, a court may, by order, direct that this section—
- (a) does not apply to a person; or
 - (b) applies to a person only in relation to particular premises,
- if the court is satisfied that it would be just to give the direction.

Part 4 Miscellaneous

26 Subordinate local law

The local government may make a subordinate local law about a matter about which this local law specifically allows for the making of a subordinate local law.

27 Registration fees

- (1) The local government may fix fees payable in respect of the registration of premises under this local law on the basis or bases the local government thinks appropriate¹².
- (2) Without limiting section 27(1) (Registration fees) of this local law, the amount of the registration fee may vary as between different premises, or different classes or categories of premises, according to the extent to which the premises, class or category are assessed as being operated in compliance with applicable provisions of this local law and any subordinate local law.

28 Transitional - existing registration

- (1) Where premises required to be registered under this local law are registered under a corresponding previous local law on the day of commencement of this local law, the premises are taken to be registered under this local law until the expiry of the existing registration.
- (2) Subject to section 28(3) (Transitional – existing registration) of this local law, an existing registration expires on the date upon which it would have expired if this local law had not commenced.
- (3) However, the local government may by a subordinate local law prescribe an earlier or later date as the date of expiry of an existing registration.

¹² The power to fix fees is given by section 1071A(1)(a) (Power to fix regulatory fees) of the *Local Government Act 1993*.

29 Executive officers must ensure the corporation complies with the local law

- (1) The executive officers of a corporation must ensure the corporation complies with this local law.
- (2) If a corporation commits an offence against a provision of this local law, each of the corporation's executive officers also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence – the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

30 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty for subsection (1)—half the maximum penalty for committing the offence.

- (2) The provisions of the Criminal Code (relevant to attempts to commit offences) apply to the attempt.

31 Defences

It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a lawful excuse or defence.

Example—

It is a defence to any breach or non-compliance of any provision contained in this local law if a person was not criminally responsible in accordance with Chapter 5 of the Criminal Code.

32 Appointment of authorised person

A local government may appoint a person as an authorised person for the purposes of this local law only if—

- (a) the local government considers the person has the necessary expertise or experience for the appointment; or
- (b) the person has satisfactorily finished training approved by the local government for the appointment.

Part 5 Review

33 Reviewable decision

A decision of the local government or an authorised person under this local law is reviewable (a *reviewable decision*) unless it is—

- (a) a decision made by resolution of the local government; or
- (b) a decision to dispose of goods that has been implemented; or
- (c) a decision with which immediate compliance is required; or
- (d) a decision made on an earlier application for review; or
- (e) a decision to prosecute a person for an offence against this local law; or
- (f) a decision to issue an infringement notice for an offence against this local law.

34 Application for review

(1) A person who is aggrieved by a reviewable decision may apply to the local government for a review of the decision.

(2) An application for review of a reviewable decision must—

- (a) be in writing; and
- (b) state the reasons why the applicant considers the decision should be reviewed; and
- (c) be lodged at the office of the local government within 14 business days after the day on which notice of the decision was given to the applicant or within a further period allowed by the local government (before or after the end of that period).

35 Carrying out review

- (1) The local government must either—
 - (a) carry out a review at a meeting of the local government; or
 - (b) have the review carried out by an authorised person.
- (2) An authorised person who carries out a review under section 28(1)(b) (Carrying out review) of this local law must not be the original decision maker and must be a person who is no less senior than the original decision maker.

36 Decision on review

On completing a review, the local government may confirm, vary or reverse the decision under review.

- (1) The local government must give the applicant written notice of the result of the review.
- (2) If the local government does not decide an application for review within 28 business days after receiving the application, the local government is taken to have confirmed the decision under review.

REPEALED (GAZETTE 19/12/08)