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**Hon. David Gibson MP**

26 June 2014

**Chair**

**State Development, Infrastructure and Industry Committee**

Parliament House

George Street

Brisbane Qld 4000

By email to: sdiic@parliament.qld.gov.au

Dear Sir

## **Submission to the**

***Inquiry into the State Development, Infrastructure & Planning (Red Tape Reduction) & Other Legislation Amendment Bill 2014 (the Bill) Amendments to the Sustainable Planning Act 2009 Party house provisions.***

We act on behalf of the national Holiday Rental Industry Association. This Submission has been approved by the Board.

## **ABOUT THE HOLIDAY RENTAL INDUSTRY ASSOCIATION (HRIA)**

The HRIA was launched in February 2013 as a national peak industry body for Australia's holiday rental industry. Our members include owners, agents, managers and the major web based distribution portals. Through its current membership the HRIA represents over 40,000 of the leading holiday rental properties across more than 1,500 destinations in Australia. For further information see [www.hria.com.au](http://www.hria.com.au).

Its primary objective is to ensure the sustainable growth of the holiday and short term rental industry through innovation, leadership and advocacy. Recent initiatives of the HRIA towards that objective include:

1. Adoption and planned rollout of the National Holiday and Short Term Rental Accommodation Code of Conduct (copy enclosed);
2. Economic Impact Study (copy enclosed); and
3. Regulatory Report on the issues and approaches around Australia (copy enclosed).

We have reviewed the proposed Party House Provisions in the *Amendments to the Sustainable Planning Act 2009* against:

- (a) the Fundamental Legislative Principles<sup>1</sup>
- (b) with regard for
  - (i) tourism law and policy
  - (ii) the practicalities of the holiday and short term rental sector
  - (iii) industry self regulatory initiatives.

Set out below are our submissions.

## **1. SUPPORT FOR THE OBJECTIVE, NOT THE MEASURES**

The HRIA fully supports the stated objective of dealing with out of control parties with unacceptable behavioural and noise impacts on neighbouring communities in residential areas.

However we believe that the proposed Party House Provisions are deeply flawed and ought to be scrapped entirely in favour of more constructive and effective regulatory measures including those presented in this Submission and the enclosures.

## **2. LACK OF CONSULTATION AND INVOLVEMENT OF STAKEHOLDERS**

It is noted from the Explanatory Notes that consultation on the Party House Provisions comprised:

In relation to party houses, discussions have been held with the Local Government Association of Queensland, Queensland Tourism Industry Council, affected local governments and relevant state agencies.

In accordance with Fundamental Legislative Principles we submit that wider consultation and engagement needs to be undertaken including with key stakeholder bodies and groups particularly:

- The national Holiday Rental Industry Association (HRIA) and the Gold Coast Holiday Rental Group (HRG)
- Owners, agents and managers of the approximately 70,000 holiday and second homes in Queensland offered for holiday and short term rental; and
- Tourists and visitors to Queensland who spend approximately 812,500 bed nights per year in Queensland holiday and short term rented residential properties.

Keeping the Party House Provisions secret during formulation and then presenting them to Parliament buried deep in an omnibus "Red Tape Reduction" Bill weakens parliamentary democracy, public confidence in government and the rule of law.

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<sup>1</sup> References to these are by the number and description provided in the Queensland Government legislation Handbook at <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles.aspx>

We trust that the Committee will rectify this by now conducting a thorough and open review and consultation with key stakeholders. This is especially important because, as discussed below, the Explanatory Memorandum presented to Parliament failed to

- (a) identify or analyse many serious breaches of the Fundamental Legislative Principles;
- (b) identify or consider effective alternatives; and
- (c) appreciate or address the severe collateral damage the Provisions will cause if enacted.

### **3. SEVERE UNMENTIONED COLLATERAL DAMAGE ON SHORT TERM AND HOLIDAY RENTAL**

The Bill purports to promote tourism and state development but through the negative impacts on the stakeholder groups above it would achieve quite the opposite with knock on impacts on investment, construction and employment.

It is a fact of life and probably fortunate and desirable that "parties" (which the Bill defines as "for example, bucks nights, hens nights, raves, wedding receptions or similar parties" are regularly held by the occupants of "residential dwellings" (as defined in the Bill).

It is also an unfortunate fact of life that sometimes these parties get out of control and result in antisocial behaviour and unacceptable adverse impacts on neighbours.

This occurs regardless of whether some or all of the people at the party are owners, tenants, guests or visitors. Usually there is a combination.

All the usual regulatory controls on this throughout Australia also apply in Queensland plus the additional Queensland measures to deal with and punish the perpetrators of "out-of-control events" in the *Police Powers and Responsibilities and Other Legislation Amendment Act 2014*, which, as noted in part 3.4.2 of the Regulatory Report, the HRIA supports.

But this Bill targets only short term and holiday rental where parties are held regularly. And it punishes the owners of residential dwelling rather than the people at the party, some of whom are the perpetrators.

This offends Fundamental Legislative Principle 7.2.12 Rights and Liberties of Individuals: imposition of responsibility for the actions of others.

And when the powers granted to local government under the Bill to declare the whole precinct a "party house restriction area" it moves off the target and punishes all the owners of residential dwellings within the precinct for the sins of the offending "parties" at a different property. This is a severe contravention of the Fundamental Legislative Principle above especially as it affects consumer choice, small business, investment, development and employment in Queensland.

It is exacerbated by delegation of the power to local government level and the retrospective extinguishment of existing use rights without compensation discussed later.

If enacted, the Party House Proposals will eliminate holiday and short term rental, precinct by precinct and discourage tourism demand, investment, construction and employment in many of Queensland's most attractive destinations.

These are severe unmentioned, unmeasured, unassessed adverse consequences of the Party House Proposals. They are entirely unnecessary and avoidable. Under the national Holiday and Short term Rental Industry Code of Conduct "party houses" are prohibited and the Code includes measures for enforcement so that offending owners, agents and managers are delisted from the major distribution portals and effectively put out of business.

#### **4. FAILURE TO CONSIDER ALTERNATIVES**

It is noted from the Explanatory Notes that the only alternative considered (and rejected) was:

An alternative approach is to amend the Standard Planning Scheme Provisions, currently known as the Queensland Planning Provisions version 3.0 (QPP 3.0) which provides standardised provisions for Queensland local government planning schemes, including land use and administrative definitions, zones, structure and format etc.

The proposed amendments allow greater flexibility to local governments, as the provisions will only take effect if a local government amends its planning scheme or makes a temporary local planning instrument to recognise a party house as a new land use and subsequently regulate it in the area.

A local government may choose not to exercise these provisions. In this way, the State is not imposing planning scheme requirements on local governments for an issue that may not be locally relevant

It is submitted that this reasoning is flawed and inadequate and this has led to the wrong conclusion and the adoption of the inappropriate measures in the Party House Proposals.

There is a wise old adage in law that "hard cases make bad law". The Party House Proposals are a perfect example of this. The legislative measures focus on the isolated negative without consideration for the overwhelming positive social and economic aspects of holiday and short term rental. It should be the other way round as expressed in the lyric discussed in Part 8 below.

As set out in the enclosed Regulatory Report, the Standard Planning Scheme Provisions could and should be amended to recognise the reality of holiday and short term rental in residential areas, define it and regulate it using a graduated and flexible system of planning controls depending on the level of

regulation required to minimise adverse impacts in particular local government areas or in particular precincts within local government areas. The Part 1 Executive Summary of the Regulatory Report describes this alternative in these terms (See Part 6 Conclusions and Recommendations for more details):

To provide clarity and uniformity and to facilitate the continuation of holiday rental subject to appropriate controls on amenity this report recommends that under standard planning instruments:

- o "Short term rental of residential accommodation" be a defined land use.
- o It be a permitted or permissible use in zones where "dwelling houses" or "dwelling units" (or similar defined uses) are permitted or permissible.
- o Where more control is required,
  - it be exempt development where it comprises up to 4 bedrooms.
  - it be complying development where it comprises 4-6 bedrooms subject to predetermined development standards. The Holiday Rental Code of Conduct provides a useful checklist.
- o In special locations and circumstances such as rural residential or areas with typically larger properties, it may be appropriate to make more than 6 bedrooms exempt or complying development
- o Otherwise where it comprises more than 6 bedrooms standard development approval procedures could be applied. In other zones "short-term rental of residential accommodation" should be permitted or permissible based on the objectives, location and circumstances of such zones and subject to the principles of exempt and complying development above.

It is submitted that this approach, in conjunction with the national rollout and implementation of the Holiday and Short Term Rental Code of Conduct (not mentioned or considered in the Explanatory Note), would provide a flexible and effective solution, without the severe adverse and unintended consequences of the Party House Proposals.

Any remaining problems will be addressed by the increased police powers on out-of-control parties which have not been given time to work.

## **5. RETROSPECTIVITY**

Holiday and short term rental of residential dwellings is a long established and accepted tradition in Queensland dating back to the days of early settlement. Most current Queenslanders can recall such holidays and many if not most of Queensland's tourism and recreational destinations were founded and developed in this way. And, inevitably, at times of holidays and relaxation people have always partied.

This has been confirmed decision of the Court of Appeal in *Sunshine Coast Regional Council v Ebis Enterprises P/L v [2010] QCA 379*. This case concerned a large 6 bedroom luxury house located in a rural residential area of the Sunshine Coast. It was used for short term holiday rental to groups of up to 20 people. There had been complaints of noise and anti social

behaviour mainly from one adjoining resident. The Court of Appeal unanimously and unequivocally confirmed that this was a permitted use within the ordinary accepted meaning of a "dwelling house"./

The Bill purports to deny this reality and undo this law with retrospective effect by declaring in Section 755D Effect of identification of party house restriction area:

(1) This section applies if a planning scheme or temporary local planning instrument identifies an area as a party house restriction area under section 755C.

(3) The use of a residential dwelling in the area as a party house is not, and has never been, a natural and ordinary consequence of a residential dwelling development.

In planning law this has the serious and draconian consequence of purporting to deny and extinguish existing use rights.

This is a blatant contravention of Fundamental Legislative Principle 7.2.7 that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively

## **6. COMPULSORY ACQUISITION OR EXTINGUISHMENT WITHOUT COMPENSATION**

The Bill further provides in Section 755D Effect of identification of party house restriction area:

(2) A development permit or compliance permit for a residential dwelling development in the area does not authorise, and has never authorised, a material change of use for a party house to take place as part of the residential dwelling development.

(4) Subsection (5) applies if, at any time, whether before or after the commencement of this section, a planning scheme or temporary local planning instrument provides or provided that a residential dwelling development is self-assessable development or exempt development.

(5) The planning scheme or temporary local planning instrument does not authorise, and has never authorised, a material change of use for a party house to be carried out as part of the residential dwelling development This section applies if a planning scheme or temporary local planning instrument identifies an area as a party house restriction area under section 755C.

This makes the retrospectivity comprehensive and purports to do it in a way which will deny compensation.

It is a fundamental principle of property law and rights that the State should not compulsorily take or extinguish existing rights, without fair compensation.

This is confirmed in relation to planning changes in the Sustainable Planning Act 2008 s 707 Compensation for reduced value of interest in land which provides:

(1) An owner of an interest in land is entitled to be paid reasonable compensation by a local government if—

(a) a change reduces the value of the interest; ...

The comprehensive declaration of retrospectivity purports to establish, contrary to reality, that the right or interest never existed so that presumably, it can be argued that no compensation will be payable. This will undoubtedly be challenged legally probably in a class action involving those Owners, agents and managers of the approximately 70,000 holiday and second homes in Queensland offered for holiday and short term rental who are adversely affected. This will be damaging for sovereign risk and investor confidence in Queensland.

This is a blatant contravention of Fundamental Legislative Principle 7.2.9 that compulsory acquisition of property must not be undertaken without fair compensation.

## **7. LOOPHOLE EXPOSES THAT BILL WILL MISS THE REAL TARGETS AND ONLY CAUSE THE COLLATERAL DAMAGE**

Under the definitions (underlining added)

**party house** means premises containing a dwelling that is used to provide accommodation or facilities for guests if—

(a) the premises, or any part of the premises, is regularly used by guests for parties, including, for example, bucks nights, hens nights, raves, wedding receptions or similar parties; and  
(b) the accommodation or facilities are provided for a period of less than 10 days; and

(c) the accommodation or facilities are provided for a fee; and

(d) the premises is not occupied by the owner of the premises during the period mentioned in paragraph (b).

Under the general definitions in Schedule 6 of the Act (underlining added) the definition of "owner" would include a "tenant". It provides:

**owner, of land,** means the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

"Regularly" is ambiguous but this is not the most important issue which is discussed below.

As discussed in Part 3, residential dwellings are regularly used for parties and these sometimes get out of control regardless of whether some or all of the people at the party are owners, tenants, guests or visitors.

The Party House Provisions target only short term and holiday rental and have carefully excluded parties where the residential dwelling is occupied by an owner which under the definition includes a tenant.

Rogue holiday rental owners and operators who were determined to continue renting for unruly parties could simply circumvent the provisions by:

- (a) renting to the guests for 10 or more days; or
- (b) granting a tenancy for less than 10 days.

Although holiday rental is an exception to the *Residential Tenancies Act 1994*, nothing prevents an owner from granting a tenancy or lease for holiday purposes for less than 10 days.

Against such rogue operators, the Party House Provisions will be completely ineffective. All that will stop them will be (as discussed in Part 3 above):

- (a) The "out-of-control events" provisions recently added to the *Police Powers and Responsibilities Act 2014*; and
- (b) The Holiday and Short Term Rental Code of Conduct by which they will soon be delisted and commercially put out of business.

This clearly demonstrates that the Party House Provisions:

- will miss the real target;
- will only cause collateral damage on well managed holiday and short term rental; and
- are completely unnecessary.

## **8. A BETTER WAY FORWARD**

Consult, cooperate, develop, and, to borrow from a famous lyric, *accentuate the positive, eliminate the negative*<sup>2</sup>

This encapsulates the philosophy of the HRIA and the best way forward with regulating holiday and short term rental in Queensland.

Consistently with its pro business, investment, development and employment policies the Government should face the reality of the unstoppable consumer demand, supply and distribution factors which now make holiday and short term rental such an important part of the tourism industry.

One reaction would be to try to preserve the past "horse and buggy" like and hold back the tide of progress, development and technology. This is unsustainable and undermines not only prosperity but also parliamentary democracy and the rule of law as so often demonstrated in less fortunate and less sophisticated countries and societies.

A better way forward is to embrace change and build an efficient legislative framework in cooperation with all stakeholders which implements the lyric above.

As the founding state of tourism and still Australia's preferred destination by so many measures, a progressive Queensland should be at the forefront of this dynamic.

The HRIA as the peak industry body is ready, willing and able to cooperate and assist in building and enforcing this regulatory framework.

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<sup>2</sup> "Ac-Cent-Tchu-Ate the Positive" is a popular song written by Harold Arlen and the lyrics by Johnny Mercer, and published in 1944 and recorded by many famous artists ever since



Please do not hesitate to contact the writer if you require any further information or clarification.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Trevor Atherton', with a long horizontal flourish extending to the right.

Trevor Atherton,  
Partner  
ATHERTON LEGAL

# **HOLIDAY AND SHORT TERM RENTAL CODE OF CONDUCT**

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## **OVERVIEW & ADMINISTRATIVE FRAMEWORK**

**Participating Organisations**

## INTRODUCTION

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Holiday rental is a long established practice in Australia and serves a range of purposes. The short term rental of houses and apartments to holiday makers, workers and students makes an important contribution to the local as well as the broader State and national economy. Holiday rental is the term used to describe the rental of a dwelling for short periods, most commonly for weekends or a few weeks for holidays. Short term rental is also used by workers, students and the like who require residential accommodation for a limited period of time.

The use of a dwelling for the provision of holiday accommodation can be considered to be ancillary to the main use of the residential property. A dwelling includes a room or suite of rooms occupied or used as a separate domicile (including a house, villa, town house, apartment or granny flat) whether for permanent or holiday accommodation.

Holiday rental of a residential property is typically through a licence agreement rather than a tenancy agreement under the relevant state and territory residential tenancy legislation.

Holiday rental of dwellings can make a positive sustainable contribution to local tourism and communities, and should be managed so as to minimise any adverse social or environmental impacts. However in some areas, the increased use of dwellings for holiday rental accommodation has led to some impacts on amenity such as in relation to noise and car parking issues.

This Code of Conduct has been developed and refined over several years to provide a self-regulatory approach in the management of holiday rental. This approach has been used in some areas and has been found to be successful in managing amenity impacts associated with holiday rental, particularly in New South Wales.

The Holiday Rental Industry Association (HRIA) was launched in February 2013 as a national peak industry body for Australia's holiday rental industry. One of the key objectives of the HRIA is to promote the sustainable development of the industry through enhancing industry standards and promoting self regulation in cooperation with local government and other stakeholders.

In accordance with those objectives the HRIA resolved to adopt and adapt the Code of Conduct to apply to the holiday rental industry throughout Australia.

**This self regulatory approach to Holiday Rental incorporates four components:**

**Part 1** This part outlines obligations on Participating Organisations to cooperate and combine efforts to achieve the Objectives of the Code through appropriate administration and enforcement of the Code.

**Part 2** This part outlines obligations on Managers of Holiday Rental Properties.

**Part 3** This part outlines obligations on Owners and Guests required to implement the Code through the Terms and Conditions of the contract between the Owner and Guests.

**Part 4** This part provides a framework for House Rules for Visitors and Guests at a Property to ensure that the amenity of neighbouring properties is not adversely affected.

# Holiday Rental Code of Conduct

## OBJECTIVES OF THIS CODE

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The objectives of this Code of Conduct are:

- a) To establish acceptable standards of behaviour for Holiday Rental Guests and Visitors to minimise any adverse social or environmental impacts;
- b) To assist Owners and Managers of Holiday Rental accommodation to meet the needs of all stakeholders including Guests, neighbours, local communities, local councils and government authorities; and
- c) To inform the community of the standards of conduct expected from Holiday Rental Owners, Managers, Guests and Visitors so as to effectively minimise amenity impacts.

Government authorities and private sector bodies are encouraged to endorse this Code of Conduct and to work cooperatively with Participating Organisations to achieve its Objectives.

## DEFINITIONS USED IN THIS CODE

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- **Holiday Rental** means rental of Property for holiday and other purposes within the maximum term permitted for rental without a residential tenancy agreement under state and territory residential tenancy legislation.
- **Dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.
- **Guest** means a person who stays overnight in the Property during the term of the occupancy.
- **Manager** means the Owner or another person appointed by the Owner (such as a real estate agent), who is responsible for renting the Property.
- **"Offensive Noise" is as defined under relevant state environmental protection legislation and any local regulations.**
- **Owner** means the person or entity who owns the Property. It includes the lessee of a Property who sublets or licences it to others for Holiday Rental.
- **Participating Organisations** comprise those organisations that endorse and agree to implement this Code of Conduct.
- **Property** means Dwellings and residential premises including houses, dual occupancies, villas, townhouses, apartments, units, secondary dwellings, cabins and the like generally with a maximum of 6 bedrooms unless the relevant local council permit holiday rental in properties with more than 6 bedrooms.
- **Visitor** means a person a Guest invites or permits to visit the Property during the term of the occupancy who does not stay overnight.

## Part 1. Holiday Rental – Obligations of Participating Organisations

***This Part outlines the arrangements and the role and responsibilities of Participating Organisations for the promotion, implementation, administration, monitoring and enforcement of this Code of Conduct.***

### 1.1 Guiding Principles

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This Code of Conduct is for use by Participating Organisations to outline to Holiday Rental Managers, Owners Guests and Visitors what their responsibilities are in order to ensure that the amenity of the Property and neighbours is maintained.

- a) This Code of Conduct applies to the Holiday Rental of Property owned or managed by members of Participating Organisations;
- b) Managers (including owners and agents) are encouraged to join Participating Organisations and may become Participating Organisations;
- c) Participating Organisations consider that compliance with this Code of Conduct is required to achieve the Objectives and undertake to enforce this Code;
- d) Participating Organisations signify their endorsement and agreement to this Code of Conduct by signing and lodging a copy of it with the National Code Administration Committee;
- e) Participating Organisations may withdraw their endorsement and agreement to this Code of Conduct at any time by lodging a written notice with the National Code Administration Committee; and
- f) Participating Organisations will implement and promote this Code of Conduct and make a copy of it available to the public from their website.
- g) The Guiding Principles for Guests and Visitors in the Holiday Rental of a Property under this Code of Conduct are:
  - This is a home;
  - Treat it as your own;
  - Respect your neighbours;
  - Leave it as you find it.

### 1.2 Implementation of the Code

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This Code of Conduct will be implemented through the following mechanisms:

**1.2.1 Through Participating Organisations:**

- a) Participating Organisations must require an undertaking from Managers to comply with the Code of Conduct as a condition of membership of their organisation or of listing their Property as the case may be; and
- b) Where a Participating Organisation is a Manager they must require an undertaking from Owners as a condition of managing their Property to endorse and comply with relevant provisions in the Code and agree to this Code so far as the Manager's own Property is concerned.

**1.2.2 Through Owners and Managers:**

- a) The Terms and Conditions upon which the Property is offered, booked and occupied for Holiday Rental must meet the standards in Part 3 of this Code and be incorporated into the contract between the Owner of the Property and Guests;
- b) House Rules including the fundamental obligations of Guests and Visitors on Noise and Residential Amenity under the Terms and Conditions must meet the standards in Part 4 and be displayed at all times in a prominent position in the Property to remind Guests of their key contractual obligations and to inform all Guests and Visitors of the conditions upon which they are permitted to enter and remain on the Property; and
- c) A full printed copy of this Code of Conduct, the Terms and Conditions, the House Rules and any By Laws relating to the strata or community title must be provided in a Guest & Visitor Information Folder within the Property in a location which is prominent and easily accessible to Guests, Visitors and persons authorised by the Manager or law to inspect and enforce compliance.



## **1.3 Sanctions**

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### **1.3.1 Through Participating Organisations**

Each Participating Organisation is responsible for dealing with instances where Managers are not complying with this Code of Conduct.

- a)** Participating Organisations may impose sanctions upon Managers for non compliance with this Code of Conduct;
- b)** Such sanctions will be imposed under the terms of their membership or listing arrangements with Managers;
- c)** If so directed by the National Code Administration Committee, a Participating Organisation must impose the sanctions;
- d)** A Manager who disputes a sanction imposed upon it by a Participating Organisation under this Code may appeal to the National Code Administration Committee and in that case the National Code Administration Committee will review the sanction and direct the Participating Organisation on what it considers to be the appropriate sanction in all the circumstances; and
- e)** The sanctions should reflect the nature, seriousness and frequency of the breach and include in increasing severity:
  - i.** Issuing a censure or warning to the Manager;
  - ii.** Requesting the Manager to rectify the harm done or compensate for the damage caused by the breach;
  - iii.** Requesting the Manager to take remedial action to ensure the breach does not reoccur. Remedial action may include more restrictive practices, for example limiting the number of Guests permitted to stay at a Property to a lesser number or restricting the number of Visitors and the hours when Visitors can be on the Property ; and
  - iv.** Expulsion from membership or delisting of the Property as the case may be.

### **1.3.2 Through the National Code Administration Committee**

The National Code Administration Committee is responsible for dealing with instances where Participating Organisations are not complying with this Code of Conduct.

- a) The National Code Administration Committee may impose sanctions upon Participating Organisations for non compliance with the obligations of a Participating Organisation under this Code of Conduct.
- b) If a Participating Organisation disputes a sanction imposed upon it by the National Code Administration Committee under this Code the dispute shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations. Unless the National Code Administration Committee and the Participating Organisation agree upon an arbitrator, either of them may request a nomination from either the President OR the Chapter Chairman of the Chapter where the dispute arises.
- c) The sanctions should reflect the nature, seriousness and frequency of the breach and include in increasing severity:
  - i. Issuing a censure or warning to the Participating Organisation;
  - ii. Requesting the Participating Organisation to rectify the harm done or compensate for the damage caused by the breach;
  - iii. Requesting the Participating Organisation to take remedial action to ensure the breach does not reoccur; and
  - iv. Cancelling the registration of the Participating Organisation under this Code of Conduct.

## **1.4 Code Administration**

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### **1.4.1 National Code Administration Committee**

This Code of Conduct will be administered by the National Code Administration Committee ("NCAC").

- a) The NCAC will comprise Holiday Rental industry representatives from each State and Territory approved by the HRIA.
- b) Members of the NCAC may be appointed and dismissed by decision of the HRIA.
- c) The HRIA may invite representatives of other industry and stakeholder bodies to act as observers or advisors to the NCAC when appropriate, for example, state or local holiday rental bodies, real estate institutes, tourism bodies, consumer organisations, community organisations.

- d) The HRIA may also invite other relevant authorities to act as observers or advisors to the NCAC when appropriate, for example the Australian Competition and Consumer Commission and State and Territory Government agencies such as Tourism, Planning and Fair Trading Departments, law enforcement authorities, Local Government and Shires Associations.
- e) The NCAC will be funded by the HRIA.
- f) The NCAC, with approval of the HRIA, may delegate its role and responsibilities to sub-committees to deal with particular states, territories, regions or matters.
- g) The chairman and secretary of the NCAC and of each sub-committee of the NCAC will be appointed by decision of the HRIA.
- h) Unless otherwise agreed meetings of the NCAC will be held in Sydney, NSW and members from other cities or states may participate by telephone or video conferencing.
- i) Meetings of the NCAC require a quorum of a majority of members present or participating by telephone or video conferencing.
- j) Decisions of the NCAC will be made by simple majority provided that:
  - i. In the event of a deadlock the Chairman shall have an additional casting vote; and
  - ii. NCAC decisions to amend this Code of Conduct also require approval of the HRIA
- k) All the authorities and responsibilities of the HRIA referred to in this clause 1.4.1 will be exercised by the Board of the HRIA.

#### **1.4.2 The Role of the NCAC**

The role of the NCAC will be to:

- a) Publicise and promote this Code of Conduct;
- b) Maintain a register of Participating Organisations, receive and process signed copies of this Code of Conduct and any notice or decision that any signatory ceases to be a Participating Organisation;
- c) Monitor and review the operation of this Code of Conduct;
- d) Give instructions to Participating Organisations and hear and determine appeals from Managers concerning sanctions under Clause 1.3.1 of this Code of Conduct;
- e) Impose sanctions upon Participating Organisations under clause 1.3.2 of this Code of Conduct;

- f)** Consult with Participating Organisations and key stakeholders from the Holiday Rental industry (where appropriate) on proposed amendments to this Code of Conduct;
- g)** Determine necessary amendments to this Code of Conduct, subject to approval of the HRIA;
- h)** Operate within the funding arrangements provided and approved by the HRIA.
- i)** Report to the HRIA periodically and as and when requested by the HRIA including on the monitoring and outcomes of the Code referred to in Clause 1.5;
- j)** Produce an annual report on this Code of Conduct and its administration;
- k)** Report on the operation and effectiveness of this Code of Conduct as required to such state and territory government Tourism, Fair Trading and Planning authorities as have endorsed this Code of Conduct;
- l)** Report to the Participating Organisations and key stakeholders from the Holiday Rental industry on the operation and effectiveness of this Code of Conduct;
- m)** Organise an independent review of this Code of Conduct once every three years;
- n)** The reports and review referred to in sub paragraphs i)-j) above must first be provided to the HRIA for approval prior to publication, release or distribution to any other party; and
- o)** All the authorities and responsibilities of the HRIA referred to in this clause 1.4.2 will be exercised by the Board of the HRIA.

## **1.5 Monitoring Outcomes of the Use of this Code**

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The NCAC will monitor the implementation of this Code.

### **1.5.1 Monitoring criteria**

The criteria which will be used to monitor and measure the effectiveness of this Code of Conduct include:

- a)** Number of Participating Organisations;
- b)** Number of Owners and Managers of a Property represented by Participating Organisations;
- c)** Number of endorsing government authorities and private sector bodies;
- d)** Number of relevant complaints (bearing in mind that implementation of this Code of Conduct will provide and promote mechanisms for lodging complaints) received by:
  - i.** Participating Organisations;
  - ii.** Fair Trading authorities that have endorsed this Code of Conduct (so far as data is readily available);

- iii. Local councils (so far as data is readily available); and
- iv. State government planning authorities (so far as data is readily available.)
- e) Success rate in resolving disputes and complaints without recourse to litigation (so far as data is readily available); and
- f) Instances of acceptance of this Code of Conduct as a practical self regulatory alternative to government regulation.

#### **1.5.2 Outcomes from the monitoring**

- a) This Code of Conduct is designed to be a living document that will evolve based on monitoring outcomes and stakeholder feedback.
- b) The NCAC will be responsible for making necessary changes to better achieve the objectives of this Code of Conduct.

### **1.6 Compliance with Australian Competition & Consumer Act**

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This Code of Conduct is intended to comply with the Australian Competition and Consumer Act 2010 (the 'Act') and any term or requirement of the Code including Parts 1, 2, 3 and 4 which conflicts with the Act shall be read and be enforceable as if it complies with the Act.

# HOLIDAY RENTAL CODE OF CONDUCT

## OBLIGATIONS & IMPLEMENTATION GUIDE FOR MANAGERS

***This Part outlines the role and responsibilities of Managers, including standards, practices and procedures for implementation of this Code of Conduct.***

### 2.1 Role and Responsibilities of Managers

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- a) Managers are required to comply with this Code of Conduct as a condition of membership of a Participating Organisation or of listing their Property with a Participating Organisation as the case may be.
- b) Managers must also comply with any request made by a Participating Organisation under the Sanction provisions of this Code of Conduct.
- c) Managers must use their best endeavours to ensure that Property under their management used for Holiday Rental complies with this Code of Conduct generally including in particular the standards, practices and procedures under this Part.
- d) Managers must outline to Guests (and Visitors) the consequences of not complying with any Terms and Conditions.
- e) Managers are to provide information to neighbouring properties on the relevant authority to contact in the event of a contravention of the Terms and Conditions. This can include the provision of a telephone number to contact in this event.

### 2.2 Property Management generally

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#### 2.2.1 Managers should:

- a) Act with integrity, professionalism, courtesy and consideration when dealing with Guests, neighbours, Owners corporations and other community stakeholders; and
- b) Cooperate with other stakeholders including industry associations, tourism bodies, local councils and other government authorities to enhance the image, standards and contribution of Holiday Rental to the economy.

### **2.2.2 The Property must not be offered, described, or advertised:**

- a) In a false or misleading manner;
- b) For a purpose inconsistent with this Code of Conduct; or
- c) For more than the maximum number of Guests or Visitors determined in accordance with this Code of Conduct or in any relevant environmental planning instrument.

### **2.2.3 The Property offered must:**

- a) Be offered in a clean, safe and habitable state of repair; and
- b) Comply with relevant planning, building and fire safety and health regulations.

### **2.2.4 Managers should:**

- a) Provide general, after hours and emergency telephone numbers to Guests and neighbours; and
- b) Have a local representative to manage Guests and Property issues.

## **2.8 Insurance**

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Owners and Managers should hold appropriate insurance, including comprehensive landlords' and public liability insurance (as appropriate.)

## **2.9 Complaints handling**

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### **2.9.1 Managers must:**

- a) Have a policy, setting out how to deal with disputes or complaints;
- b) Retain a log of related communication and actions taken;
- c) Respond to complaints professionally and take effective action to stop any problems; and
- d) Cooperate and participate in any complaint handling, response or resolution system implemented by their relevant Participating Organisation or local council.

### **2.9.2 Managers must also make and maintain a record of the following particulars of each complaint:**

- a) Date and time received;
- b) Name and designation (e.g. Guest, neighbour, council, police etc) of complainant(c) contact details of complainant;
- c) Nature of complaint;

- d) Action taken (by whom and when); and
- e) Outcome and/or further action required (e.g. community consultation, meet with council, meet with local police, review management systems or issue resolved.)

**2.9.3 Participating Organisations and Managers should encourage and facilitate complaint handling and dispute resolution through the following stages:**

- a) Initially by the Manager;
- b) If not resolved in (a) then through the relevant Participating Organisation; and
- c) If not resolved in (b) then through the relevant state or territory Fair Trading or other authority.

## **2.10 Consequences of not meeting this Code of Conduct**

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Where required to ensure compliance, Managers must make Owners, Guests and Visitors aware that:

- a) Depending on the Terms and Conditions of the contract between the Guest and Owner, the consequences of not meeting the requirements of this Code of Conduct can include enforcement action from:
  - i. the Owner and its agents including Manager and security services;
  - ii. local councils or; and
  - iii. in some instances, the Police.
- b) Enforcement action is subject to the Australian Consumer Law and other relevant legislation.
- c) Such enforcement action could result in termination of permission to occupy the Property, eviction, loss of rental paid, deductions from security deposits and extra charges.
- d) It is therefore important for all Guests to be aware of their obligations and of their responsibilities to make any Visitors to the Property aware of these requirements to maintain the amenity of the Property and its neighbourhood.



## **2.11 Standards for Terms and Conditions (Part 3) and House Rules (Part 4)**

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### **2.11.1 Approach: prescribed standards not solutions**

- a) It is acknowledged that Holiday Rental Properties, Managers, Guests, Visitors, neighbourhoods, systems and other circumstances for holiday rental around Australia are diverse and a prescriptive “one-size-fits-all” approach is unlikely to achieve the Objectives;
- b) It is also acknowledged that the industry is dynamic and that alternative, innovative and technological solutions which achieve the Objectives should be encouraged and not stifled by undue prescription;
- c) Accordingly, in the performance standards set out in Parts 3 and 4, the focus is on the required outcome to be achieved rather than on prescription of rigid “one-size-fits-all” solutions.

### **2.11.2 Deemed to satisfy solutions**

- a) To provide guidance and assistance to the industry, the Code does provide in Attachments A and B so far as is practical “deemed to satisfy” solutions to compliance with the performance standards in Part 3 and Part 4 respectively;
- b) The benefit of adopting a “deemed to satisfy” solution to a performance standard is that, in the event of a complaint about a Property to a Participating Organisation or the NCAC which relates to a performance standard, there is no onus on the Owner to prove that the relevant Terms and Conditions or House Rules used for the Property meet the relevant performance standard.

### **2.11.3 Equivalent solutions**

- a) Managers are free to adapt or adopt different provisions in their Terms and Conditions and House Rules from those set out in Attachments A and B respectively which better suit their own circumstances, provided they are “equivalent solutions”.
- b) Equivalent solutions are Terms and Conditions and House Rules for a Property that are designed to achieve the required performance standards by provisions which are different from the deemed solutions.
- c) In the event of a complaint about a Property to a Participating Organisation or the NCAC which relates to a performance standard where the relevant deemed solution has not been used, the onus is on the Manager to prove that the performance of the provisions used is at least equivalent to that of the deemed to satisfy solution.

### **2.11.3 Equivalent solutions**

Failure to adopt a deemed solution or equivalent solution to each of the performance standards in Part 3 and Part 4 is a breach of this Code of Conduct.

## **2.3 Terms, Conditions and House Rules**

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### **2.3.1 Managers must ensure that:**

- a) The Terms and Conditions upon which the Property is offered, booked and occupied for Holiday Rental must meet the standards specified in Part 3.
- b) These Terms and Conditions must be incorporated into the contract between the Owner and the Guest.

### **2.3.2 Managers must:**

- a) Provide and have displayed prominently in the Property, the House Rules;
- b) Provide a Guest & Visitor Information Folder containing other information including a copy of this Code of Conduct and information promoting good neighbourly behaviour;
- c) The House Rules upon which Guests and Visitors are permitted to enter and remain upon the Property must meet the standards specified in Part 4; and
- d) The Terms and Conditions and House Rules must not offend the unfair contract terms and other provisions of the Australian Consumer Law.

## **2.4 Deemed to Satisfy Provisions**

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### **Part 3)**

- c) Set out the original Terms and Conditions as a “deemed to satisfy” solution

### **Part 4)**

- d) Set out the original House Rules as a “deemed to satisfy” solution

## Part 3) Terms and Conditions between Owners and Guests

***The Terms and Conditions upon which a Property is offered, booked and occupied for Holiday Rental under the contract between the Owner and Guest consistent with the requirements of the Holiday Rental Code of Conduct.***

***These are the Performance Standards for the Terms and Conditions of the Contract between the Owner and the Guest.***

### 3.1 Formalities:

---

The Terms and Conditions:

- a) Must be in writing;
- b) May be in electronic, printed or other legally compliant form;
- c) Must include the information and cover the matters in Part 3 of this Code of Conduct;
- d) May incorporate information by reference including Booking Conditions, Occupancy Agreement, House Rules, By Laws and information made available to the Guest from web sites; and
- e) May cover such other matters generally required in relation to Holiday Rental of the Property and any special conditions provided they are not inconsistent with this Code of Conduct including in particular this Part 3.

### 3.2 General Content

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- a) The Terms and Conditions must include:
  - i. the address and description sufficient to identify the particular Property;
  - ii. Guest's name, usual residential address, email and phone number(s);
  - iii. dates of occupancy and check-in/check-out times;
  - iv. total rental payable and any other charges;
  - v. amount and timing for payment of deposit and balance of moneys due;
  - vi. provisions on variation, cancellation and forfeiture or refund of moneys paid; and
  - vii. contact details for the Manager or their nominated representative.
- b) The Terms and Conditions must not offend the unfair contract terms and other provisions of the Australian Consumer Law.

### **3.3 Licence not a tenancy**

---

The Terms and Conditions must include:

- a)** Guests are granted a limited permission to occupy the Property for holiday purposes;
- b)** This is not a residential tenancy agreement under the residential tenancy legislation; and
- c)** Failure to comply with the Guest's obligations in the Terms and Conditions may result in termination of permission to occupy the Property and eviction.

### **3.4 Security Deposits or Bonds**

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Make effective and fair use of security deposits or bonds to procure compliance.

### **3.5 Number of Guests and Visitors**

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- a)** The maximum number of adult Guests permitted at a Property must not exceed a maximum of 2 per bedroom plus 2; and
- b)** The number of Visitors permitted at a Property must not be such as may conflict with residential amenity, House Rules and more generally the Holiday Rental Code of Conduct.

### **3.6 Noise and Residential Amenity**

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Prohibit Offensive Noise and antisocial behaviour and enable the Manager to exercise all legal rights and remedies to promptly deal with any breach.

### **3.7 Functions and parties**

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- a)** Properties located in residential areas must not host commercial catering or functions unless they have local council permission to do so.
- b)** So called "party houses" conflict with residential amenity, are damaging to the Holiday Rental industry and are not permitted.
- c)** Any gathering, celebration or entertainment permitted at a Property must not conflict with residential amenity and must comply with all the other requirements of this Code of Conduct including the Terms and Conditions (Part 3) and House Rules (Part 4) and any other relevant planning approvals.

### **3.8 Access and Parking**

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Managers must provide information to Guests prior to arrival regarding access or parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties.

### **3.9 Recycling and Garbage**

---

**Managers must:**

- a)** Inform Guests of the garbage disposal or recycling usual practices at the Property including:
  - i.** the allocated bins and how excess rubbish should be managed and not left in public or common areas;
  - ii.** details of local council garbage and recycling collection days; and
  - iii.** any special requirements relating to the disposal of garbage or waste minimisation.
- b)** Make arrangements for the removal of any excess garbage left by Guests and Visitors.

### **3.10 Complaints and dispute resolution procedure**

---

Provide adequate information on complaints handling and dispute resolution.

### **3.11 Consequences of not meeting the Terms and Conditions**

---

Clearly set out the consequences of not meeting terms and Conditions and enable the

## **Model Terms and Conditions between Owners and Guests**

## PART 4) HOLIDAY RENTAL CODE OF CONDUCT

# House Rules for Guests and Visitors

***Holiday rentals provide a unique tourism experience: consider this your home, treat it as your own, respect your neighbours and leave it as you find it. These House Rules are provided at the Property to ensure that Guests and Visitors know and comply with the specific Rules governing their permission to enter and occupy the Property.***

### **4.1 General requirements**

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House Rules are binding on Guests and Visitors and any issues must be promptly reported to the Manager

### **4.2 Noise and Residential amenity**

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Offensive Noise and anti-social behaviour is prohibited

### **4.3 Visitors**

---

Guests are responsible for Visitors

### **4.4 Gatherings or functions**

---

Parties and non compliant functions or gatherings are prohibited

### **4.5 Parking**

---

Parking regulations and requirements are specified clearly

### **4.6 Garbage and recycling**

---

Garbage storage and disposal requirements are specified clearly

### **4.7 Security**

---

Security arrangements are specified clearly

### **4.8 Swimming pool/spa (if applicable)**

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Hours of use and safety measures are specified

### **4.9 Deck and balcony areas**

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Appropriate rules are specified

### **4.10 Smoking**

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Restrictions are specified to the property

### **4.11 Pets**

---

Restrictions are specified to the property

### **4.12 BBQ**

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Arrangements are specified

### **4.13 Damages and breakages**

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Damages and breakages must be reported to the Manager

### **4.14 On departure arrangements**

---

Arrangements for keys, security, dishwashing, rubbish, etc are specified

### **4.15 Emergency Contact**

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Emergency contact name and telephone numbers are provided

### **4.16 Compliance**

---

Consequences of non-compliance are specified including termination and eviction



HOLIDAY RENTAL  
INDUSTRY ASSOCIATION

# Review of the Regulation of the Holiday and Short Term Rental Industry

Prepared for the Holiday Rental Industry Association



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## 1. Executive Summary

- Short term rental of houses and apartments for holiday and other accommodation purposes has been a long accepted practice and tradition in Australia without any special planning or other restrictions.
- Recent case law at Supreme Court and Court of Appeal level has confirmed that the ordinary meaning of terms such as "residence", "dwelling", "house" or "apartment" does not require or imply that the occupancy be long term rather than short term although there are conflicting decisions especially in New South Wales. Uncertainty, disputes and litigation over such matters is unproductive.
- Unfortunately, current standard planning instruments in the eastern states do not provide clarity and uniformity on whether short term rental of residential accommodation is a permitted, permissible or prohibited use in residential and other zones.
- Licensing, registration and other recent restrictions on short term rental are unwarranted, unfair and ineffective.
- When implemented nationally by the HRIA, the self regulatory Holiday Rental Code of Conduct will deal directly and more effectively with any potential adverse impacts on amenity.
- To provide clarity and uniformity and to facilitate the continuation of holiday rental subject to appropriate controls on amenity this report recommends that under standard planning instruments:
  - "Short term rental of residential accommodation" be a defined land use.
  - It be a permitted or permissible use in zones where "dwelling houses" or "dwelling units" (or similar defined uses) are permitted or permissible.
  - Where more control is required,
    - it be exempt development where it comprises up to 4 bedrooms.
    - it be complying development where it comprises 4-6 bedrooms subject to predetermined development standards. The Holiday Rental Code of Conduct provides a useful checklist.
  - In special locations and circumstances such as rural residential or areas with typically larger properties, it may be appropriate to make more than 6 bedrooms exempt or complying development
  - Otherwise where it comprises more than 6 bedrooms standard development approval procedures could be applied..
  - In other zones "short-term rental of residential accommodation" should be permitted or permissible based on the objectives, location and circumstances of such zones and subject to the principles of exempt and complying development above.

## 2. Introduction

### 2.1 Scope

Atherton Advisory Pty Ltd has been engaged by the Holiday Rental Industry Association (HRIA) to examine the planning and related regulatory framework for holiday and short term rental in the three largest tourism states of Australia and to compare approaches and recommend a model for state and local governments to

consider which facilitates the continuation of this activity (for its economic and other benefits) while addressing neighbourhood amenity and other concerns.

As the national industry association the HRIA is itself an important part of the regulatory framework. It has the role and responsibility to address issues on behalf of the industry in cooperation with state and local government and other stakeholders. Under its business plan a key priority is the nationwide adoption and enforcement of the Holiday Rental Code of Conduct. The Code will be an important self regulatory mechanism for minimising any noise or anti social behaviour at holiday and short term rental properties. More information on the HRIA is available at: <http://hria.com.au/>

## **2.2 Background**

Holiday and short term rental is a long accepted practice and tradition in houses and apartments in residential areas throughout Australia which can be traced back for more than a century.

Traditionally, as planning schemes have developed, they have not made any distinction between short and long term residential occupancy and planning permits have not been sought or required. While the number of properties has grown modestly, the activity has expanded with increasing mobility of guests and the advent of the internet and efficient online distribution portals for both traditional real estate agents and owner-managers.

As the activity has expanded, opposition has emerged from some commercial accommodation operators and from some neighbours where misbehaviour of guests and visitors has caused annoyance.

Where there has been opposition, there has been pressure on state and local government to regulate the activity under planning law by redefining land use terms and use rights. However, this has proven difficult for a variety of reasons as examined in this Report including unclear definitions and the constraints on retrospectivity posed by existing use rights.

This has also generated extensive disputation and litigation and the judiciary has struggled with similar difficulties as illustrated in the cases examined in this Report.

Local government has various other powers and responsibilities for maintaining the amenity of neighborhoods but the problems require assistance of other authorities including health, fire safety, building, noise abatement, police etc. This Report examines some initiatives to coordinate this.

Finally efforts to find and implement regulatory solutions have been hampered by the fragmented and disorganised nature of the holiday rental industry itself. Government has not had a reliable representative partner with whom to engage. The HRIA will remedy this and this Report marks the beginning of a more cooperative public-private partnership approach to the issues.

## 2.3 Definition

The policies, plans, instruments, cases and legislation examined in this Report use a variety of descriptions for holiday and short term rental and the authors follow the terminology of the source where appropriate. However the intention throughout is to refer to short term rental of houses and apartments for any purpose using the operational methods which distinguish holiday rental from commercial accommodation.

From the materials examined in this Report the authors have developed the following land use definition which is explained in more detail in Part 6:

*"Short-term residential accommodation" is self-contained residential accommodation provided for the exclusive use of an individual, family or household group for a temporary period of time usually not exceeding three consecutive months where the owner or manager does not reside or have an office or reception desk in the building during the occupancy.*

## 2.4 Structure

This report examines the regulatory system and practice for holiday and short term rental in Part 3 Queensland, Part 4 New South Wales and Part 5 Victoria. From this examination and the authors' experience with policy, law and development of other tourism sectors, Part 6 presents a recommended model for state and local governments to consider.

# 3. Queensland

## 3.1 Leading case

*Sunshine Coast Regional Council v Ebis Enterprises P/L v [2010] QCA 379* (Sunshine Coast case) concerned a large 6 bedroom luxury house located in a rural residential area of the Sunshine Coast. It was used for short term holiday rental to groups of up to 20 people. There had been complaints of noise and anti social behaviour mainly from one adjoining resident.

Under the planning scheme "detached house" and "dwelling unit" were defined in terms of self contained accommodation "designed, adapted or used for the exclusive use of one household" [underlining added].

The Queensland Court of Appeal (Margaret McMurdo P, Chesterman JA and Philippides J) unanimously held that this use was permitted under the scheme. The Court gave the definition its ordinary disjunctive meaning and refused to read in from the word "household" or from a table elsewhere in the instrument or any other source any implication or requirement that it be for long term rather than short term use.

Chesterman JA noted that otherwise the result would be absurd. "A holiday house ... which was used by its owners, and perhaps the owners' family and friends only for brief holidays, a few days at a time or a week or two here and there, would [cease to be a dwelling]. Its use though exclusively residential would not be *long term* residential [and so would require a DA]".

In many respects this is completely opposite to the conclusion reached by the Court of Appeal in the leading case in NSW discussed below. But in Queensland it stands as the prevailing authority and is a persuasive authority in states other than NSW wherever similar terms are used. The reasoning and conclusions would also extend to apartments.

### 3.2 *Standard Planning Instrument*

Like most states, Queensland is introducing a system of standardised planning instruments to achieve clarity and uniformity in new planning schemes across the state.<sup>1</sup>

The Queensland Planning Provisions (QPP) provide a standard template from which local governments must prepare their new planning schemes under the *Sustainable Planning Act 2009*. They include mandatory and optional provisions to allow some flexibility on the level of detail and for local circumstances.

Version 3 was released on 25 October 2013. Under this version, the relevant definitions and provisions are as follows:

<b>Column 1 Use</b>	<b>Column 2 Definition</b>	<b>Column 3 Examples include</b>	<b>Column 4 Does not include the following examples</b>
Short-term accommodation	Premises used to provide short-term accommodation for tourists or travellers for a temporary period of time (typically not exceeding three consecutive months) and may be self-contained...	Motel, backpackers, cabins, serviced apartments, accommodation hotel, farm stay	Hostel, rooming accommodation, tourist park

"Short-term accommodation" is obviously intended to be a broad, all encompassing concept. None of the examples given in Column 3 and 4 are defined terms. With additional facilities this concept is the basis of the definition of "Resort complex" and with a liquor licence, dining and entertainment facilities it is an "Hotel".

All the examples given of "Short-term accommodation" are forms of commercial accommodation whereas holiday rental is generally not regarded as commercial accommodation. For this reason it could be argued that it is not included within "Short-term accommodation" as defined. Then, unless it fits within the definition of some other land use, it would be regarded as an undefined land use. Undefined land uses generally require planning approval.

Contrary to the interpretation in the *Sunshine Coast* case discussed above, the definition of "Dwelling house" and "Dwelling unit" now expressly exclude "Short-term accommodation". So it no longer fits there.

<sup>1</sup> Under the *Sustainable Planning Act 2009*

But the definition of "Multiple dwelling" does not expressly exclude "Short-term accommodation", thereby creating conflict and confusion with "Dwelling unit" and the other definitions.

There is an exception for "Nature-based tourism" which is defined to include "Short-term accommodation" that is "environmentally responsible". The latter term is vague and undefined.

"Short-term accommodation" is then included as a use within the broader term "Accommodation activity".<sup>2</sup>

In the Standard Suite of Zones Index<sup>3</sup> Residential zones detail table category Level 1 Zone General Residential the overall outcomes sought in this use include (optional):<sup>4</sup>

*"Visitors to residential communities are provided with appropriate short-term accommodation."*

This use is also included to a diminishing extent in further Residential categories.

In the Level 1 Zone Tourist Accommodation the overall outcomes include (optional):<sup>5</sup>  
*"Short-term accommodation is provided at a scale, density and in locations that service tourist needs."*

The use is also included (optionally) as an ancillary outcome in various Centre and Industrial zones.

In summary then under the current QPP definitions holiday and short term rental of houses and apartments:

1. Is expressly excluded from "dwelling house" and "dwelling units".
2. Falls within the broad Column 2 definition of "Short-term accommodation" but, unlike all the examples given is not commercial so arguably excluded under the ejusdem principle of statutory interpretation.
3. That leaves it as a vague undefined land use under the QPP.

This is unsatisfactory and will promote uncertainty, misunderstanding, disputes and litigation in Queensland.

Although to some extent the level of assessment set in a local government scheme is optional,<sup>6</sup> the practical result is likely to be that commencing (or recommencing or increasing the intensity of use of a residential property for holiday or other short term rental) will be a material change of use<sup>7</sup> which is impact assessable (in common parlance requiring a DA ie Development Approval) with all that encompasses in terms of time, cost and uncertainty under the realities of the Australian urban planning system.

---

<sup>2</sup> Schedule 1 - 94 -

<sup>3</sup> Part 6 - 30 -

<sup>4</sup> Part 6 - 31 -

<sup>5</sup> Part 6 - 35 -

<sup>6</sup> Part 5.3

<sup>7</sup> Section 10(1) *Sustainable Planning Act 2009* and Ch 6 Div 5 part 2 Div 1

The intention and consequences are clear:

- This is all designed to undo the definitions and meanings of terms established in the *Sunshine Coast* case discussed above, in futuro
- As each local government area adopts the standard template instrument the clear intention is that all new holiday and other short term rental of dwelling houses and dwelling units will require DA.
- If a contested DA assessment is required, the practical consequences may be that property development and construction for this use (a major industry at most destinations) will be severely curtailed or cease.
- Existing uses will continue, subject to restrictions.
- But over time the number of existing use properties will be depleted as will holiday rental tourists and tourism in Queensland. The economic impact of this may be gauged from the separate HRIA Economic Impact Study.

The definitions and intentions are also out of step with other important complementary legislation and regulations including:

- The 3 month criterion in the definition of "Short-term accommodation" conflicts with the 6 week criterion for the exception to the requirements for a residential tenancy under Section 21 *Residential Tenancies Act 1994*.<sup>8</sup> This Act should be amended to 3 months to bring it into line with other states.
- They conflict with the building classification requirements under the Building Code of Australia (Class 1, 2 and 3) which the recent Court of Appeal case in Victoria has held are independent of length of stay (See discussion in Victoria below).

There have been media reports of a new proposal for planning prohibitions on holiday and short term rental. No details were available to the authors at the date of this report. It is difficult to understand how such prohibitions could be validly imposed given the constraints on retrospectivity and protections for existing use rights.

The Queensland planning system itself is undergoing a major review and new legislation is due later this year. It is an opportune time to address the deficiencies in the planning definitions and approach to holiday and short term rental in accordance with the recommendations presented in Part 6.

### **3.3 Planning approaches**

Under the prevailing *Sunshine Coast* case (and previous similar) interpretations, and a traditionally more laissez faire and pro tourism approach than southern states, Councils in Queensland have been more reluctant and constrained in finding a planning solution to the issues in short term and holiday rental.

---

<sup>8</sup> *Residential tenancies Act 1994 - Sect 21*

*21 Premises used for holidays*

*(1) This Act does not apply to a residential tenancy agreement if the right of occupancy of the premises is given for holiday purposes.*

*(2) For subsection (1), a right to occupy premises given for 6 weeks or longer is taken not to be given for holiday purposes unless the contrary is proved*

For example, the Gold Coast City Council, on legal advice, abandoned at an early stage the effort to find a planning solution to the party house problem as it began to emerge from 2009.

### **3.4 Other approaches**

#### **3.4.1 Local Laws and Licensing**

The *Local Government and other Legislation Amendment Act 2012 No 33* included amendments to enable local councils to make local laws to regulate "party houses" by making the owner of a residential property liable to a penalty because of excessive noise emitted from the property.<sup>9</sup>

The Explanatory notes make it clear that the local laws in mind will be directed at short term occupancies.

"Excessive noise" is proven when a noise abatement direction is issued<sup>10</sup> in respect of a property. Councils are empowered to fix the number of times they must be issued in order to trigger a penalty.

There are very serious problems with this legislation including:

- The penalty of up to \$93,500 is draconian and out of all proportion to the gravity of the offence.
- It is a breach of fundamental legislative principles to make one person ie the owner liable for the offence of another ie the occupant whose misbehaviour is causing the nuisance.
- It targets short term rental and excludes excessive noise from owner occupiers or long term tenants.
- But the most serious flaw in this legislation is that it entirely misses the point. "Owner" is defined to include tenants who have exclusive possession of the property. In holiday rental the occupant is usually not a tenant with exclusive possession but rather a guest with a mere licence to occupy. So the real culprits ie the misbehaving guests or visitors go unpunished and undeterred under this law.
- These and other serious flaws in the legislation are discussed in more detail in a submission to the Transport, Housing and Local Government Committee which reviewed the Bill.

The Gold Coast City Council (GCCC) introduced *Local Law No 19 (Control of Party House Noise) 2013* under this legislation. The Local Law deals only with residential property made available for short term (less than 42 days) rental accommodation purposes. The offence is committed when more than two noise abatement directions are issued in any one year.

It is understood that so far there has not been a prosecution or indeed even one noise abatement direction issued under this local law.

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<sup>9</sup> Section 33B

<sup>10</sup> under the *Police Powers and Responsibilities Act 2000*



This local law is designed to work in conjunction with the GCCC's licensing scheme for short term rental accommodation which has been in place since 2008.<sup>11</sup> Under this scheme such properties must be licensed and Council then imposes an increased level of rates. In practice there is no other practical outcome from the licensing scheme other than that licensed properties are charged significantly higher general rates.

For the reasons above it is clear that these local laws are not an appropriate or effective way to regulate the misbehavior of short term occupants of residential premises.

### **3.4.2 Strengthening Police Powers**

Queensland has now sought to regulate "party houses" in another way.

A Bill<sup>12</sup> to strengthen police powers and responsibilities to crack down on "out-of-control events" is presently before state parliament. These are defined as events where 12 or more people are gathered and three or more do any of the following:<sup>13</sup>

- Unlawfully enter property.
- Use offensive or threatening language.
- Fight or assault another person.
- Cause property damage.
- An indecent act such as wilful exposure.
- Excessive noise.
- Burn-outs in a motor vehicle.
- Unlawfully light fires or fireworks.
- Throw dangerous objects.
- Unreasonably obstruct a person or vehicle.
- Litter in a way that could harm a person, property or the environment.
- Public drunkenness.
- Break liquor or drug laws.

Under the proposed amendments organisers of such events will be subject to penalties including imprisonment and fines of up to \$12,000.

While the amendments have been criticised by civil libertarians and others as being an "an attack on the right to have fun", from the perspective of the holiday rental industry and stakeholders this is a fairer and more effective regulatory approach than the earlier options because it:

(a) directly addresses the key problem of wild parties and misbehaviour including at private residences whether by owner occupants, tenants, guests or visitors, short or long term.

(b) penalises the perpetrators ie the organisers of the event rather than innocent owners or managers of the property who may be unaware of the event and, in accordance with the Holiday Rental Code of Conduct, will have prohibited it.

(c) penalises rogue holiday rental operators (owners or managers) who, contrary to the Holiday Rental Code of Conduct, are "substantially involved in arranging,

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<sup>11</sup> *Local Law No. 16 (Licensing) 2008, Subordinate Local Law No. 16.1 (Rental Accommodation) 2008*

<sup>12</sup> *Police Powers and Responsibilities and Other Legislation Amendment Bill 2013*

<sup>13</sup> Section 53BB, 55BC

hosting, managing, advertising or promoting the event"<sup>14</sup>. They will be liable just like any other person who "organises" such an event.

(d) strengthens police powers and responsibilities to deal with the problem.

## 4. New South Wales

### 4.1 Leading cases

*North Sydney Municipal Council v Sydney Serviced Apartments Pty Ltd* (1990) 71 LGRA 432 (*Blue Point Tower* case) concerned the short term rental of 37 of the 144 apartments in the high rise Blue Point Tower residential flat building at McMahon's Point, Sydney. SSA "controlled" by leaseback and letting agency agreement 37 of the 144 units and let them out as serviced apartments from an on site office (separately approved for commercial use).

Development consent had been granted for a "residential flat building" when the building was constructed in 1960. "Residential building" was defined by Ordinance to include "residential flat building" [not defined] and hostel, residential hotel, residential club.

The NSW Court of Appeal (Mahoney J, Priestly and Handley JJA agreeing) unanimously held that the use was not permitted. Mahoney J held that:

"'residential building' requires human habitation, not permanent or for any particular period. But there are varying degrees of permanency required by type..."the description of a flat as a 'dwelling' or 'domicile' carries with it the notion of a degree of permanency and so excludes short term rental." [underlining added]

His Honour distinguished between a "*residential unit*" which an owner lives in or rents out under the Residential Tenancies Act and a "serviced apartment" which is hired out short term similar to a hotel and serviced regularly by a manager.

As neither "dwelling" nor "domicile" were used in the relevant Ordinance or the development consent the impact of the decision is very wide and difficult to distinguish.

As noted above the reasoning and conclusion are completely opposite to that in the leading Queensland case. Nevertheless as a unanimous decision of the Court of Appeal it is binding upon and has prevailed in every similar case concerning flats or apartments in New South Wales since. These have included:

- *Sutherland Shire Council v Foster* [2003] NSWLEC 2: "Trade Winds" at Cronulla
- *KGD York Management Services Pty Limited v City of Sydney Council* [2006] NSWLEC 218: "The York" 150 flats at York St Sydney.
- *181 Kent Pty Limited v Council of the City of Sydney* [2007] NSWLEC 88: "Kent Street" comprised 158 residential units over 27 levels in Sydney city
- *Council of the City of Sydney v Waldorf Apartments Hotel Sydney Pty Limited and Anor* [2008] NSWLEC 97 (5 March 2008): Council had accepted use as serviced apartments for 25 years before objecting, estoppel held no defence)
- etc

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<sup>14</sup> Section 55BD

In *Dobrohotoff v Bennic* [2013] NSWLEC 61 (*Terrigal* case) this interpretation was extended to a 6 bedroom house in Terrigal on the NSW Central Coast used for holiday rental to up to 12 or 13 persons. There was evidence of parties, noise, and antisocial behaviour. The complainant neighbours sought an injunction restraining the use.

The NSW Land and Environment Court (Pepper J) applied the *Blue Point Tower* case and held that the use was prohibited in the Residential zone. Her Honour held:

- "The term "dwelling-house" is defined in the GPSO at cl 3(1) to mean "a building containing 1... dwelling". The term "dwelling" is defined to mean "a room or number of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile".<sup>15</sup>
- "The definition of "dwelling" has two limbs. The first concerns the actual occupation or use of a room or rooms as a separate domicile and the second deals with the hypothetical test of whether a room or rooms are "so constructed or adapted as to be capable of being occupied or used" as a separate domicile..."<sup>16</sup>

On the first limb Her Honour applied the *Blue Point Tower* and following line of authority and also relied on the term "domicile" (not in the *Sunshine Coast* case or the *Blue Point Tower* case) to find that the occupancies lacked the requisite permanency and other characteristics of occupation by a family or household group "in the ordinary way of life".

On the second limb Her Honour acknowledged the *Sunshine Coast* case but asserted it was "entirely distinguishable" (for reasons unclear to the author) and instead in effect adopted a conjunctive interpretation of "or" (rather than distributive) to find that the use was also outside the second limb.<sup>17</sup>

Because of the vintage and repeated application of the *Blue Point Tower* case (20 years) that interpretation has crept into the definitions in some planning instruments in NSW in more express terms including eg the term "domain" in the instrument considered on the *Terrigal* case above. The result is the legal position of holiday rental in residential zones in NSW ranges from prohibited, ambiguous, to permitted depending on the council, instrument and date of commencement of the use. This is an unsatisfactory outcome for the state.

#### **4.2 Standard Planning Instrument**

New South Wales, like other states, is introducing a system of standardised planning instruments to achieve clarity and uniformity in new planning schemes across the state.<sup>18</sup>

In the latest version of the Standard Instrument Local Environmental Plan (LEP) the relevant definitions and provisions are as follows (underlining added):

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<sup>15</sup> Para 32

<sup>16</sup> Para 33

<sup>17</sup> Compare paras 54 and 57

<sup>18</sup> Under the *Sustainable Planning Act 2009*

**"dwelling"** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

**"dwelling house"** means a building containing only one dwelling

Note: Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary

**"residential accommodation"** means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings...
  - (d) dwelling houses...
  - (h) residential flat buildings,
- but does not include tourist and visitor accommodation or caravan parks"

**"tourist and visitor accommodation"** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
  - (b) bed and breakfast accommodation,
  - (c) farm stay accommodation,
  - (d) hotel or motel accommodation,
  - (e) serviced apartments,
- but does not include:
- (f) camping grounds, or
  - (g) caravan parks, or
  - (h) eco-tourist facilities.

**"hotel or motel accommodation"** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpackers' accommodation, a boarding house, bed and breakfast

**"serviced apartment"** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

Note. Serviced apartments are a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

**"eco-tourist facility"** means a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

This use is expressly excluded from "tourist and visitor accommodation" and special requirements are set down for approval.<sup>19</sup> This has limited application to holiday rental but does provide a precedent.

The result for holiday and short term rental is as follows:

- These definitions do not address the issues in New South Wales.
- Inclusion of the word "domicile" in the definition of "dwelling" would clearly exclude holiday or short term rental under the current case law in New South Wales.
- Requiring regular servicing or cleaning and that the accommodation be provided on a commercial basis would in practical terms exclude most holiday rental from "serviced apartments" because holiday rental is generally provided only on a departure clean or service basis (like permanent rental), does not have on site management, office or reception and for most purposes eg GST is not regarded as being on a commercial basis. The Income Tax Ruling on this also provides other indicators of the non-commercial nature of holiday rental.<sup>20</sup>
- For similar reasons it would not fit within "hotel and motel accommodation".
- No other nominated inclusion in the definition of "tourist and visitor accommodation" would include holiday rental.
- By clearly separating "dwellings" from "tourist and visitor accommodation" in this uncertain way holiday rental is left in limbo in between, neither one nor the other.

This is entirely unsatisfactory for a planning scheme designed to achieve clarity and uniformity state wide. If holiday rental was included in "tourist and visitor accommodation" this is not a permitted use in Residential zones. So, unless existing use rights apply, holiday rental will at worst be prohibited or at best require development approval in residential areas throughout NSW. The practical consequences are similar to those discussed for Queensland in Part 3.2 above.

Clearly a new defined term and recategorization within residential accommodation is required to provide a clear fit for the use and so that appropriate special provisions can be made for approval and regulation. This is developed in Part 6.

### **4.3 Planning approaches**

Gosford City Council (host of the *Terrigal* case discussed above) has been working on a planning solution for some years and has come up with an innovative, balanced approach which facilitates the continuation of holiday rental of dwellings while introducing controls to protect residential neighbourhood amenity.

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<sup>19</sup> Clause 5.13

<sup>20</sup> ITR 2000/20

It is presented in the current draft of the Gosford Local Environment Plan and the Development Control Plan and involves the following main components:

- Definition of the use  
*"Short term holiday letting of dwellings" means an existing dwelling that provides temporary or short term [up to 3 months] accommodation on a commercial basis but excludes hotel or motel accommodation, serviced apartments, bed and breakfast accommodation, tourist and visitor accommodation and backpacker's accommodation."*
- Making the use permissible in Residential zones
- Making the use Exempt Development if the dwelling comprises not more than 4 bedrooms
- Establishing under the DCP detailed controls on all aspects likely to impact amenity which are the criteria for consideration in a DA for approval of the use and for enforcement in a dwelling comprising more than 4 bedrooms but not more than 6 bedrooms
- Prohibiting the use if the dwelling has more than 6 bedrooms.

Although the definitions and approach have been constrained somewhat because they are grafted onto the definitions, structure and zones of the existing LEP, the concept and the principles are very useful in designing a balanced solution which will work under the standard planning instruments proposed in Queensland, New South Wales, Victoria and other states . This is developed further in the recommendations in Part 6 below.

#### **4.4 Other approaches**

##### **4.4.1 Code of Conduct**

In May 2012, the Stayz Group with industry partners launched the Holiday Rental Code of Conduct to self regulate the industry. The Code introduces a system of best practices to minimise any adverse impacts on local amenity and to deal effectively with complaints and breaches of the Code.

The Code prohibits party house activities, prohibits offensive noise and lays down mandatory industry standards to maintain residential amenity during holiday and short term rentals. This is a self regulatory initiative of the industry and it exercises owners' rights and imposes obligations on guests and visitors in contract law and property law in a coordinated and comprehensive manner to deal with the problem. It covers not just noise but all antisocial behaviour.

The Code is designed to cooperate with and complement the role and responsibilities of the police and local authorities in these matters.

The Code has been endorsed by an inter-governmental committee in New South Wales subject to an initial two year trial which commenced 31 May 2012.

## 5. Victoria

### 5.1 Leading cases

The author could not find a case directly in point at Supreme Court or Court of Appeal level in Victoria. However several decisions have dealt with similar issues albeit in different contexts.

The most recent is the decision of the Court of Appeal in *Genco & Anor v Salter & Anor* [2013] VSCA 365 (*Salter case*). This case concerned the *Building Code of Australia* classification of apartments in a multi-building apartment complex constructed in Docklands, Melbourne. Mr Salter commenced using a number of apartments in the complex for short term rental in a similar manner to serviced apartments but without an office or reception desk on the property. The City of Melbourne contended that this use changed the classification:

- from Class 2 "a building containing 2 or more sole-occupancy units each being a separate dwelling"
- to Class 3: "a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including ... (b) a residential part of a hotel or motel".

The Court of Appeal (Nettle and Osborn JJA) unanimously held that the apartments remained Class 2. Per Osborn JA (underlining added):

- *"In essence a dwelling is a building (or part of a building) which contains within it the facilities necessary for separate residential occupation. In its ordinary meaning a 'dwelling' is simply a place of residence or abode, whether temporary or permanent."<sup>21</sup>*
- *"There is no justification for implying a further criterion with respect to permanency of occupation..."<sup>22</sup>*
- *"It follows that a beach house will be a dwelling as a matter of ordinary language if it has the facilities that are necessary to make a building habitable as a dwelling. It will remain a dwelling whether or not it is occupied only sporadically. It will also remain a dwelling even if it is let out during holiday periods to short term occupants."<sup>23</sup>*
- *"Likewise an apartment will remain a dwelling as a matter of ordinary language even if its owner lives overseas or interstate and uses it only occasionally and then for relatively short periods. It will remain a dwelling even if it is let for short term use. There is nothing in the fundamental concept contained in BCA clause A3.1 or the ordinary meaning of dwelling which requires that a dwelling be occupied for extended periods of time by the same person."<sup>24</sup>*

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<sup>21</sup> Para 51

<sup>22</sup> Para 54

<sup>23</sup> Para 102

<sup>24</sup> Para 103

The South Australian Environmental Resources and Development Court had earlier come to a similar conclusion in *The Oaks Hotels & Resorts P/L v City of Holdfast Bay* [2010] SAERDC 16.

In *Derring Lane Pty Ltd v Port Phillip City Council (No 2)* [1999] VSC 269 (*Derring Lane case*) the Victorian Supreme Court held a motel was not a residential building. Balmford J reasoned (underlining added):

- “As a general concept residence includes two elements: physical presence in a particular place and the intention to treat that place as home; at least for the time being, not necessarily for ever.”<sup>25</sup>
- “On that basis, the phrase “residential building” must be taken to refer to a building constructed for the purpose of people dwelling there permanently or for a considerable period of time, or having in that building their settled or usual abode.”<sup>26</sup>
- Thus a motel is in effect defined as “a house for the accommodation of strangers or travellers, catering primarily for motorists”... Reading that definition with the [general concept of residence]... it will be apparent that the concept of a motel, accommodating strangers and travellers, is very far from the concept of a “residential building”, being a building in which people have their settled or usual abode.”<sup>27</sup>

This decision has been applied in several Victorian Civil and Administrative Tribunal cases concerning holiday rental including *Armato v Hepburn Shire* [2007] VCAT 603 (*Armato case*), *Hill v South Gippsland SC* [2010] VCAT 623 and, from the *Armato case*, in *Ogilvie v Yarra Ranges SC* [2010] VCAT 658 (*Ogilvie case*). Two of these cases are discussed further below in the context of interpreting the standard instrument. It has also been followed in the Western Australian State Administrative Tribunal in *Hope & City of Joondalup* [2007] WASAT 8.

Although the *Salter case* concerned the BCA rather than planning law it may well lead to a reconsideration of the interpretation adopted in the *Derring Lane case* and applied in the subsequent cases for several reasons including:

- *Salter case* is a unanimous decision of the Court of Appeal
- It set out in clear and unequivocal terms the interpretation that a house or apartment remains a dwelling although used for short term rental (just like the *Sunshine Coast case* in Queensland).
- There are other more cogent reasons for distinguishing a motel from a dwelling.

## 5.2 Standard Instrument

Victoria, like other states, is introducing a system of standardised planning instruments to achieve clarity and uniformity in new planning schemes across the state.<sup>28</sup>

<sup>25</sup> Para 13

<sup>26</sup> Para 16

<sup>27</sup> Para 18

<sup>28</sup> Under the *Planning & Environment Act 1987*.



In the latest version of the Victorian Planning Provisions (VPP) (updated 20 December 2013)<sup>29</sup> the relevant table of land use definitions and provisions are as follows (underlining added):<sup>30</sup>

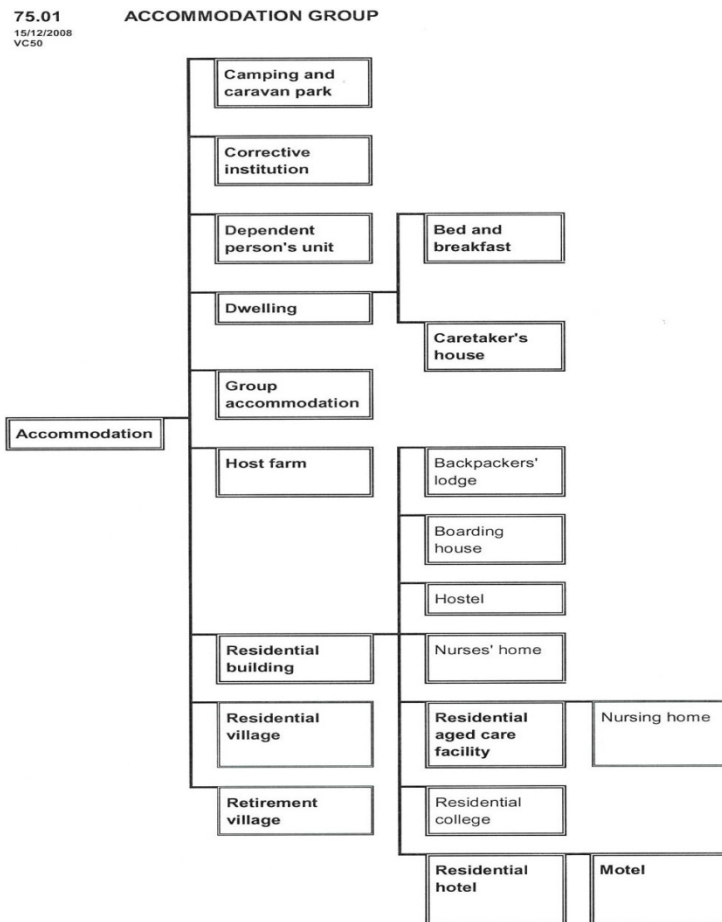
<b>Column 1 Land use term</b>	<b>Column 2 Definition</b>	<b>Column 3 Includes</b>	<b>Column 4 Included in</b>
Accommodation	Land used to accommodate persons.	Camping and caravan park Corrective institution Dependent person's unit Dwelling Group accommodation Host farm Residential building Residential village Retirement village	
Backpackers' lodge			Residential building
Bed and breakfast	A dwelling used, <u>by a resident of the dwelling</u> , to provide accommodation for persons away from their normal place of residence.		Dwelling
<u>Dwelling</u>	A <u>building used as a self contained residence</u> which must include: a) a kitchen sink; b) food preparation facilities; c) a bath or shower; and d) a closet pan and wash basin. It includes out-buildings and works normal to a dwelling.	<u>Bed and breakfast</u> Caretaker's house	Accommodation
Motel	Land used to provide accommodation in serviced rooms for persons away from their normal place of residence, and where provision is made for parking guests' vehicles convenient to the rooms.		Residential hotel
Residential building	Land used to accommodate persons, but does not include camping and caravan park, corrective institution, dependent person's unit, dwelling, group accommodation, host farm, residential village or retirement village.	Backpackers' lodge Boarding house Hostel Nurses' home Residential aged care facility Residential college Residential hotel	Accommodation
Residential hotel	Land used to provide accommodation in serviced rooms for persons away from their normal place of residence. If it has at least 20 bedrooms, it may include the sale of liquor for consumption on, or off, the premises, function or conference rooms, entertainment, dancing, amusement machines, and gambling	Motel	Residential building

The information in the table above is also presented in a nesting diagram for each main land use group. The Accommodation Group is as follows:<sup>31</sup>

<sup>29</sup> Though note: " This combined version may not be updated as quickly as the individual documents listed below. Check the last updated date against the date at the top-left of this page"

<sup>30</sup> Clause 74

<sup>31</sup> Clause 75



Unfortunately, holiday and short term rental is not a defined use when clearly it ought to be to achieve the clarity and uniformity required in the planning scheme across Victoria. Meantime there are three possible ways in which it might be categorised under this structure and the other land use definitions:

**1. Dwelling.** Conceptually, holiday and short term rental of a dwelling would fit most logically as a subcategory of "Dwelling" in Column 3 like "Bed and Breakfast" and "Caretaker's House". However the *Derring Lane* case interpretation weighs against this, even though the Column 2 example "Bed and Breakfast" accommodation is itself obviously short term. Following the *Salter* case, this may be reconsidered.

**2. Residential Building.** The general Column 2 definition of "Residential Building" is wide enough to cover it but none of the Column 3 examples fit. The *Ogilvie* case categorised it this way as another unlisted example.

**3. Accommodation.** The general column 2 definition is certainly wide enough to cover it and it may be an unlisted example if neither 1. nor 2. cover it. The *Armato* case categorised it in this way.

### 5.3 Planning approaches

The standard instrument in Victoria contains another very important provision which facilitates holiday and short term rental, despite the limitations discussed in Part 5.2 above.

**Clause 52.23 Shared Housing** provides:

A permit is not required to use a building, including outbuildings normal to a dwelling, to house a person, people and any dependants or 2 or more people (including people with intellectual disabilities) if the building meets all of the following requirements:

- *Is in an area or zone which is used mainly for housing.*
- *Provides self contained accommodation.*
- *Does not have more than 10 habitable rooms.*

So, under whatever categorization is adopted above, if planning approval is found to be required, the Shared Housing provision will exempt holiday and short term rental from that requirement if the provisions of 52.23 are satisfied. Although it exempts the building and not the land use, the effect is similar to exempt development as proposed in Part 4.3 Gosford above and recommended in Part 6 below. Two VCAT cases illustrate how this works for holiday and short term rental under the current uncertain definitions and structure.

*Armato v Hepburn Shire [2007] VCAT 603 (Armato case)* considered whether a large house formerly used for a bed and breakfast required a planning permit for a change of use to short term rental. Deputy President Gibson held:

- The *Derring Lane* case applied to exclude the use from "dwelling" in the table of definitions above;
- It was also excluded from "residential building" because it did not have the characteristics of the Column 3 examples under that category of multiple units of accommodation to multiple individuals or groups who are not necessarily related or connected to one another;
- So it fell within the broadest category "accommodation";
- In the Residential 1 zone (and in most Residential zones) that use required a planning permit;
- If it satisfied the requirements of clause 52.53 shared housing the use would be exempt from that requirement;
- In this case the house had more than 10 habitable rooms and so was disqualified under clause 52.23; and
- So planning approval was required.

Deputy President Gibson made some insightful observations on the planning scheme:

- *"There are innumerable holiday houses and other houses (or single units of accommodation such as flats or apartments) which are used for tourist or short term accommodation that would require a planning permit if the exemption in clause 52.23 did not apply. If they all required a permit for "accommodation", this would create much additional work for responsible authorities; it would create an unnecessary burden for owners in having to apply for a permit; and it would upset the status quo."*<sup>32</sup>
- *"If people choose to let out a holiday house or other single accommodation unit, a planning permit for the use of land for this purpose is not generally sought or required by councils, probably on the erroneous basis that such accommodation [is] a "dwelling". It is only when complaints arise that a council's attention tends to become focussed on whether or not the use of*

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<sup>32</sup> Para 54

*land for tourist or short term accommodation can properly be characterised as a dwelling. As I have indicated earlier, it is probably not the correct characterisation because the land is not being used as a residence. But the question arises as to whether any good planning purpose would be served by requiring a planning permit for a domestic scale accommodation use, which in other circumstances might well be used as a dwelling. In my view, the answer to this question is no."*<sup>33</sup>

- *"... based on the planning scheme as it is today, my conclusion is that where accommodation of any sort, including tourist or other short term accommodation, is of a domestic scale and meets the requirements of clause 52.23 in terms of being in an area or zone which is used mainly for housing, provides self contained accommodation and does not have more than 10 habitable rooms, then under the operation of clause 52.23 it does not need a permit."*<sup>34</sup>

*Ogilvie v Yarra Ranges SC* [2010] VCAT 658 (*Ogilvie case*) considered whether a large house in a more rural setting required a planning permit for a change of use to short term rental. Senior Member Byard held:

- *Armato* case correctly held that short term tourist accommodation came within "accommodation" and was not a "dwelling"<sup>35</sup>
- Was not a "dwelling" [on the basis of the *Armato* interpretation of the *Derring Lane* case]<sup>36</sup>
- Disagreed with *Armato* case and held that it fell within "residential building"<sup>37</sup>
- In the Green Wedge A zone (rural, agriculture, rural living) that use required, inter alia, a planning permit;
- If it satisfied the requirements of clause 52.23 shared housing the use would be exempt from that requirement;
- But the use must be permissible ie all the requirements for permissibility must be met, otherwise it is prohibited and clause 52.23 will not operate.<sup>38</sup>
- Unlike the Residential 1 zone considered in *Armato*, in the Green Wedge A zone there were further requirements for permissibility including that there be a connection with agriculture and there be a minimum lot size of 8 hectares.
- As neither of these further requirements were met the use was prohibited so clause 52.23 which might have excused the need to obtain a permit became ineffective.<sup>39</sup>
- So the use remained prohibited.

These decisions highlight the potential of the exempt development/use/building mechanism to facilitate holiday rental subject to controls, but also the need for more clarity in the definitions and structure under the standard instrument.

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<sup>33</sup> Paras 55, 56

<sup>34</sup> Para 57

<sup>35</sup> Para 41

<sup>36</sup> Para 45

<sup>37</sup> Para 57

<sup>38</sup> Para 32

<sup>39</sup> Para 57

## **5.4 Other approaches**

### **5.4.1 Registration**

Victoria also has a system of registration of premises above a certain capacity providing short term rental which operates in conjunction with planning controls.

The *Public Health and Wellbeing Act 2008 and Regs 2009*:

- Require houses or apartments offered for rental without an RTA for more than 5 persons to be registered.
- Impose conditions on registration and to monitor and enforce compliance including through penalties and deregistration.

It is understood that few councils have introduced registration schemes under this legislation.

Like the licensing system in Queensland, it is not considered that this is an effective or efficient mechanism for regulating holiday rental.

The Act also regulates "nuisance" in land use generally by:

- Nuisance includes impacts which are "offensive" which means noxious or injurious to personal comfort and includes offensive noise, refuse and activity etc [ie anti social behaviour]
- Council initiated or private complainant, duty to investigate and deal with it, court enforceable at action of council or private complainant.

It is understood these provisions have not yet been used against holiday rental.

## **6. Conclusions and recommendations**

Given the size and economic importance of the industry indicated in the separate HRIA Economic Impact Study, there is a need for clarity and uniformity not just within states but also throughout Australia .

From the review of the system and practice in the main tourism states above, and from our experience with policy, law and development of other tourism sectors, we make the following recommendations.

### **6.1 Define the land use**

The following definition is proposed in the context of the New South Wales standard instrument and system. It needs to be adapted to fit Queensland, Victoria and other states.

#### *Definitions*

*"Short-term(n1) residential(n2) accommodation(n3)" is self-contained(n4) residential accommodation(n5) provided for the exclusive use of an individual, family or household group(n6) for a temporary period of time usually not exceeding three consecutive months(n7) where the owner or manager does not reside or have an office or reception desk in the building(n8) during the occupancy"*

*Explanatory notes:*

1. "Short-term". There are numerous reasons why people require short term residential accommodation including holidays, education, health care, employment, changing/renovating houses etc. Simply using "short-term" focuses on the common characteristic and covers them all.
2. "residential". This reflects another key characteristic of the land use ie it is based upon standard usually existing residential accommodation including houses, apartments and the like. In Queensland this also distinguishes the use from "Short-term accommodation" which is the foundation term for commercial accommodation.
3. "accommodation" is a well accepted and clearly understood term. For example in Victoria it simply means "Land used to accommodate persons".
4. "*self-contained*" is another key characteristic distinguishing it from other forms of short-term accommodation
5. "*residential accommodation*". This is a defined term in New South Wales. "Short-term residential accommodation" should be added to the list of included uses.
6. "*for the exclusive use of an individual, family or household group*". This is another distinguishing feature from other forms of short-term accommodation where the unit is shared by unrelated persons eg bed and breakfast and backpacker accommodation. "Household" is a defined term under the national census. If necessary it could be further defined to more clearly include a 'group of friends' or 'business colleagues'.
7. *definition of short term. Three months is the standard* criterion for the exception to the requirements for a residential tenancy under the *Residential Tenancies legislation*. Some states eg Queensland are out of step (6 weeks) and their Residential legislation needs to be amended for national uniformity and clarity.
8. "*where the owner or manager does not reside or have an office or reception desk in the building*". This is the last distinguishing characteristic from other forms of short term accommodation including hotels, motels and serviced apartments.
9. In the New South Wales instrument "short-term residential accommodation" should also be expressly excluded from "tourist and visitor accommodation" all of which is provided on a commercial basis.

**6.2 Include the land use in permitted or permissible uses**

Short-term residential accommodation should then be included in the permitted or permissible uses column of all Residential zones and all zones where "dwelling houses" and "dwelling units" are permitted or permissible.

Making the use permitted will preserve the status quo in many local government areas. By making the use permissible, councils are able to set standards and exercise more controls over the use if required.

**6.3 Exempt development up to 4 bedrooms**

Where the use is permissible rather than permitted, short-term residential accommodation comprising up to 4 bedrooms should then be included in exempt

development<sup>40</sup> ie so that development approval is not required. This will avoid the delay, uncertainty and expense of the planning approval process for small scale dwellings which are unlikely to have adverse impacts.

The intention is to limit the capacity of the premises in terms of number of occupants. Generally a maximum of 2 adults per bedroom is recommended subject to health requirements for minimum area per adult.<sup>41</sup> As bedrooms are detailed on a property's development approval they provide the most practical way of measuring compliance and enforcement.

The exempt development code for this use should include the usual requirements for dwellings as well as limits on number of bedrooms and occupants.

The industry self regulatory Code of Conduct will provide a complementary mechanism to minimise and deal with any adverse impacts.

#### **6.4 Complying development 5-6 bedrooms**

Where the use is permissible rather than permitted, short-term residential accommodation comprising 5-6 bedrooms should then be included in complying development<sup>42</sup> ie so that development approval is required. However the requirements for compliance should be clearly specified so that compliance can be independently certified.

The complying development controls required for this use should then set out detailed, predetermined development standards which address any potential issues. These could cover issues like parking, garbage removal, hours of operation of equipment eg pools, spas etc. The best practice Holiday Rental Code of Conduct provides a useful checklist for this.

Compliance with the development controls could then be routinely or independently approved, without delay.

As part of the DA the applicant could be required to submit a management plan showing to be taken to ensure on going measures compliance.

#### **6.5 Permissible development more than 6 bedrooms**

In special locations and circumstances local government may wish to make more than 6 bedrooms permissible as exempt or complying development under its planning scheme under the principles outlined above. This may include rural residential areas or locations with typically large properties.

Otherwise, where Short-term residential accommodation comprising more than 6 bedrooms is proposed, standard development approval procedures could be applied.

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<sup>40</sup> Section 76(2) *Environment Planning and Assessment Act 1979* NSW

<sup>41</sup> For example under the *Boarding Houses Regulation 2013* NSW

<sup>42</sup> Section 76A(5) *Environment Planning and Assessment Act 1979* NSW

## **6.6    *Other zones***

In other zones Short-term residential accommodation should be permitted or permissible based on the objectives, location and circumstances of such zones and subject to the principles of exempt and complying development above.





# The Economic Impact of the Holiday Rental Industry

*Prepared for the Holiday Rental Industry Association of Australia*

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## ABOUT HRIA

- HRIA is Australia's peak professional association for Australia's holiday rental industry and its members represent over 40,000 holiday rental premises nationally.
- HRIA's primary objective is to ensure sustainable growth of the holiday rental industry through innovation, leadership and advocacy.

## EXECUTIVE SUMMARY

- The holiday rental industry is a key contributor to the national economy generating an estimated \$31 billion dollars of activity which in turn supports around 238,000 jobs.
- There are an estimated 276,000 holiday rental premises across Australia with an estimated 7.7% of households owning a holiday home and around 44% making their home available for rental.
- Annually approximately 32.5 million nights are spent at holiday rental properties.
- Direct spending by holiday home occupants is estimated at \$7.3 billion—split into \$5.2 billion by holiday home renters, and a further \$2.1 billion of spending by the actual holiday home owner using their own dwelling.
- Holiday home accommodation provides an alternative to commercial accommodation and is more likely to be distributed outside of the capital cities compared to commercial tourism accommodation.
- Regional centres are more likely to benefit from the economic impact generated by the holiday home industry, compared to tourism associated exclusively with commercial holiday rental accommodation.
- Further research at a regional level would provide insights in to the specific direct and indirect benefits at a regional level.

## 1. INTRODUCTION

BIS Shrapnel has been asked by the Holiday Rental Industry Association of Australia to estimate the economic impact of the holiday rental industry.

Consequently, this analysis aims to estimate firstly the size of the holiday rental market, before estimating the level of occupancy and applying a spend to determine the direct contribution made by the holiday rental industry, and then secondly determining the broader impact on the economy by estimating the multiplier effects and its impact on employment.

This analysis uses three main sources:

- The results from BIS Shrapnel's survey of holiday home owners taken over 2003 and 2005;
- Special run data from Tourism Research Australia from the National Visitor Survey analysing the spending patterns of overnight visitors staying in a rented house, apartment, flat or unit, and those staying in their own holiday house;
- Aggregate data on occupancy rates (twelve months to December 2013) and location of holiday rental stock from the Stayz database and YesBookit.

### ***BIS Shrapnel's Survey***

BIS Shrapnel conducted a telephone survey of 8,000 households across NSW/ACT (split into Sydney and rest of NSW/ACT), VIC (split into Melbourne and rest of VIC), QLD (split into Brisbane and rest of QLD), Adelaide and Perth over 2003 and 2005. Quotas were set for respondents by age to ensure that a representative sample of households was surveyed.

Respondents were asked if they had a holiday home, with a positive response rate of 632 households (or 7.9% of total surveyed households). Among other questions, these households were then asked whether it was made available for rent as a holiday rental, as well as the frequency of their own use of the holiday home.

To update the data from the survey, the rate of holiday home ownership by households in each region was scaled up to the number of households as at the 2011 Census, with additional rates of ownership inferred for the regions of Australia that were not covered by the survey. This allowed BIS Shrapnel to estimate the size of the holiday home market overall (as at 2011), as well as the size of the holiday rental market. Based on this, it is estimated that 7.7% of households owned a holiday home nationally in 2011.

### ***Tourism Research Australia***

Tourism Research Australia collects data via its quarterly National Visitor Survey (NVS). The survey encompasses day trip and overnight visitors and provides detailed information on reason for travel, accommodation and spending.

As Tourism Research Australia does not collect similar expenditure data by accommodation type from its International Visitor Survey, we have applied the spending data for domestic visitors across total occupancy in our analysis. That is, it assumes that any occupancy by overseas visitors will have the same spending pattern as domestic visitors.

### ***The Stayz Group and YesBookit***

Stayz.com.au is Australia's leading web site for holiday rentals, while YesBookit is a reservation system used by property managers.

Between them, these sites should provide an indicator of the geographic distribution of holiday rentals, as well as the overall rate of occupancy.

## 2. SIZE OF THE HOLIDAY RENTAL MARKET

Table 2.1 derives the number of holiday homes based on the number of households as at the 2011 Census across Australian regions, and the surveyed or inferred rate of holiday home ownership amongst households revealed by BIS Shrapnel's survey.

We estimate that there were 623,000 holiday homes owned nationwide at 2011. Residents in Perth had the highest rate of holiday home ownership (8.8% of households), with the lowest rate of ownership amongst households was across rest of QLD (6.1%).

- Of the total holiday homes owned nationally, an estimated 44.3%, or 276,000 holiday homes are made available for rent. This ranges from 31% in Melbourne to 52% in regional QLD.
- Furthermore, according to BIS Shrapnel's survey, holiday home owners use their property for an average 7.5 weeks per year (of the holiday home owners who do not have their dwelling exclusively for rent).

**Table 2.1: Holiday home ownership by location of owner, 2011**

<i>Region</i>	<i>Estimated households at 2011 Census</i>	<i>Surveyed/inferred rate of holiday home ownership (%)</i>	<i>Number of holiday homes</i>
AUSTRALIA	8,117,704	7.68	623,238
TOTAL NSW/ACT	2,722,163	7.93	215,964
SYDNEY	1,604,382	8.60	137,936
OTHER NSW/ACT	1,117,781	6.98	78,028
TOTAL VIC	2,033,410	8.31	169,073
MELBOURNE	1,500,003	8.40	125,942
OTHER VIC	533,407	8.09	43,131
TOTAL QLD	1,615,920	6.61	106,769
BRISBANE	760,855	7.21	54,835
OTHER QLD	855,065	6.07	51,934
TOTAL SA	641,339	6.67	42,785
ADELAIDE	492,023	6.67	32,824
REST OF SA	149,316	6.67	9,961
TOTAL WA	839,683	8.50	71,349
PERTH	661,511	8.79	58,149
REST OF WA	178,172	7.41	13,199
NT	65,841	6.07	3,999
TAS	199,348	6.67	13,299

Source: Australian Bureau of Statistics, BIS Shrapnel

### 3. ECONOMIC IMPACT OF THE HOLIDAY RENTAL MARKET

#### 3.1 Total Direct Spending

The NVS spending data disaggregates into the categories identified in Table 3.1. The table presents special run data from the NVS that extracts (at the national level) overnight visitor spending for those who only stayed in a rented house, apartment, flat or unit, and those staying in their own holiday house, as opposed to other forms of accommodation. Selected items have a minimal spend (as indicated by the 'np') and these items have not been included in the total spend.

- Analysis of the Stayz and YesBookit booking systems suggest an overall occupancy rate for holiday rentals of 29%, which based on the total estimated holiday home stock available for rental of 276,000 dwellings, equates to a total of 25 million visitor nights per annum.
- BIS Shrapnel's own survey indicates that 77% of holiday home owners use their holiday home for personal use (and not just exclusively for rental), and for an average 7.5 weeks of the year, or 52 days per year. Across the holiday home stock of 478,000 dwellings that are used for personal use, this equates to 25.2 million visitor nights per annum.

On this basis, spending generated by visitor nights in holiday homes by guests totalled \$5.2 billion in 2012/13, while holiday home owners themselves generated \$2.1 billion. This is likely to be understated as there are categories of spending for which expenditure was too low for Tourism Research Australia to provide a reliable estimate, and these have not been included in our analysis.

**Table 3.1: Total expenditure of holiday home renters and owners, Australia, year to June 2013**

Spending item	Holiday home renters		Holiday home owners	
	Nightly spend	Total spend ('000s)	Nightly spend	Total spend ('000s)
Package tours	np		np	np
Taxis	\$12	\$28,421	np	np
Airfares	\$96	\$421,978	\$94	\$115,361
Organised tours	\$41	\$34,464	np	np
Car hire	\$48	\$94,794	np	np
Fuel	\$25	\$355,175	\$24	\$423,296
Vehicle maintenance/repairs	np	np	np	np
Other long distance transport	\$8	\$9,516	np	np
Other local transport	\$12	\$23,343	np	np
Accommodation (can include food)	\$145	\$2,142,958	np	np
Takeaways and restaurant meals	\$42	\$768,956	\$28	\$418,875
Groceries for self catering	\$26	\$441,950	\$26	\$496,057
Alcohol, drinks (not already reported)	\$20	\$281,641	\$16	\$187,569
Shopping, gifts, souvenirs	\$36	\$391,784	\$48	\$317,064
Entertainment, museums, movies	\$27	\$166,339	\$21	\$68,440
Gambling	\$24	\$25,547	np	np
Convention/conference/seminar, etc, registration fees	np	np	np	np
Education, course fees	np	np	np	np
Other	\$27	\$33,583	\$28	\$31,755
<b>Total</b>		<b>\$5,220,448</b>		<b>\$2,058,417</b>
<b>Total nights ('000s)</b>		<b>25,047</b>		<b>25,155</b>

Source: BIS Shrapnel, Tourism Research Australia, Stayz Group, YesBookit

np – sample size not large enough for an estimate

### **Holiday home guests**

- Accommodation was the largest individual item of spend by holiday home guests, at an average \$145 per night per dwelling, or a total of \$2.1 billion.
- \$2.2 billion in spending such as car hire, local transport, takeaways and restaurant meals, self catering, alcohol and drinks, shopping, and entertainment (with 'other' also included in this category) is likely to be spent largely within the region and therefore contribute economically.
- Other items, such as air fares, organised tours, taxis, fuel, and long distance transport total \$850 million and will represent a mix of spending prior or on the way to the destination and spending within the region itself.

### **Holiday home owners**

- With the accommodation already owned, self catering was the largest spend by holiday home owners, at a total of \$496 million.
- As well as the self catering, another \$1 billion in spending such as car hire, local transport, takeaways and restaurant meals, alcohol and drinks, shopping, and entertainment (with 'other' also included in this category) is likely to be spent largely within the region and therefore contribute economically.
- Other items, such as air fares, organised tours, taxis, fuel, and long distance transport total \$540 million and will represent a mix of spending prior or on the way to the destination and spending within the region itself.

## **3.2 Indirect income generated and employment**

Our in-house input-output tables, derived from Australian Bureau of Statistics data, have been used to determine industry multipliers. We have used Type II(ii) multipliers, which capture both the indirect and induced effects, and include income from households as a production sector, in terms of income from employment. This differs from multipliers produced by Tourism Research Australia in calculating tourism's contribution to the Australian economy, which only account for indirect spending and not induced effects. BIS Shrapnel has chosen to include the income generated by the direct and indirect spending is typically spent, thereby creating additional economic activity.

The multipliers chosen were specific to each spending category (for example, the retail industry multiplier was used to determine the indirect and induced effects of spending on shopping). These multipliers ranged from 3.87 to 4.62 and averaged 4.3 across all holiday home spending.

Applying these multipliers to the annual total of each spending category resulted in the total economic impact generated by holiday home renters.

To determine the total number of jobs supported by the holiday home rental industry, we used a ratio of GDP (expenditure approach) to employment. We used this broad economic measure, rather than a measure more specific to tourism spending-based employment, to take into account the economy-wide impact from the indirect and induced effects—i.e. while the spending was in relation to tourism, most of the expenditure items were across a number of sectors of the economy.

Using this methodology, we estimated gross figures for total economic impact and number of jobs supported. In gross terms, we estimate that the holiday home rental industry supported \$31.3 billion in economic activity and 238,000 jobs.



### 3.3 Location of spending

Table 3.2 highlights the distribution of total commercially rented accommodation (under the Australian Bureau of Statistics categories *Hotels and Resorts*, *Motels*, *Private Hotels and Guest Houses*, and *Serviced Apartments*) in each state by number of premises (either hotel/motel rooms or serviced apartment dwellings). A comparison is made with the geographic distribution of holiday rental accommodation as indicated by the Stayz portfolio of over 40,000 properties.

It is important to note that the commercial accommodation is concentrated toward the centre of the capital cities of each of the states. In comparison, around 88% of the holiday rental stock is located outside of Australia's state capital cities and in regional areas—as indicated in Table 3.2—and in particular regional areas in travelling distance from the capital cities.

Regions where holiday homes have a greater presence compared to commercial accommodation include *South Coast* in New South Wales, *Western* (includes Great Ocean Road), *Mornington Peninsula* and *Phillip Island/Gippsland* in Victoria, *Sunshine Coast* and *Whitsundays* in Queensland, *Australia's South West* in Western Australia and *Fleurieu Peninsula* in South Australia.

Consequently, holiday rental stock offers accommodation options in areas that are typically not as well serviced by commercial accommodation, thereby attracting both visitors and the expenditure and employment that are associated with it. Further research at a regional level would provide insights in to the specific direct and indirect benefits at a regional level.

Moreover, compared to larger commercial developments, holiday rental dwellings are more compatible with the scale and character of smaller regional centres, while also affording the flexibility to be made available for short or long term rental depending on market conditions.

**Table 3.2: State distribution of commercial accommodation vs holiday rental accommodation, 2013**

REGION	State share of commercial accom premises (%)	State share of holiday rental accom (%)	REGION	State share of commercial accom premises (%)	State share of holiday rental accom (%)
<b>NEW SOUTH WALES</b>			<b>VICTORIA</b>		
Sydney	47.7	13.6	Melbourne	67.0	6.8
<b>Regional NSW</b>	<b>52.3</b>	<b>86.4</b>	<b>Regional Vic</b>	<b>33.0</b>	<b>93.2</b>
South Coast	5.4	24.1	Peninsula	2.2	26.6
Snowy Mountains	3.4	3.1	Wimmera/Mallee	3.2	0.5
Capital Country	2.9	4.6	Western	7.2	29.2
The Murray/Riverina	7.3	1.1	Western Grampians/Central Highlands	1.1	1.3
Central NSW	5.5	1.2	Bendigo Loddon/Ballarat	2.2	1.9
Hunter	6.1	11.3	Murray River/Goulburn	3.7	1.5
Mid North Coast	7.8	16.2	High Country/Murray East	5.3	5.8
New England North West	3.8	0.4	Lakes	1.7	2.4
Outback NSW	1.3	0.0	Phillip Island/Gippsland	4.5	18.4
Northern Rivers	4.5	12.4	Upper Yarra/Melbourne East	1.5	2.2
Central Coast	2.5	8.6	Macedon/Spa Country	0.4	3.4
Blue Mountains	1.8	3.5			
<b>QUEENSLAND</b>			<b>SOUTH AUSTRALIA</b>		
Brisbane	20.9	4.1	Adelaide	55.3	15.5
<b>Regional QLD</b>	<b>79.1</b>	<b>95.9</b>	<b>Regional SA</b>	<b>44.7</b>	<b>84.5</b>
Gold Coast	21.0	21.3	Limestone Coast	8.5	10.7
Sunshine Coast	8.8	32.0	Murraylands	1.2	1.2
Fraser Coast	2.7	6.2	Fleurieu Peninsula	3.5	45.4
Darling Downs	4.7	1.1	Barossa	4.5	2.2
Bundaberg	1.3	1.7	Riverland	3.9	0.8
Central Queensland	6.6	1.4	Flinders Ranges and Outback	9.8	0.5
Mackay	3.0	0.2	Clare Valley	1.1	1.9
Whitsundays	4.7	16.4	Eyre Peninsula	7.7	1.6
Northern	5.5	1.6	Yorke Peninsula	1.0	11.0
Tropical Nth Queensland	19.1	13.8	Kangaroo Island	2.0	8.1
Outback	1.8	0.1	Adelaide Hills	1.5	1.2
<b>WESTERN AUSTRALIA</b>			<b>TASMANIA</b>		
Experience Perth	50.6	33.4	East Coast	9.1	25.1
<b>Regional WA</b>	<b>49.4</b>	<b>66.6</b>	North West/Wilderness West	22.8	13.7
Aust's Golden Outback	9.5	5.8	Hobart and the South	40.0	45.0
Australia's South West	16.5	41.5	Launceston, Tamar and the North	28.1	16.3
Australia's North West	17.2	4.7			

Source: Australian Bureau of Statistics, Stayz.com.au