

**The Director
Committee on Environment and Planning
Parliament House, Macquarie Street,
Sydney NSW 2000
By email to: environmentplanning@parliament.nsw.gov.au**

11 March 2016

Dear Sir

**NSW Parliamentary Inquiry –
Regulating Short-Term Holiday Letting in NSW
Holiday and Short Term Rental Code of Conduct**

At the hearing in Tweed on 7 March questions were raised and the writer was requested to provide an explanation of versions of the Code of Conduct which have been cited in various Submissions.

To assist the Committee and to save time on Monday I thought it useful to provide this in writing today. However to ensure this information is available on the public record I will also submit a copy to the hearing on Monday. If there are any changes before then in relation to Airbnb or REINSW then I will update this on Monday.

Holiday Rental Code of Conduct (version 1, march 2012)

The 2012 Code of Conduct was developed through a collaborative process between 2010-2012. There had been various other codes and guidelines considered for Short Term and Holiday Rental (STHR). These were simple inspirational documents without a solid legal foundation based on the available rights and obligations of the parties in contract and property law or an effective enforcement mechanism as explained in the HRIA Submission No 202 Part (f).

Key stakeholders during the early development phase were the main digital platforms at the time: Stayz, Takeabreak, Rentahome and Realholidays and the REINSW.

In 2011 NSW Planning and NSW Trade and Investment (Tourism) became involved with a view to developing it up to be a workable self regulatory alternative to planning controls. HLO Byron and HLO Central Coast and other associations joined the collaborative committee. Stayz engaged the writer's firm Atherton Legal to do the professional design and drafting which we have continued to do ever since through to the current version of the Code. Although there have been more than 30 working drafts there have only been 3 published versions of the Code as discussed below.

Key milestones and developments in the process have included:

- After approximately 8 or so revisions including some by Planning NSW we submitted the draft Code to ACCC for initial review.
- At that stage REINSW withdrew because of concerns about competition issues.
- Further 6 or so revisions before submitted to ACCC with comments addressed
- Further comments and further revisions to address all stakeholder concerns and achieve a consensus version
- HLO Central Coast (Submission No 102) quit the collaborative code development process before the 2012 V1 was completed or adopted¹.
- REINSW were persuaded to rejoin the process shortly before the launch.

The version endorsed by the Minister the Hon Brad Hazzard and launched for a 2 year trial was Holiday Rental Code of Conduct (version 1, march 2012)

At Launch the Participating Organisations (P6 of the Code) were:

- Stayz;
- TakeABreak;
- Rentahome;
- Holiday Letting Organisation Byron (HLO Byron); and
- NSW Real Estate Institute (REINSW)

The Code Administration Committee (CAC) (p10 of the Code) was to comprise a representative of

- Stayz or its nominee;
- HLO Byron;
- REINSW;
- A consumer group or tourism body; and
- A government or statutory planning body.

The intention was that Stayz would nominate the HRIA as the national association as soon as it was operational.

John Bates of Tourism NSW who had chaired the working groups developing the Code served in the CAC as the government and tourism representative.

The Code provides:

- 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 CAC will be responsible for making necessary changes to better achieve the objectives of this Code of Conduct.

During the first year the feedback received from owners and managers was that it was too prescriptive and inflexible which would discourage acceptance and stifle innovation and adaptation to meet the wide range of circumstances and environments around NSW. Similar feedback had been received from around Australia where owners and managers were being encouraged to take up the Code through the efforts of Stayz as a Supporting Organisation.

¹ Over disagreement about the composition of the CAC. It has never been a Participating Organisation or member of the Code Administration Committee of this or subsequent versions of the Code discussed below

Holiday Rental Code of Conduct Version 1.1 (MAR 2013)

At the first annual review the CAC resolved to amend the Code in accordance with clause 1.5.2 to address this feedback.

The Code was amended to change from a prescriptive approach to an approach where performance standards are set for Terms and Conditions and House Rules. The former versions under the 2012 code (with some modifications) were presented as deemed to satisfy solutions. This is an effective and commonly used approach in similar circumstances including in eg the Building Code of Australia. The rationale is set out in the amended Holiday Rental Code of Conduct Version 1.1 (MAR 2013)

- 2.11.1 Approach: prescribed standards not solutions;
- 2.11.2 Deemed to satisfy solutions;
- 2.11.3 Equivalent solutions.

The CAC also produced a Review at the end of the 2 year trial period in March 2014 which was provided to the NSW Planning Department.

The HRIA was launched in February 2013 and endeavoured to persuade the CAC to admit Participating Organisations from outside NSW and to cooperate in a national rollout of the Code. As the CAC refused the HRIA then began work on modifying the Code so it would be open for Participating Organisations from all states around Australia and have a nationally represented CAC,

On 9 December 2014 the CAC under the Holiday Rental Code of Conduct Version 1.1 (MAR 2013) met and the following Resolution was passed unanimously (for more se details see copy attached):

- (1) The CAC will facilitate the orderly and cooperative transition to the national Code administered by the HRIA;
- (2) Members of the CAC who so wish will accept the invitations from the HRIA to join the National Code Administration Committee (NCAC);
- (3) The NSW Code will thereupon be replaced by the national Code; and
- (4) The NSW CAC will thereupon be disbanded.

As the custodian of the national Code the HRIA resolved that the initial NCAC would comprise the board of the HRIA (which is nationally representative and elected by members) plus John Gudgeon representing the HLO Byron who accepted the invitation to join from the old CAC under the terms of the resolution copied above. The writer is the chair of the NCAC.

Holiday and Short Term Rental Code of Conduct – National Version 24 March 2015

This was officially launched by the HRIA on that day. A copy is available at:
http://c.ymcdn.com/sites/www.hria.com.au/resource/resmgr/Docs/Holiday_and_Short_Term_Renta.pdf

Current Participating Organisations are:

- o Stayz
- o Homeaway
- o Flipkey (Tripadvisor)
- o HLO Byron
- o HRG Gold Coast
- o VicAIA

Unfortunately, despite our best endeavours to persuade them otherwise, the REINSW has declined to continue as a Participating Organisation and has advised that any REINSW members who support the Code do so in their own capacity and not as members of the REINSW. A copy of their letter dated 24 March 2015 is in attached. However, despite the lack of cooperation from REINSW, most leading real estate agents in NSW (including most, if not all of the 8 members of the REINSW Holiday Rental Chapter), support and implement the Code and so REINSW's withdrawal is not particularly relevant.

Airbnd is presently a Supporting Organisation

HRIA Submission Recommendation #19 provides:

19. To strengthen the reach and effectiveness of the Code of Conduct, all digital platforms listing Australian properties for STHR (including Airbnb) be encouraged to become a Participating Organisation.


Councils including Byron Council and Tweed Council have requested to become Supporting Organisations and MoUs for this are being prepared. Fair Trading in Victoria is also considering this in conjunction with their inquiry into the regulation of short term rental of apartments.

HRIA Submission Recommendation #19 provides:

20. State agencies that are stakeholders in STHR including planning, tourism, consumer affairs, policing, rural fire services and the like, as well as local councils be encouraged to become Supporting Organisations of the Code of Conduct.

The NSW Department of Planning has been kept informed of these developments throughout.

Yours faithfully



Contact on this Submission:
Trevor Atherton,
Partner, Atherton Legal



Trevor Atherton,
Chair Regulatory & Government Relations Committee
HRIA

**Resolution
of the
Code Administration Committee (CAC)**
Holiday Rental Code of Conduct Version: 1.1 (MAR 2013)
Sydney
9 December 2014

Members

John Bates, ex Tourism NSW
Justin Butterworth, Stayz Group
Don Binkley, REINSW
John Gudgeon, HLO Byron

Following completion of the trial period in New South Wales and the adoption by the Holiday Rental Industry Association (HRIA) of an updated national 'Holiday and Short Term Rental Code of Conduct' (the national Code) with changes and arrangements necessary for it to be implemented nationally

the CAC under Code Version: 1.1(MAR 2013) (NSW Code:

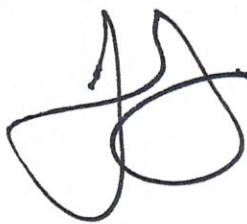
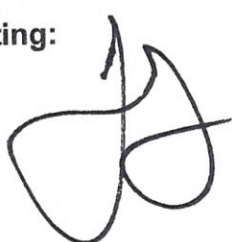
RESOLVED THAT:

- (1) The CAC will facilitate the orderly and cooperative transition to the national Code administered by the HRIA;
- (2) Members of the CAC who so wish will accept the invitations from the HRIA to join the National Code Administration Committee (NCAC);
- (3) The NSW Code will thereupon be replaced by the national Code; and
- (4) The NSW CAC will thereupon be disbanded.

Moved by:

Seconded by: JOHN BATES

Voting:

Allison Manners
Chairperson
Holiday Rental Industry Association
PO Box 970
Bondi Junction NSW 1355

24 April 2015

Dear Madame,

Holiday Letting Code of Conduct

We refer to the Holiday Letting Code of Conduct (**Code**), which we understand is recognised by your organisation.

As you may be aware, the Real Estate Institute of NSW (**REINSW** or the **Institute**) is the largest professional association of real estate agents and other property professionals in New South Wales. As such the Institute is involved in a number of important policy issues of interest to real estate agents, including, until recently, the Code.

We wish to advise that REINSW no longer participates in the further development and maintenance of the Code. Accordingly we request that you remove all references to REINSW and the Institute's logo and branding from all copies of the Code held by your organisation and from all documents and communications referring to the Code.

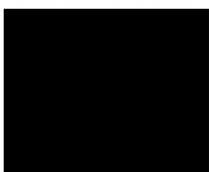
We thank you in anticipation of your cooperation.

Please note also that any REINSW members who support the Code or participate in its maintenance and promotion do so in their own capacity and not as members or representatives of REINSW.

We wish those with carriage of the Code well for the future.

Yours faithfully,

Tim McKibbin
Chief Executive Officer



HOLIDAY RENTAL CODE OF CONDUCT

Participating Organisations



VERSION: 1.0 March 2012

INTRODUCTION

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 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. This Code of Conduct applies to dwelling properties that are rented for the purposes of holiday accommodation. This Code may be applied to short term rental for other purposes in due course.

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

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

- **Holiday Rental** means rental of Property for holiday 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.
- **Noise** means any sound which is offensive to occupiers of neighbouring properties.
- **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 and include initially:
 - Stayz;
 - TakeABreak;
 - Rentahome;
 - Holiday Letting Organisation Byron (HLO Byron); and
 - NSW Real Estate Institute (REINSW.)
- **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 permits 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

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 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 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.

1.2 Implementation of the Code

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 comply with 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 comply with 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

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 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 Code Administration Committee and in that case the 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 Code Administration Committee

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

- a) The 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 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 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

1.4.1 Code Administration Committee

This Code of Conduct will be administered by the Code Administration Committee (“CAC”).

- a) The CAC will consist of representatives of Participating Organisations or key stakeholders in the Holiday Rental industry.
- b) The initial CAC will comprise a representative from each of the following:
 - i. Stayz or its nominee;
 - ii. HLO Byron;
 - iii. REINSW;
 - iv. A consumer group or tourism body; and
 - v. A government or statutory planning body.

- c) Members of the CAC may be appointed and dismissed by decision of the CAC.
- d) The CAC may invite other relevant authorities to act as observers or advisors when appropriate, for example the Australian Competition and Consumer Commission and State and Territory Government agencies such as Tourism, Planning and Infrastructure and Fair Trading Departments, law enforcement and the Local Government and Shires Associations.
- e) The chairman and secretary of the CAC will be appointed by decision of the CAC.
- f) The CAC will be industry-funded.
- g) Unless otherwise agreed meetings of the CAC will be held in Sydney, NSW and members from other cities or states may participate by telephone or video conferencing.
- h) Decisions of the CAC will be made according to the following:
 - i. CAC decisions to amend this Code of Conduct or changes to the membership of the CAC require a majority of at least 66%;
 - ii. All other CAC decisions require a simple majority; and
 - iii. In the event of a deadlock the Chairman shall have an additional casting vote.

1.4.2 The role of the CAC

The role of the CAC 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;
- h) Provide for the adequate financing of Code of Conduct administration expenses;
- i) Produce an annual report on this Code of Conduct and its administration;

- j) Report on the operation and effectiveness of this Code of Conduct as required to such state and territory government Tourism, Fair Trading and Planning and Infrastructure authorities as have endorsed this Code of Conduct;
- k) Report to the Participating Organisations and key stakeholders from the Holiday Rental industry on the operation and effectiveness of this Code of Conduct; and
- l) Organise an independent review of this Code of Conduct once every three years.

1.5 Monitoring Outcomes of the Use of this Code

The CAC 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 CAC 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

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.

Part 2. Holiday Rental - Obligations of 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

- 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

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.

2.3 Terms, Conditions and House Rules

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 adequately cover and be consistent with this Code of Conduct and the Terms and Conditions 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 be consistent with this Code of Conduct and must be consistent with and adequately cover the issues in the House Rules specified in Part 4 and must cover any other any key issue relating to the particular Property; 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 Number of Guests and Visitors

- a) The maximum number of Guests permitted at a Property must not exceed a maximum of 2 adults per bedroom; and
- b) The number of Visitors permitted at a Property must not be such as may conflict with residential amenity and must comply with all the other requirements of this Code of Conduct including the Terms and Conditions and House Rules.

2.5 Functions and parties

- 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.

2.6 Access and Parking

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.

2.7 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.

2.8 Insurance

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

2.9 Complaints handling

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

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.

Part 3. Holiday rental – 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 must adequately cover and be consistent with this Code of Conduct and provisions set out in this Part.

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

- 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

A security deposit (or equivalent) should be obtained from the Guest (e.g. as cash or a credit card transaction or authorisation) prior to commencement of the occupancy;

- a)** Guests should be advised that failure to comply with the Terms and Conditions may result in charges against the security deposit; and
- b)** Security deposits should be administered, processed and accounted for and any balance released or returned to the Guest as soon as possible following their departure in accordance with the applicable law.

3.5 Maximum number of Guests and Visitors

In compliance with the Code of Conduct the Terms and Conditions must specify:

- a)** Maximum permitted number of Guests; and
- b)** Maximum permitted number of Visitors.

3.6 General obligations of Guests and Visitors

Guests and Visitors must:

- a)** Comply with all House Rules and By-Laws;
- b)** Respect the residential amenity and security of the Property and neighbours;
- c)** Refrain from anti-social behaviour;
- d)** Guests must control and be responsible for Visitors and ensure that Visitors comply with the House Rules;
- e)** Comply with any instructions from the Manager and security services during their stay; and
- f)** Notify the Manager of any disputes or complaints as soon as is practicable.

3.7 Noise and Residential Amenity

- a)** Guests must not create noise which is offensive to neighbours especially between 10pm-8am and during arrival and departure at any time throughout the occupancy.
- b)** Offensive noise is prohibited and may result in:
 - i.** termination of permission to occupy the Property;
 - ii.** eviction;
 - iii.** loss of rental paid; and
 - iv.** extra charges for security and other expenses which may be deducted from Security Deposits or Bonds.
- c)** Guests must abide by any noise abatement conditions, standards and orders issued by police or any regulatory authority to minimise impacts upon the residential amenity of neighbours and local community.

3.8 Functions and parties

- a)** The Property is not a “party house” and any such activities are strictly prohibited; and
- b)** Any gathering, celebration or entertainment permitted at the Property must not conflict with residential amenity and must comply with all House Rules.

3.9 Access and Parking

- a)** Guests and Visitors must comply with parking regulations and show consideration to neighbours;
- b)** Information on any constraints on access or any parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties;
- c)** If relevant, specify maximum number of vehicles permitted onsite and parking space(s) allocated; and
- d)** If relevant, Guests may be required to supply vehicle/trailer registration numbers.

3.10 Recycling and Garbage

- a)** Guests must dispose of garbage and recycling in accordance with the usual practice at the Property and in the allocated bins;
- b)** Guests must not leave excess rubbish in public or common areas; and

- c) Guests should be co-operative in complying with requirements in relation to the relevant local council garbage and recycling collection days, and any special requirements relating to the disposal of garbage or waste minimisation.

3.11 Complaints and dispute resolution procedure

Information on complaints handling including:

- a) Guest's obligations to report any problems or incidents promptly; and
- b) Complaints and dispute resolution procedure.

3.12 Consequences of not meeting the Terms and Conditions

- a) The consequences of not complying with the Terms and Conditions requirements can include enforcement action from the owner, Manager, security services, local councils or, 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.

Part 4 Holiday Rental - House Rules for Guests and Visitors

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. House Rules are to be displayed in a conspicuous place in the Property so they can be easily viewed by Guests and Visitors, such as in the Property's kitchen. Matters contained in House Rules should include those set out in this Part and should be adapted and augmented to suit the particulars of the Property, such as specific instructions for car parking arrangements and the like and rules appropriate for any special equipment, facilities or local risks.

4.1 General requirements

- a) Guest and Visitors must comply with all House Rules, By-Laws and instructions from the Manager and security services during their stay; and
- b) Guests must notify the Manager of any disputes or complaints from neighbours as soon as is practicable.

4.2 Noise and Residential amenity

- a) Guests and Visitors must not create noise which is offensive to occupiers of neighbouring properties especially between 10pm - 8am and during arrival and departure at any time throughout the occupancy;
- b) Offensive noise is prohibited and may result in termination of permission to occupy the Property, eviction, loss of rental paid and extra charges for security and other expenses which may be deducted from Security Deposit or Bond under the Terms and Conditions; and
- c) Guests and Visitors must not engage in anti-social behaviour and must minimise their impact upon the residential amenity of neighbours and local community.

4.3 Visitors

- a) Guests are responsible for ensuring the limits set on Visitor numbers is complied with at all times; and
- b) Guests are responsible for ensuring that Visitors comply with these House Rules.

4.4 Gatherings or functions

- a) The Property is not a “party house” and any such activities are strictly prohibited; and
- b) Any gathering, celebration or entertainment permitted at a Property must not conflict with residential amenity and must comply with all the other requirements.

4.5 Parking

- a) Guests and Visitors are to comply with parking regulations and other requirements set out below and show consideration to neighbours and other vehicles; and
- b) Parking arrangements at the Property are as follows: [Manager insert here]

4.6 Garbage and recycling

- a) Guests and Visitors are to dispose of garbage and recycling in accordance with the usual practice at the Property (as set out below) in the allocated bins, and excess rubbish must not be left in public or common areas; and
- b) Garbage and recycling arrangements at the Property are as follows: [Manager insert here]

4.7 Security

Whenever you are absent from the Property, close all windows and doors to maintain security and prevent rain and water damage.

4.8 Swimming pool/spa (if applicable)

- a) The swimming pool/spa must not be used between the hours of 10.00pm and 7.00am.
- b) No glassware is permitted in the pool.

4.9 Deck and balcony areas

[Manager insert here – if applicable]

4.10 Smoking

Smoking is not permitted indoors (if applicable).

4.11 Pets

Pets are not permitted indoors (if applicable).

4.12 BBQ

[Manager insert here – if applicable]

4.13 Damages and breakages

Damages and breakages must be reported to the Manager.

4.14 On departure arrangements

Arrangements for keys, security, dishwashing, rubbish, etc are: [Manager insert here]

4.15 Emergency Contact

In the event of an emergency relating to the Property, please telephone [Manager insert name here] on [Manager insert phone number here]

4.16 Compliance

- a) Breach of these House Rules is a breach of the Terms and Conditions of occupancy.
- b) The Owner and Manager reserve the right to terminate permission to occupy and to evict from the Property, Guests or Visitors who refuse to follow these House Rules or who cause a nuisance.

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

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

4.2 Noise and Residential amenity

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)

Hours of use and safety measures are specified

4.9 Deck and balcony areas

Appropriate rules are specified

4.10 Smoking

Restrictions are specified to the property

4.11 Pets

Restrictions are specified to the property

4.12 BBQ

Arrangements are specified

4.13 Damages and breakages

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

Emergency contact name and telephone numbers are provided

4.16 Compliance

Consequences of non-compliance are specified including termination and eviction

HOLIDAY RENTAL CODE OF CONDUCT - OVERVIEW & ADMINISTRATIVE FRAMEWORK

VERSION: 1.1 March 2013

INTRODUCTION

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 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. This Code of Conduct applies to dwelling properties that are rented for the purposes of holiday accommodation. This Code may be applied to short term rental for other purposes in due course.

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

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

- **Holiday Rental** means rental of Property for holiday 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.
- **Noise** means any sound which is offensive to occupiers of neighbouring properties.
- **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 permits 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

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 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 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

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

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 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 Code Administration Committee and in that case the 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 Code Administration Committee

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

- a)** The 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 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 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

1.4.1 Code Administration Committee

This Code of Conduct will be administered by the Code Administration Committee (“CAC”).

- a)** The CAC will consist of representatives of Participating Organisations or key stakeholders in the Holiday Rental industry.
- b)** The initial CAC will comprise a representative from each of the following:
 - i.** Stayz or its nominee;
 - ii.** HLO Byron;
 - iii.** REINSW;
 - iv.** A consumer group or tourism body; and
 - v.** A government or statutory planning body.

- c) Members of the CAC may be appointed and dismissed by decision of the CAC.
- d) The CAC may invite other relevant authorities to act as observers or advisors when appropriate, for example the Australian Competition and Consumer Commission and State and Territory Government agencies such as Tourism, Planning and Infrastructure and Fair Trading Departments, law enforcement and the Local Government and Shires Associations.
- e) The chairman and secretary of the CAC will be appointed by decision of the CAC.
- f) The CAC will be industry-funded.
- g) Unless otherwise agreed meetings of the CAC will be held in Sydney, NSW and members from other cities or states may participate by telephone or video conferencing.
- h) Meetings of the CAC require a quorum of a majority of members present or participating by telephone or video conferencing.
- i) Decisions of the CAC will be made according to the following:
 - i. CAC decisions to amend this Code of Conduct or changes to the membership of the CAC require a majority of at least 66%;
 - ii. All other CAC decisions require a simple majority; and
 - iii. In the event of a deadlock the Chairman shall have an additional casting vote.

1.4.2 The role of the CAC

The role of the CAC 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;
- h) Provide for the adequate financing of Code of Conduct administration expenses;
- i) Produce an annual report on this Code of Conduct and its administration;

- j) Report on the operation and effectiveness of this Code of Conduct as required to such state and territory government Tourism, Fair Trading and Planning and Infrastructure authorities as have endorsed this Code of Conduct;
- k) Report to the Participating Organisations and key stakeholders from the Holiday Rental industry on the operation and effectiveness of this Code of Conduct; and
- l) Organise an independent review of this Code of Conduct once every three years.

1.5 Monitoring Outcomes of the Use of this Code

The CAC 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 CAC 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

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

- 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

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

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

2.9 Complaints handling

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

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)

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 CAC 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 CAC 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

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

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

- 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

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

3.5 Number of Guests and Visitors

- a)** The maximum number of Guests permitted at a Property must not exceed a maximum of 2 adults per bedroom; 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

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

- 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

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 Manager to exercise all legal rights and remedies to promptly deal with any breach.

[Rationale: Heading should accurately reflect the content of the Part and how it works at law]

HOLIDAY AND SHORT TERM RENTAL CODE OF CONDUCT

-

OVERVIEW & ADMINISTRATIVE FRAMEWORK



Participating and Supporting Organisations

Participating Organisations



stayz



HomeAway



FLIPKEY

a tripadvisor company



VicAIA

Supporting Organisations



airbnb

Visit www.hria.com.au to sign up as a Participating or Supporting Organisation

INTRODUCTION

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 and short term 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 standards set for Terms and Conditions of the contract between the Owner and Guests.

Schedule A Sets out model Terms and Conditions as a “deemed to satisfy” solution to the requirements of Part 3.

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

Schedule B Sets out model House Rules as a “deemed to satisfy” solution to the requirements of Part 4.

Holiday and Short Term Rental Code of Conduct Introduction

OBJECTIVES OF THIS CODE

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 support this Code of Conduct and to work cooperatively with the National Code Administration Committee and Participating Organisations to achieve its Objectives whether as Supporting Organisations or otherwise.

DEFINITIONS USED IN THIS CODE

- **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.
- **Supporting Organisations** comprise those organisations that register to support and promote the Code and that may enter further partnership and other cooperative arrangements with the National Code Administration Committee to achieve common objectives.
- **Visitor** means a person a Guest invites or permits to visit the Property during the term of the occupancy who does not stay overnight.

Holiday and Short Term Rental Code of Conduct Part 1

Part 1. 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

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

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.

1.2.3 In cooperation with Supporting Organisations and other stakeholders.

1.3 Sanctions

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

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) Maintain a register of Supporting Organisations and carry out the obligations of the NCAC under the associated Memoranda of Understanding;
- d) Monitor and review the operation of this Code of Conduct;
- e) Give instructions to Participating Organisations and hear and determine appeals from Managers concerning sanctions under Clause 1.3.1 of this Code of Conduct;
- f) Impose sanctions upon Participating Organisations under clause 1.3.2 of this Code of Conduct;

- g)** Consult with Participating Organisations and key stakeholders from the Holiday Rental industry (where appropriate) on proposed amendments to this Code of Conduct;
- h)** Determine necessary amendments to this Code of Conduct, subject to approval of the HRIA;
- i)** Operate within the funding arrangements provided and approved by the HRIA.
- j)** 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;
- k)** Produce an annual report on this Code of Conduct and its administration;
- l)** Report on the operation and effectiveness of this Code of Conduct to Supporting Organisations and as required to other state and territory government Tourism, Fair Trading and Planning authorities;
- m)** Report to the Participating Organisations and key stakeholders from the Holiday Rental industry on the operation and effectiveness of this Code of Conduct;
- n)** Organise an independent review of this Code of Conduct once every three years;
- o)** 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 Cooperation with Supporting Organisations

The NCAC will promote and facilitate cooperation with Supporting Organisations by:

- Communication;
- Consultation;
- Complaint referrals and handling; and
- Reporting.

1.5.1 General Cooperation

- a)** The NCAC will communicate and engage with key stakeholders particularly government authorities and private sector bodies who share common objectives and concerns directly and through local Participating Organisations.
- b)** Key government authorities include national and state tourism, consumer, fair trading and planning departments as well as local councils.
- c)** The NCAC will address and deal with issues and concerns raised in these communications and engagements in carrying out its role and responsibilities through the code administration processes set out in this Part.

1.5.2 Supporting Organisations

- a) Stakeholders may register as Supporters Organisations and will be recognised as such under the Code.
- b) Where there is sufficient common interest and concern the NCAC may enter express partnership and cooperative arrangement with particular Supporting Organisations to address these matters in a more organised, systematic and effective way.

1.5.2 Memoranda of Understanding

- a) The NCAC may enter and implement a written Memorandum of Understanding with a Supporting Organisation to cover the key points such as:
 - i. Complaint referral;
 - ii. Complaint handling and reporting;
 - iii. Observer and advisor status on the Code;
 - iv. Review of the Code;
 - v. Amendments to the Code;
 - vi. Input into national, state and local policy, laws and regulations; and
 - vii. Such other matters as are mutually agreed.

1.6 Monitoring Outcomes of the Use of this Code

The NCAC will monitor the implementation of this Code.

1.6.1 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 the following (so far as data is available and provided to the NCAC):
 - i. Participating Organisations;
 - ii. Supporting Organisations; and

- iii. Other stakeholders;
- 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.

1.6.2 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.

1.7 Compliance with Australian Competition & Consumer Act

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 and Short Term Rental Code of Conduct Part 2

Part 2. Obligations of Property 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

- 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

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.

2.3 Insurance

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

2.4 Complaints handling

2.4.1 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.

2.4.2 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.)

2.4.3 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.

2.5 Consequences of not meeting this Code of Conduct

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)

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 Schedules 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 Schedules 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

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

Schedule A

- c) Sets out model Terms and Conditions as a “deemed to satisfy” solution to the requirements of part 3.

Schedule B

- d) Sets out model House Rules as a “deemed to satisfy” solution to the requirements of Part 4.

Holiday and Short Term Rental Code of Conduct Part 3

Part 3. Terms and Conditions between Owners and Guests: Performance Standards

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

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

3.1 Formalities:

Be in writing, cover the matters in Part 3 of the Code of Conduct and be legally compliant and enforceable in contract law.

3.2 General Content

Adequately identify the property; provide name, address and contacts of the parties; clearly set out the details of the occupancy; and make clear and fair provisions for variation and termination.

3.3 Licence not a tenancy

Define the legal rights and status of Guests as licensees to the extent possible within the holiday rental exception in residential tenancy legislation and reserve the Owner's right to terminate the occupancy and evict for breach.

3.4 Security Deposits or Bonds

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

3.5 By Laws and Common Property

Where the Property is part of a strata or community title scheme, require Guest and Visitor compliance with owners' corporation by-laws and include damage to common property as a ground for drawing upon the security deposit or bond.

3.6 Number of Guests and Visitors

Specify the maximum number of Guests and Visitors permitted at the Property. Generally, the maximum number of adult Guests permitted at a Property must not exceed 2 per bedroom plus 2.

3.7 General obligations of Guests and Visitors

Set out the general obligations of Guests and Visitors designed to procure safety and security and preserve residential amenity.

3.8 Noise and Residential Amenity

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

3.9 Functions and parties

Prohibit “party house” and non compliant functions.

3.8 Access and Parking

Regulate Guest and Visitor parking to ensure compliance and consideration for neighbours.

3.9 Recycling and Garbage

Regulate garbage storage and disposal to ensure compliance and avoid adverse impacts on amenity and neighbours.

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 Manager to exercise all legal rights and remedies to promptly deal with any breach.

Holiday and Short Term Rental Code of Conduct Part 4

These are the Performance Standards for the House Rules for a Property offered, booked and occupied for Holiday and Short Term Rental under the Code of Conduct. House Rules must be 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

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

4.2 Noise and Residential amenity

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)

Hours of use and safety measures are specified

4.9 Deck and balcony areas

Appropriate rules are specified

4.10 Smoking

Restrictions at the Property are specified

4.11 Pets

Restrictions are specified

4.12 BBQ

Arrangements are specified

4.13 Damages and breakages

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

Emergency contact name and telephone numbers are provided

4.16 Compliance

Consequences of non-compliance are specified including termination and eviction

Holiday and Short Term Rental Code of Conduct Schedule A

These are a "deemed to satisfy" solution to the performance standards set for Terms and Conditions under Part 3 of the Holiday and Short Term Rental Code of Conduct. However they do need to be adapted and augmented as necessary to cover the specific issues and circumstances of the Property and occupancy.

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 which are consistent with the requirements of the Holiday Rental Code of Conduct.

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

- 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)** Except where residential tenancy legislation otherwise requires, this is not a residential tenancy agreement; 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

- a)** A security deposit (or equivalent e.g. as cash or a credit card transaction or authorisation) is required prior to commencement of the occupancy;
- b)** Failure to comply with the Terms and Conditions may result in charges against the security deposit; and
- c)** Security deposits will be administered, processed and accounted for and any balance released or returned to the Guest as soon as possible following their departure in accordance with the applicable law.

3.5 By Laws and Common Property

Where the Property is part of a strata or community title scheme:

- a)** Guests and Visitors must comply with owners' corporation by-laws and the lawful directions of managers and caretakers of the scheme; and
- b)** Guests are responsible for damage to common property by Guests or their Visitors and this is a ground for drawing upon or charging the security deposit or bond.

3.6 Number of Guests and Visitors

- a)** The maximum number of adult Guests permitted at a Property is [specify total number for the Property which must not exceed a maximum of 2 per bedroom plus 2]; and

- b)** The number of Visitors permitted at a Property is [specify number which must not be such as may conflict with residential amenity, House Rules and more generally the Holiday and Short Term Rental Code of Conduct.

3.7 General obligations of Guests and Visitors

Guests and Visitors must:

- a)** Comply with all House Rules and By-Laws;
- b)** Respect the residential amenity and security of the Property and neighbours;
- c)** Refrain from anti-social behaviour;
- d)** Guests must control and be responsible for Visitors and ensure that Visitors comply with House Rules and By-Laws;
- e)** Comply with any instructions from the Manager and security services during their stay; and
- f)** Notify the Manager of any disputes or complaints as soon as is practicable.

3.8 Noise and Residential Amenity

- a)** Guests and Visitors must not create noise which is offensive to neighbours especially between 10pm-8am and during arrival and departure at any time throughout the occupancy.
- b)** Offensive noise is prohibited and may result in:
 - i.** Termination of permission to occupy the Property;
 - ii.** Eviction;
 - iii.** Loss of rental paid; and
 - iv.** Extra charges for security and other expenses which may be deducted from Security Deposits or Bonds.
- c)** Guests and Visitors must abide by any noise abatement conditions, standards and orders issued by police or any regulatory authority to minimise impacts upon the residential amenity of neighbours and local community.

3.9 Functions and parties

- a)** The Property is not a “party house” and any such activities are strictly prohibited; and
- b)** Any gathering, celebration or entertainment permitted at the Property must not conflict with residential amenity and must comply with all House Rules.

3.10 Access and Parking

- a) Guests and Visitors must comply with parking regulations and show consideration to neighbours;
- b) [Set out information on any constraints on access or any parking restrictions to ensure ease of access with minimum disturbance to other residents or neighbouring properties];
- c) [If relevant, specify maximum number of vehicles permitted onsite and parking space(s) allocated]; and
- d) [If relevant, require Guests to supply vehicle/trailer registration numbers.]

3.11 Recycling and Garbage

- a) Guests must dispose of garbage and recycling in accordance with the usual practice at the Property and in the allocated bins;
- b) Guests must not leave excess rubbish in public or common areas; and
- c) Guests should be co-operative in complying with requirements in relation to the relevant local council garbage and recycling collection days, and any special requirements relating to the disposal of garbage or waste minimisation.

3.12 Complaints and dispute resolution procedure

Provide information on complaints handling including:

- a) Guest's obligations to report any problems or incidents promptly; and
- b) Complaints and dispute resolution procedure.

3.13 Consequences of not meeting the Terms and Conditions

- a) The consequences of not complying with the Terms and Conditions requirements can include enforcement action from the Owner, Manager, security services, and local councils or, 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.

Holiday and Short Term Rental House Rules Schedule B

These are a "deemed to satisfy" solution to the performance standards set for House Rules under Part 4 of the Holiday and Short Term Rental Code of Conduct. However they do need to be adapted and augmented as necessary to cover the specific issues and circumstances at the Property.

House Rules for Guests and Visitors

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.

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.

4.1 General requirements

- a) Guests and Visitors must comply with all House Rules, By-Laws and instructions from the Manager and security services during their stay; and
- b) Guests must notify the Manager of any disputes or complaints from neighbours as soon as is practicable.

4.2 Noise and Residential amenity

- a) Guests and Visitors must not create noise which is offensive to occupiers of neighbouring properties especially between 10pm - 8am and during arrival and departure at any time throughout the occupancy;
- b) Offensive noise is prohibited and may result in termination of permission to occupy the Property, eviction, loss of rental paid and extra charges for security and other expenses which may be deducted from the Security Deposit or Bond under the Terms and Conditions; and
- c) Guests and Visitors must not engage in anti-social behaviour and must minimise their impact upon the residential amenity of neighbours and local community.

4.3 Visitors

- d) Guests are responsible for ensuring the limits set on Visitor numbers is complied with at all times; and
- e) Guests are responsible for ensuring that Visitors comply with these House Rules.

4.4 Gatherings or functions

- a) The Property is not a “party house” and any such activities are strictly prohibited; and
- b) Any gathering, celebration or entertainment permitted at a Property must not conflict with residential amenity and must comply with all the other requirements.

4.5 Parking

- a) Guests and Visitors are to comply with parking regulations and other requirements set out below and show consideration to neighbours and other vehicles; and
- b) Parking arrangements at the Property are as follows: [Manager insert here]

4.6 Garbage and recycling

- a) Guests and Visitors must dispose of garbage and recycling in accordance with the usual practice at the Property (as set out below) in the allocated bins, and excess rubbish must not be left in public or common areas; and
- b) Garbage and recycling arrangements at the Property are as follows: [Manager insert here]

4.7 Security

- a) Whenever you are absent from the Property, close all windows and doors to maintain security and prevent rain and water damage; and
- b) [Specify any other appropriate security arrangements for the Property]

4.8 Swimming pool/spa (if applicable)

- a) The swimming pool/spa must not be used between the hours of 10.00pm and 7.00am.
 - b) No glassware is permitted in the pool.
- [Specify any other appropriate arrangements for the Property]

4.9 Deck and balcony areas

[Specify appropriate rules for the Property]

4.10 Smoking

[Specify restrictions (if any) at the Property]

4.11 Pets

[Specify restrictions (if any) at the Property]

4.12 BBQ

[Specify appropriate arrangements]

4.13 Damages and breakages

Damages and breakages must be reported to the Manager

4.14 On departure arrangements

[Specify arrangements for keys, security, dishwashing, rubbish, etc as required for the Property]

4.15 Emergency Contact

Emergency contact name and telephone numbers are:

[Specify appropriate arrangements]

4.16 Compliance

- a)** Breach of these House Rules is a breach of
- (i) The Terms and Conditions of contract; and
 - (ii) The permission for occupancy of the Property.

The Owner and Manager reserve the right, in accordance with law, to terminate the permission to occupy and to evict from the Property, Guests or Visitors who refuse to follow these House Rules or who cause a nuisance