

HOLIDAY RENTAL CODE OF CONDUCT

Participating Organizations

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.

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.

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.

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.

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.