

**RESPONSE OF THE WESTERN AUSTRALIAN
GOVERNMENT TO THE**

**WESTERN AUSTRALIAN LEGISLATIVE ASSEMBLY
ECONOMICS AND INDUSTRY STANDING COMMITTEE**

IN RELATION TO

THE INQUIRY INTO THE REGULATION OF SHORT-STAY ACCOMMODATION IN
WESTERN AUSTRALIA

Report 7 - Levelling the Playing Field. Managing the impact of the rapid increase of Short-Term Rentals in Western Australia

Executive Summary

The Western Australian Government generally agrees with the Report and will consider developing and/or adopting policy to give effect to the intent of the recommendations, including forming an interdepartmental working group to address some of the recommendations.

The Western Australian Government thanks the Committee for undertaking the Inquiry, and welcomes its Report. The Government also acknowledges the important contributions made by the stakeholders who participated in the Inquiry, including local governments, major online accommodation platforms, industry associations, key social organisations, individual hosts, hotel and caravan park owners, and guest house and bed and breakfast owners.

In responding to the Committee's recommendations, the Western Australian Government acknowledges the complexity of the issues raised and the wide range of views on the topic across the State and within local government areas. The Government recognises the broader issues in relation to short-term rentals, including a lack of available data, perception of an 'uneven playing field', amenity issues for neighbours, and confusing regulatory requirements to name a few. In principle, the Government accepts that the existing State-level policy and guidance addressing short-term rentals are dated and inconsistent, and will look at rectifying this.

The recommendations of the Committee are outlined below:

Recommendation 1

The Minister for Commerce request the Department of Mines, Industry Regulation and Safety develop a public education campaign in association with Real Estate Institute of Western Australia (REIWA) to make owners, real estate agents, property managers and purchasers of real estate in Western Australia aware of their obligations in regard to:

- the truthful marketing and presentation of properties as Short-Term Rental prospects;
- the importance of considering Short-Term Rental as part of the pre-purchase due diligence process; and
- other legal obligations surrounding the use of properties as Short-Term Rentals.

Recommendation 2

That by June 2020 the Minister for Planning update the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend:

- land use definitions to differentiate between hosted and unhosted Short-Term Rentals;
- land use definitions to include the size and capacity of Short-Term Rentals; and
- the definition of bed and breakfast accommodation.

Recommendation 3

That by June 2020 the Minister for Planning direct the Western Australian Planning Commission (WAPC) to update planning guidance so that it aligns with the amended land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* and provides greater guidance to local governments about ways to appropriately regulate Short-Term Rentals.

Recommendation 4

The Minister for Planning direct the relevant government agency to work with stakeholders to develop model by-laws that assist strata companies to better manage Short-Term Rentals in their strata scheme. These model by-laws should include:

- by-laws that, if adopted by a strata company, would prevent owners from letting their lots as Short-Term Rentals; and
- by-laws that, if adopted by a strata company, would enable owners to let their lots as Short-Term Rentals.

Recommendation 5

The Minister for Planning direct Landgate to update their strata titles guidance to include discussion of the powers and processes open to strata companies to manage Short-Term Rentals in strata schemes.

Recommendation 6

The Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

Recommendation 7

The interdepartmental working group should:

1. Establish the baseline requirements for a state-wide registration scheme, including:
 - a. the minimum information required for both hosted and unhosted premises;
 - b. the cycle of registration;
 - c. registration costs for the State register (separate from any additional local government fees, charges or costs);
 - d. the most appropriate agency to hold the register; and
 - e. the treatment of Traditional Accommodation providers.
2. Determine the legal mechanisms through which the State Government can introduce and enforce a registration scheme, including consequences for non-compliance.
3. Determine the most appropriate mechanism to collect and manage the registration data.
4. Determine the information disclosure requirements for online platforms and appropriate enforcement mechanisms.
5. Determine information sharing mechanisms between State and local government authorities, including information gathered under existing registration and licensing regimes for Traditional Accommodation.
6. Determine what information, if any, should be made publicly available.
7. Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.

The interdepartmental working group's activities should incorporate appropriate consultation mechanisms with local government authorities and relevant stakeholders.

Recommendation 8

The relevant Minister should ensure, through appropriate legislative or regulatory mechanisms, that online platforms are required to display a valid registration number for Short-Term Rentals, issued under the registration scheme. The interdepartmental working group should consider and provide advice to the Minister on the appropriate requirements for Traditional Accommodation.

Recommendation 9

The relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia to the government agency with primary responsibility for the state-wide registration system, on a disclosure cycle to be recommended by the interdepartmental working group.

Recommendation 10

The relevant Minister introduce a state-wide registration scheme for Short-Term Rentals based on the parameters developed by the interdepartmental working group, coupled with data provision requirements for online platforms. Local government authorities should be responsible for:

- approving additional registration requirements for properties within their boundaries;
- developing additional registration criteria, suited to their particular circumstance;
- enforcing compliance with their local controls;
- managing complaints about Short-Term Rentals; and
- setting and imposing penalties for non-compliance with local requirements.

The process for information collection and disclosure should be developed by the interdepartmental working group, in consultation with local government.

The Government's specific response to each of the recommendations follow.

Government's Response to the Recommendations

Recommendation 1

The Minister for Commerce request the Department of Mines, Industry Regulation and Safety develop a public education campaign in association with REIWA to make owners, real estate agents, property managers and purchasers of real estate in Western Australia aware of their obligations in regard to:

- the truthful marketing and presentation of properties as Short-Term Rental prospects;
- the importance of considering Short-Term Rental as part of the pre-purchase due diligence process; and
- other legal obligations surrounding the use of properties as Short-Term Rentals.

Response

The Government agrees to the recommendation.

In using a property for a short-term rental, there are a range of approvals, public health and safety, insurance, taxation and amenity issues that both the consumer and service provider need to be aware of. It is important that there is an appropriate level of education and information available to ensure awareness of these requirements, and the Western Australian Government supports the development of an education program than can be tailored to local conditions.

The *Real Estate and Business Agents and Sales Representatives Code of Conduct 2016* (the Code) provides that an agent or sales representative must exercise due care, diligence and skill. Additionally, the Code provides for the disclosure of material facts to any person materially affected. This would include the correct communication (advertising) of properties and their suitability for use as short-term rental properties.

The Department of Mines, Industry Regulation and Safety (DMIRS) will communicate with the industry, in liaison with REIWA reminding it of the Code requirements and how the Australian Consumer Law (WA) applies. DMIRS will also establish a communication strategy to the community (owners, purchasers etc) alerting them to matters that should be considered at the time of purchase and use of properties.

The Minister for Commerce notes that the Australian Consumer Law (WA) applies to the provision of all goods and services. In relation to the suppliers of short-term rentals, this includes the application of consumer guarantee provisions meaning that: services are provided with due care and skill, the accommodation is fit-for-purpose and that consumers are not misled or deceived in their transactions with suppliers. The Minister for Commerce will request DMIRS to work with other jurisdictions to propose that a national education campaign on consumer rights under the Australian Consumer Law (WA) in relation to short-term rentals be developed.

The Department of Fire and Emergency Services (DFES) proposes that it is actively consulted and engaged in the development of any education campaigns. These will be communicated to the community and appropriate related education initiatives:

- educating short-term rental owners about what safety standards and signage they need to display in their property; and

- educating travellers about the risks of the local area, what to do in a bushfire or other emergency, and how to stay informed.

Recommendation 2

That by June 2020 the Minister for Planning update the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend:

- land use definitions to differentiate between hosted and unhosted Short-Term Rentals;
- land use definitions to include the size and capacity of Short-Term Rentals; and
- the definition of bed and breakfast accommodation.

Response

The Government endorses the intent of the recommendation; however, the timeline is considered insufficient.

It is agreed that the land use definitions in *Planning Bulletin 99 – Holiday Homes Guidelines* and the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* that relate to short-term rentals are dated, and do not accurately reflect how residential properties are currently being used for short-term letting in Western Australia.

The inclusion of land use definitions in the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* encourages the consistent treatment of short-term rentals throughout Western Australia while retaining the ability of local governments to adjust their policy responses to local contexts.

On behalf of the Minister for Planning, the Department of Planning, Lands and Heritage (DPLH) will progress the update of the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend definitions. This review may or may not include those noted by the recommendation and additional definitions as deemed necessary. It is noted that there is a higher compliance burden on traditional bed and breakfasts, and any actions taken to harmonise land use definitions must be cognisant of the implications on traditional bed and breakfast businesses.

The model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* cannot be updated within the timeframe specified in the Report due to the drafting process and additional legislative steps required. A more accurate timeline would be November 2020.

As an interim measure, the proposed land use definitions will be incorporated into the draft WAPC Tourism Position Statement. It is expected that the WAPC will have a draft Tourism Position Statement for public consultation around mid-2020.

The Minister for Planning will also investigate the option of 'deeming' the definition of hosted accommodation and providing for this type of accommodation to be exempt from development approval, into all local planning schemes, in accordance with Section 257B of the *Planning and Development Act 2005*. This would ensure consistent provisions for hosted accommodation across the State.

Consistent with the findings of the Report, the designation of land use permissibility for unhosted accommodation will be determined through each local planning scheme.

Recommendation 3

That by June 2020 the Minister for Planning direct the Western Australian Planning Commission to update planning guidance so that it aligns with the amended land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* and provides greater guidance to local governments about ways to appropriately regulate Short-Term Rentals.

Response

The Government endorses the intent of the recommendation.

The WAPC will continue to draft policy (Tourism Position Statement and any other necessary guidance) that will align with any proposed amendments to land use definitions and provide greater guidance to local governments about ways to appropriately regulate short-term rentals. Additionally, the interdepartmental working group's work will be considered in the drafting of the policy position.

Once advertised, the draft Tourism Position Statement would be considered seriously entertained, as such, it would be applicable when considering planning applications. By releasing the policy ahead of amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) it provides an opportunity to test the application of definitions prior to incorporation into the Regulations.

Recommendation 4

The Minister for Planning direct the relevant government agency to work with stakeholders to develop model by-laws that assist strata companies to better manage Short-Term Rentals in their strata scheme. These model by-laws should include:

- by-laws that, if adopted by a strata company, would prevent owners from letting their lots as Short-Term Rentals; and
- by-laws that, if adopted by a strata company, would enable owners to let their lots as Short-Term Rentals.

Response

It should be noted that the development of model by-laws for strata is outside the scope of the Planning portfolio as it relates to the Minister for Lands. The Minister for Planning can only direct it's own agency to undertake work.

The Government does not support adopting the recommendation. Landgate notes that strata companies have broad powers to make by-laws that best suit their individual needs. However, sufficient support will be provided to stakeholders by adopting Recommendation 5.

Providing model by-laws could lead owners and tenants to assume that the by-law is inherently valid. However, in certain circumstances, a model by-law could be found to be invalid by the State Administrative Tribunal.

A strata company does not need a legislative authority to provide for short-term rentals. However, upon proclamation of the amended *Strata Titles Act 1985*, by-laws will be established as secondary to any other legislation. As a result, by-laws will *always* have to conform to the planning legislation first and foremost.

The standard by-laws currently included in the *Strata Titles (General) Regulations 2019* (under development) enable owners to facilitate short-term rentals, unless another law prohibits or restricts them from doing so.

Support in understanding by-laws will be provided to stakeholders through updating Landgate's guidance material (consistent with Recommendation 5); an activity that is already accommodated in the Strata Reform Project plan.

Recommendation 5

The Minister for Planning direct Landgate to update their strata titles guidance to include discussion of the powers and processes open to strata companies to manage Short-Term Rentals in strata schemes.

Response

It should be noted that the Minister for Planning cannot direct Landgate, as this is the role and responsibility of the Minister for Lands.

The Government supports the recommendation.

This activity is planned to occur as part of Landgate's Strata Titles Act Reform project, due to conclude in 2020/21.

Upon proclamation of the amended *Strata Titles Act 1985*, Landgate will clarify in its guidance material that a short-term rental by-law would be a governance by-law for a scheme where the legislation allows.

If, as a result of the Committee's Report, the WAPC was to amend any planning policies that affect strata by laws, Landgate will update the strata titles guidance accordingly.

In clarifying guidance material, Landgate, as part of the Strata Titles Act Reform project, may update publications relating to the *Strata Titles Act 1985* including '[A Guide to Strata Titles](#)' and the '[Strata Titles Practice Manual](#)' to include discussion on Airbnb and the sharing economy, as well as how by-laws can be used by strata companies to better manage short-term rentals in their strata schemes.

Recommendation 6

The Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

Response

The Government supports the recommendation. State Government agencies have various responsibilities and interests in short-stay accommodation, including tourism sector development and destination marketing, housing affordability, planning and land use, consumer protection and safety, bushfire safety and supporting local governments to enforce their local laws, planning schemes and policies. Given the complexities of the policy responses required, the establishment of a working group to coordinate these is a logical step.

The Ministers for Commerce, Local Government, Planning and Tourism will nominate staff within their respective portfolios to be members of the interdepartmental working group.

The implementation of a register, its administration, enforcement, determination of any fee structures, collection of information and legal obligations on both booking platforms and individual property owners has potential policy and regulatory implications for the Department of Local Government, Sport and Cultural Industries (DLGSC), DMIRS, and DPLH. The working group will identify the lead government agency to have primary responsibility for the coordination of regulation for short-stay accommodation.

The interdepartmental working group may establish a small number of specific technical working groups to undertake relevant tasks associated with respective recommendations. These groups may consist of broader membership than the working group as relevant to the task (for example, it may be appropriate to seek input from the Western Australian Local Government Association (WALGA) given the impact on local government and the sector's position). Additionally, other government and non-government entities may be invited to assist with the development of certain policies as appropriate.

Recommendation 7

The interdepartmental working group should:

1. Establish the baseline requirements for a state-wide registration scheme, including:
 - a. the minimum information required for both hosted and unhosted premises;
 - b. the cycle of registration;
 - c. registration costs for the State register (separate from any additional local government fees, charges or costs);
 - d. the most appropriate agency to hold the register; and
 - e. the treatment of Traditional Accommodation providers.
2. Determine the legal mechanisms through which the State Government can introduce and enforce a registration scheme, including consequences for non-compliance.
3. Determine the most appropriate mechanism to collect and manage the registration data.
4. Determine the information disclosure requirements for online platforms and appropriate enforcement mechanisms.
5. Determine information sharing mechanisms between State and local government authorities, including information gathered under existing registration and licensing regimes for Traditional Accommodation.
6. Determine what information, if any, should be made publicly available.
7. Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.

The interdepartmental working group's activities should incorporate appropriate consultation mechanisms with local government authorities and relevant stakeholders.

Response

The Government generally supports the recommendation, including introduction of a mandatory registration process.

The dot points identified to establish the baseline requirements for the registration scheme are comprehensive and cover the key issues. The critical part of this process, is how these are to be applied. In implementing a registration scheme, this needs to be flexible and not too onerous, to encourage use by all parties. Any property registration system needs to be simple, low cost and user friendly.

Critical issues in implementing a state-wide registration scheme will be the relationship between local and State Government, what is the legal mechanism for the State, how data is collected and shared between the respective levels of government, and what is the role of online platforms.

The interdepartmental working group will work through the details of how the registration process would operate and be applied. In doing so, the interdepartmental working group will identify the costs to both State and local government, and industry, with the aim to find most cost-effective approach.

As noted in the response to Recommendation 6, other government and non-government entities may be invited to assist with the development of certain policies. In this regard, DFES will assist the interdepartmental working group to consider the development of a Short-Term Rental Accommodation Fire Safety Standard in the Western Australian context as New South Wales has done.

Working smarter and in partnership with local government is a key priority of the McGowan Government, as illustrated in the Services Priority Review and State Local Government Partnership Agreement signed in August 2017. It provides a framework for better alignment with government strategy and a forum to discuss investment, prioritisation and identification of collective opportunities to meet mutual outcomes. In addition, a State Local Government Working Group has been established to support the Partnership Group to drive a long-term agenda and culture of collaboration between State and local government. This mechanism could be considered as part of the development of this project.

Recommendation 8

The relevant Minister should ensure, through appropriate legislative or regulatory mechanisms, that online platforms are required to display a valid registration number for Short-Term Rentals, issued under the registration scheme.

The interdepartmental working group should consider and provide advice to the Minister on the appropriate requirements for Traditional Accommodation.

Response

The Government generally supports the recommendation, including the introduction of a mandatory registration system.

The most appropriate legislative and regulatory mechanisms will be investigated through the interdepartmental working group.

If a register is established and applied as a mandatory requirement as proposed in Recommendation 7, then it is appropriate that a valid registration number is displayed to highlight that due process has been followed, and that properties are legitimate short-term rentals.

In addition to addressing short-term rentals, the interdepartmental working group will also consider and provide advice on what is determined the most appropriate requirements for traditional accommodation providers.

The interdepartmental working group will consider existing registration processes of government and identify any existing systems or programmes, where possible, including online platforms that can be utilised for this purpose.

Recommendation 9

The relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia to the government agency with primary responsibility for the state-wide registration system, on a disclosure cycle to be recommended by the interdepartmental working group.

Response

The Government generally supports the recommendation, including the introduction of a mandatory registration system, and a mechanism for data to be collected.

It is unlikely online platforms will voluntarily include registration numbers on their listings in Western Australia. As such, the Government will investigate the potential to introduce legislation to require online booking platforms to list relevant information on their websites, and report data to the Government. It is likely that the Western Australian Government will introduce measures, similar to Tasmania in its *Short Stay Accommodation Act 2019*, to encourage compliance with short-term rental planning permit requirements.

The Government recognises that adequate privacy protections would need to be developed to enable the sharing of de-identified data.

Recommendation 10

The relevant Minister introduce a state-wide registration scheme for Short-Term Rentals based on the parameters developed by the interdepartmental working group, coupled with data provision requirements for online platforms. Local government authorities should be responsible for:

- approving additional registration requirements for properties within their boundaries;
- developing additional registration criteria, suited to their particular circumstance;
- enforcing compliance with their local controls;
- managing complaints about Short-Term Rentals; and
- setting and imposing penalties for non-compliance with local requirements.

The process for information collection and disclosure should be developed by the interdepartmental working group, in consultation with local government.

Response

The Government supports the recommendation that a state-wide registration scheme be explored and developed. There is a clear need for a whole-of-government view on the appropriate regulatory and legislative framework that will meet the needs of this rapidly changing sector.

The responsibility of local government as outlined will need to be costed and appropriate cost recovery mechanisms put in place. In Western Australia, local governments can impose fees and charges on users of specific, often incidental, services. Examples include

dog registration fees, fees for building approvals and swimming pool entrance fees. In some cases, local governments will recoup the entire cost of providing a service.

Currently, fees and charges are determined according to three methods:

1. By legislation, with an upper limit set by legislation;
2. By the local government; and
3. Fees determined by State Government legislation.

The lack of efficient indexation of fees and charges determined by State Government legislation and regulation is a long-standing issue for local government which makes service planning and delivery challenging. Supposedly cost reflective, they quickly lose relevance to their cost base if they are not periodically reviewed. This revenue leakage is recovered from rate revenue. This means all ratepayers end up subsidising the activities of some ratepayers. The State Local Government Partnership Agreement is exploring this further with the Economic Regulation Authority.