

A low-angle, black and white photograph of a modern building's facade, showing a series of horizontal architectural elements and windows that recede into the distance.

**Short-Term Rental Accommodation**  
**Survey 2: Draft Planning for Tourist Position Statement**  
*Strata Community Association (WA) Submission*  
11 March 2022

## Introduction

Strata Community Association WA (SCA WA) was born in 1989 due to some passionate individuals who determined the need for a unified industry body to bring about understanding, awareness and uniformity in the Strata Industry. The 'Industry Body' should also when necessary provide representation to Government on whatever amendments may be required to the Strata Titles Act.

The aim of SCA WA is to:

- provide a structure and forum for better communication between regions
- enhance the responsibilities of industry members in a nationally consistent manner
- enable representation at a national level to the Department of Education, Science and Training and other statutory bodies.

Based on the 2020 Australasian Strata Insights Report, more than 90,000 Western Australian residents live in apartments with 51,798 strata schemes and 251,425 lots registered. Australia-wide, more than 2.2 million people live in flats and apartments, the vast majority being strata titled.<sup>1</sup> This figure does not include other forms of strata title such as townhouses and community titled developments. Nor does it include businesses operating in strata titled commercial buildings. The estimated value of property under strata title in Australia in 2020 exceeds \$1.3 trillion.<sup>2</sup>

As the growth of apartment and strata living has intensified over the last decade, the strata management strata services industry has grown in lock step to serve it. Strata managers navigate through a maze of legislation and regulation ranging from actual strata specific legislation, regulation, workplace, health and safety issues and building codes as well as measures applicable to the management of body corporate funds.

**For further information about this consultation, please contact Shaun Brockman, National Policy and Advocacy Manager, SCA. [Shaun.brockman@strata.community](mailto:Shaun.brockman@strata.community).**

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<sup>1</sup> Hazel Easthope, Sian Thompson and Alistair Sisson, *Australasian Strata Insights 2020*, City Futures Research Centre, UNSW, Accessed at <https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/>

<sup>2</sup> Ibid, p6

## SCA (WA)'s Response to the Short-Term Accommodation Review

Although the feedback to this review has been provided in survey format, to fully respond on behalf of our industry, SCA (WA)'s response needs to address two critical areas on behalf of our members:

1. **Legal issues and confusion surrounding the intersection of strata and planning legislation**
2. **Management issues within strata-titled complexes**

SCA (WA)'s response will go into detail on these two points in the first section of our response, and then we will try to work that response into the original survey questions to aid the government's submissions collection process.

### Section 1

#### Legal issues and confusion surrounding the intersection of strata and planning legislation

The majority of local authorities have definitions pertaining to short-stay, short-term, holiday house etc, in addition, a few have adopted varying policies pertaining to short-stay. Unfortunately, given the wide-ranging definitions and polices, there is significant confusion around what is required when it comes to the management of short-stay living.

Thoroughly considered and well drafted by-laws can go a long way to ensuring that problems that commonly arise with short-stay accommodation are minimised or avoided, either by prohibiting lots from being used in certain ways, or by imposing conditions on permitted uses. However, the reality is that by-laws are often drafted and enacted in a manner so that they are invalid, or uncertain.

#### Inaccuracies in the Draft Planning for Tourism Guidelines

SCA (WA) therefore wishes to highlight issues in relation to what we believe is incorrect or impractical information provided in the Draft Planning for Tourism Guidelines, particularly in 'Section 6. Strata and Community Development.'

The issues largely relate to the power of both strata by-laws and strata companies to control aspects of short-term letting.

#### **Legislative Example 1**

In Section 6. Strata and Community Development contains the following directive:

*For strata schemes, the subdivider/developer can supplement the deemed by-laws and add restrictions regarding short-term letting.*

We would direct the WAPC to the Strata Titles Act 1985; Section 46(f):

*“46. Invalidity of scheme by-laws Scheme by-laws are invalid as follows —*

*(f) to the extent that they prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing with a lot”*

An earlier version of this provision was subject to the WA Court of Appeal decision in *Bryne v The Owners of Ceresia River Apartments*, which resulted in the Court maintaining that a by-law banning owners from short-term letting could not operate.

This decision carried forward into the amended Strata Titles Act 1985 that came into effect on 1 May 2020, in the form of section 46(f) above.

In essence, the *Bryne v The Owners of Ceresia River Apartments* court decision shows that **you may use a strata scheme by-law to restrict the use of a lot (for example for residential use only), however you may not under the Strata Titles Act introduce by-laws that restrict the lease of a lot by duration, and those by-laws would be invalid if you did so.**

This is particularly important when referring to the power of by-laws in the context of short-term letting, and what restrictions by-laws may impose. For this reason, we believe this assertion in Section 6 regarding by-laws restricting short-term letting is inadequate.

### **Legislative Example 2**

In Section 6.1 ‘Short-Term Rental Accommodation in Residential Strata and Community Titles Scheme Development,’ it states:

*“Where development approval is required and is supported by the strata company or community corporation, one or more units or an entire development may be approved by the strata company or community corporation for short-term rental accommodation, subject to conditional requirements or restrictions.”*

Strata companies have no control over the use to which a lot is put, along with no legal or practical role to play in approving or not approving a short-term letting or any other use. A strata company could not say restrict the use of a lot being used as an office, if that office has prior planning approval.

Section 6.1 goes on to say:

*“The strata company or community corporation may also vote to:*

- *prohibit the use of strata/community titles units for tourist accommodation;*
- *allow the use of particular properties for short-term rental accommodation;”*

Strata companies again have no control over the use of a given lot. In this example, the introduction of strata *by-laws* may allocate the use of a given lot for tourist accommodation, however when considering allowing the use for short-term rental accommodation, the strata company has no power to allow or prohibit *duration*, and by-laws for the reasons mentioned previously may also not influence duration.

Section 6.1 also states:

*“Strata companies and community corporations can also formulate their own by-laws to:*

- *vary the insurance payable by owner/occupiers who short-term let”*

Strata companies may not arbitrarily institute changes to the by-laws in the context of varying insurance, without sufficient evidence that the insurance payable has increased as a direct result of the owner/occupiers who are short-term letting, to justify the change.

Although theoretically this may be possible, in practicality it is the opinion of SCA (WA) that insurance companies would never provide this information as to why the cost of insurance may have changed, and therefore the stipulation that strata companies can vary the insurance payable by owner/occupiers who short-term let is largely inaccurate, as changes to the by-laws for this reason could not conceivably be justified.

- *“restrict the use of tenancies for the purpose of short stay rental accommodation.”*

Once again, in reference to the *Bryne v The Owners of Ceresa River Apartments* court decision and section 46(f) of the Strata Titles Act 1985, this information is incorrect also.

## **Conclusion**

As strata is a key component of not only the issue of short-term letting, but WA tourism as a whole, **it is imperative that the WAPC Draft Planning for Tourism Guidelines is providing the correct information about the powers of both strata by-laws and strata companies to regulate the duration of use of their properties.** SCA (WA) would be happy to assist both the WAPC and Landgate further to amend the currently provided information regarding strata.

Ultimately, SCA (WA) believes that it is essential that whatever the broader regulatory and planning context, that strata companies themselves are able to control and manage to some degree both whether short stay accommodation can occur within a strata scheme, and if so, on what conditions, without interfering with the underlying principle that owners' proprietary interests in freehold land should not be unduly interfered with. An approach that incorporates changes to the Strata Titles Act may be required in the future to ensure the autonomy of strata to effectively regulate their properties.

**Recommendation 1: The WAPC Draft Planning for Tourism Guidelines need to be updated to provide completely accurate information about the powers of both strata by-laws and strata companies to regulate the duration of use of their properties.**

## Management issues within strata-titled complexes

**SCA (WA)'s overall position regarding exemptions to development approval for certain forms of low-scale short-term rental accommodation is that these exemptions will make minimal impact on the issues surrounding short-term letting in WA and should not be instituted. The suggested exemptions will not be sufficient in resolving the issues facing industry stakeholders.**

**There are significant governance difficulties with the exemptions regime.** The governing of the suggested exemptions will be extremely challenging.

There is currently no practical function in place to ascertain and regulate whether or not accommodation is truly operating as hosted or unhosted accommodation, nor to determine and monitor the frequency or length of stay for a guest(s).

The implementation of these exemptions will serve to further misrepresent the landscape of short-term accommodation, through incentivising incorrect or dishonest reporting of a given accommodation circumstance.

Behavioural issues, including noise complaints, damage to common property, parking disputes and an overall lack of knowledge about strata facilities are the major issues faced by strata managers as they manage schemes that have at least one lot undertaking short-term accommodation letting. The below recommendations are intended to provide practical solutions for people living in strata and strata managers, to effectively minimise these issues.

**SCA (WA)'s three major recommendations to improve short-term letting in strata complexes are as follows:**

### **1. Institute a Registration Scheme:**

SCA (WA) is very supportive of the intention of the Department of Local Government, Sport and Cultural Industries to implement a state-wide registration system scheme for short-term rental accommodation.

Globally, most major cities, including San Francisco (where Airbnb originated), New York, Paris, Japan, Los Angeles and Berlin, for example, already require a registration for short term letting.

The introduction of this scheme will provide not only important information on the extent of short-stay accommodation market in WA but will allow for better accountability and regulation of the industry. From a strata management perspective, this would be very useful to try to governance reduce issues of short stay accommodation in strata communities.

### **2. Institute Management Plans:**

In some grouped and multiple dwelling schemes which are predominately used as residences, short stay use may create conflict with and between owners and residents over noise, anti-social behaviour and compromised security.

An effective resolution to these issues would be the mandated introduction of a standard management plan, as a part of the registration scheme for short-term rental accommodation, that outlines information such as:

- Appropriate use of common property and shared facilities, including referencing any by-laws that may regulate the use of common facilities

- Waste management practices
- Parking requirements
- Security Access
- Safety requirements, including fire evacuation procedures
- Accommodation complaints processes
- Any other general information relating to short-stay use in a given accommodation.

The government could provide a prescribed form template online, that outlines all the information necessary to suitably conform to the requirements of a given accommodation. The resultant management plans may then be recorded and distributed to each short-stay tenant as they take up occupancy.

Introduction of a management plan of this kind could reduce the frequency of behavioural issues of short-stay tenants that may negatively impact other tenants in a grouped or multiple dwelling.

### **3. Institute a Complaints Registry:**

Strata managers generally do not reside in the schemes that they manage, and as a result the onus is often on other strata residents to report complaints relating to short-stay accommodation within the scheme. Complaints most commonly relate to the conduct of short stay tenants, including use and damage of common property, noise etc...

Currently, there is no formal mechanism to report complaints relating to the behaviour of short-stay tenants, nor is there a registry or record of complaints made, beyond any internal record keeping by strata companies. Therefore, it would be beneficial to consider the implementation of a centralised complaints registry, that would allow for the documentation of the kind and frequency of complaints linked to a given short-stay accommodation. A high frequency of complaints may indicate poor management practices of property managers and/or landlords.

A complaints registry of this kind would work most effectively if integrated into the proposed short-stay registration scheme, and may be used as a resource to utilize in the regulation of short-stay accommodation, within the approval process to determine whether or not a lot should be allowed to renew.

**Recommendation 2: Rather than an exemptions regime, institute a workable registration scheme, alongside well-defined and easy to implement management plans and a complaint registry for short stay schemes.**

## **Section 1 Summary and Recommendations**

SCA (WA)'s position on the survey questions and issue of short-term letting is drawn from our membership's extensive strata-scheme management experience, our knowledge of how the issues play out on the ground, our legislative and regulatory experience, and the experience of our strata service industry legal partners.

The recommendations we have made are practical, can be easily implemented and maintained if carried out with industry and consumer consultation and drawing on global examples and will be more effective than an exemptions regime.

Please find below a quick summary of our recommendations.



## Recommendations Summary

**Recommendation 1:** The WAPC Draft Planning for Tourism Guidelines need to be updated to provide completely accurate information about the powers of both strata by-laws and strata companies to regulate the duration of use of their properties.

**Recommendation 2:** Rather than an exemptions regime, institute a workable registration scheme, alongside well-defined and easy to implement management plans and a complaint registry for short stay schemes.



## Section 2

### SCA's Response to the Survey Questions

**Q1. What is your name?**

Shaun Brockman.

**Q2. What is your email address?**

Shaun.brockman@strata.community.

**Q3. What region do you live in?**

Perth (SCA WA Office).

**Q4. Do you own or manage short term rental accommodation?**

Yes (industry body whose members manage short-term rental accommodation).

**Q5. If you own or manage short-term rental accommodation, where is the accommodation located?**

All over Western Australia (can select Perth if necessary).

**Q6. If you do not own or manage short-term rental accommodation, what is your interest in the Position Statement? Please select all that apply.**

Industry body (other).

**Q7. Are you responding on behalf of an organisation?**

Yes, Strata Community Association WA (SCA WA).

**Q8. In the interest of transparency, submission received on the draft Position Statement and Guidelines may be published. Do you want your name removed from your submission?**

No.

**Q9. Should hosted accommodation be exempt from development approval where it occurs in a single house (or ancillary dwelling)?**

**Q10. Should hosted accommodation be exempt from development approval where it occurs in a grouped dwelling? (One of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above or below another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property?)**

**Q11. Should hosted accommodation be exempt from development approval where it occurs in a multiple dwelling? (A dwelling in a group of more than one dwelling on a lot where any part of the plot ratio area of a dwelling is vertically above any part of the plot ratio area of any other but does not include a grouped dwelling; and includes any dwellings above the ground floor in a mixed use development.)**

**Q12. Does the room and guest cap for hosted accommodation appropriately capture low-scale hosted accommodation? Are there any other considerations or criteria which may be relevant?**

**Q13. Should unhosted accommodation be exempt from development approval where it occurs in a single house?**

**Q14. Should unhosted accommodation be exempt from development approval where it occurs in a grouped dwelling?**

**Q15. Should unhosted accommodation be exempt from development approval where it occurs in a multiple dwelling?**

**Q16. What length of stay timeframe is appropriate for unhosted accommodation to be exempt from development approval?**

**Q17. Do you have any additional comments on the proposed exemptions?**

SCA (WA) Response to Questions 9-17

- SCA (WA)'s overall position regarding exemptions to development approval for certain forms of low-scale short-term rental accommodation is that these exemptions will make minimal impact on the issues surrounding short-term letting in WA and should not be instituted. The suggested exemptions will not be sufficient in resolving the issues facing industry stakeholders.

**Q18. Do you support the new land use definition for hosted accommodation? (Position Statement, table 1, page 9)**

SCA (WA): Yes. The new land use definition for hosted accommodation acceptable in its current form.

**Q19. Do you support the deletion of the bed and breakfast definition from Schedule 1 (Model Provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015? (Position Statement, Table 1, page 9)**

SCA (WA): Yes, we are supportive of this change.

**Q20. Do you support criteria outlined in sections 5.2.2. and 5.3.2 of the draft Position Statement to guide local government in determining how to plan for, regulate and manage short-term rental accommodation? (Position Statement, page 3-5 and page 5-8)**

SCA (WA): The WAPC Draft Planning for Tourism Guidelines need to be updated to provide completely accurate information about the powers of both strata by-laws and strata companies to regulate the duration of use of their properties.

**Q21. Do you have any additional comments on the Position Statement or Guidelines?**

*For the purposes of including our feedback on legal and management aspects, SCA (WA) would have placed the body of our submission (above) in this additional comments section. For the purposes of WA Government data collection and in the interests of clarity and to make our response clear, we have pasted below the same summary from our submission above.*

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## **Recommendations Summary**

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