



**Australian Resident Accommodation
Managers' Association**

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RE: ARAMA response to NSW Short Term Holiday Letting Options Paper

ARAMA National Ltd is a not for profit peak industry association which represents its members that are involved in ownership of management rights or are involved professionally in the management rights industry as resident managers, professional advisors and specialist suppliers to the industry and its participants.

The majority of ARAMA members particularly those who are referred to as Resident Managers or Caretaking Service Providers are also unit owners in community title schemes in New South Wales and are therefore members of their respective owners' corporation.

As 24/7 operators' resident managers continue to play a vital role in the successful development of density living growth in strata title communities which is now so much a part of modern New South Wales cities and towns. Resident managers are directly responsible for the operation, care, maintenance and safety of billions of dollars of investment property and the residents and visitors to these complexes.

We have been pleased to examine the short-term holiday letting options paper and our comments reflect the serious approach that ARAMA members take towards the responsible and harmonious management and administration of the properties and people impacted by short term holiday letting.

While ARAMA recognises the role that short-term letting can have in meeting holiday accommodation demand, we have used the term Short-term Rental (STR) throughout this submission to capture the other types of short-term accommodation that might be supported through letting of this nature. The submission also refers to those that provide a property on a short-term rental basis as Resident Managers, on-site letting agents or STR operators.

While ARAMA concerns itself mostly on the provision of letting services (either short stay or long stay) to investor lot owners in a strata title scheme our comments and recommendations can also have positive effect on short term letting operations in residential housing.

ARAMA wishes to congratulate all of the New South Wales Government representatives who have contributed to this process and in particular the organising group who have facilitated this position paper. ARAMA is grateful to be invited to have input into this review and we offer our continued commitment towards best practice governance in New South Wales.

Kind regards

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ARAMA Submission to STHL (STR) in NSW Options Paper – October 2017

Executive Summary

In an effort to provide a clearer definition we refer to two types of persons who bring short term rentals onto the market; an Operator or a Host. An Operator is absent when the Guest is occupying the entire property while the Host is generally present and sharing the space.

A person who offers to share their principle place of residence is not defined as an operator. They are referred to as hosts by some commercial listing platforms.

An operator is defined as a person who operates for economic gain more than one rental property either as an Agent for other lot owners, an investor lot owner with multiple properties or a tenant who is sub-letting multiple rental properties (lease backs).

ARAMA believes that the most effective way to deal with Short Term Rentals is to firstly identify who the operators are and then link the operator to the property location. This makes the operator identifiable and accountable and the rental property identifiable and able to be measured and controlled as fit for purpose.

In strata schemes Management Rights operators are already bound by these two effective principles. Each operator must be licensed - (Property Stock and Business Agents Act 2002 - definition section and section 23) and each strata title building is already registered

In relation to residential real estate, short term rental operators could easily be required to adopt some of the key principles of operator identification via existing licensing (Property Stock and Business Agents Act 2002). Property identification can be linked by utilising some or all of the principles adopted in Queensland's "Party House" legislation. <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2012-033>

Currently, to identify both the operator and the property we need to rely on self-regulation or in some cases licensing.

Self-regulation can be haphazard and usually only attracting responsible operators willing to comply or those who are compelled by economic necessity. Relying on internet based overseas owned short term letting platforms to regulate the short-term rental industry in NSW would create an uncertain future with even greater risks as digital and disruptive technology further develop and similar players start up and leave the market. Self-regulation provides no lasting consumer protection and will not help to identify the cowboy operators who can and often do cause reputational and consumer damage to the NSW tourism industry.

ARAMA members who are referred to as Resident Managers operate an on-site letting business and an on-site building management business. They are also known as Caretaking Service Providers. They generally reside on-site and are identified as both a Host and an Operator. They are required to hold an Onsite Residential Property Manager's (ORPM) license when only conducting a letting business. This license is also commonly referred to as a Restricted Letting Agents License (RLA) in other States. In NSW If the Resident Managers services also involve real estate sales as well as letting, then they are required to be fully licensed Real Estate Agents.

As a licensed Real Estate Agent, either with an ORPM or fully licensed, the Resident Manager is easily identified and can be held accountable for their actions. This provides safeguards for the Strata Scheme as well as consumer protection for guests, tenants and unit owners.

In addition to being required to hold a license, the Resident Manager must obtain the approval of the Owners Corporation to conduct a business on-site. In this respect, the Resident Manager is easily identified as an operator and the property is easily identified as a place of business. Therefore, ARAMA believes that the business of Management Rights provides a positive solution to the dilemma of short term rentals in a strata title concept.

ARAMA favours a regulatory approach through existing licensing controls and the planning system combined with industry self-regulation or (in the case of strata schemes) allowing owners' corporations to prohibit or restrict STR in their schemes through restrictive by-laws.

In conclusion, ARAMA believes that while self-regulation can deal with some process and procedure - the two consumer protection drivers of operator identification (licensing) and property identification (registration) must be controlled by way of government regulation or legislation.

Regulation through Licensing/Registration

ARAMA believes a regulatory approach through licensing would not require the creation of a new registration or licensing framework. ARAMA submits an expansion of the current Onsite Residential Property Manager's (ORPM) Licensing regime can help ensure accountability and regulation of STR carried out by agents and Operators for reward, whilst not prohibiting property owners from short term letting their own property (or tenants / occupiers provided the host is present).

Such an approach places a deliberate focus on the credentials and accountability of the property manager, ensuring compliance with minimum standards and a consistent service to consumers, without relying on haphazard self-regulation.

Activities Requiring a Licence

The current ORPM's licensing framework managed by NSW Fair Trading authorises a licensee to carry on a letting agent's business for reward. ARAMA holds the view that a modification of the existing ORPM's licensing framework is the best manner to regulate STR, especially within strata schemes.

ARAMA proposes that it should be necessary to hold a licence to perform the activity whereby a tenant conducts short term letting of a property where that tenant sublets and is not present. This will remove the current practice of persons avoiding current licensing requirements by entering into a tenancy agreement for multiple lots (known within the industry as 'leaseback arrangements'). The existing ORPM licence framework could be used to regulate this activity.

Competency and Credentials

To obtain an ORPM's licence, competency must currently be demonstrated in:

- (a) Communication with clients;
- (b) Minimising agency and consumer risk;
- (c) Maintaining business records;
- (d) Development of teams and individuals;
- (e) Establishing and building client-agency relationships;
- (f) Establishing and managing trust accounts;
- (g) Identifying legal and ethical requirements of property management; and
- (h) Lease property and monitoring and managing lease or tenancy agreements.

ARAMA submits that each of these required areas for demonstrating competency is crucial to STR best practice and preserving a capable and reputable New South Wales tourism industry. Although establishing and managing trust accounts is a required competency, it is noted a licensee would not be required to maintain a trust account unless it was handling trust monies as part of its letting operations¹.

The current licensing framework also ensures only eligible persons could conduct such activities. Eligibility includes reference to age (18 years or older), being a fit and proper person, and not disqualified from holding a licence (such as convicted offenders for offences involving dishonesty or undischarged bankrupts).

Residency and Strata Schemes

The current Onsite Residential Property Manager's licensing regime requires a licensee to both maintain its principal place of residence at the premises where letting is conducted, and hold an ownership interest in such principal place of residence². ARAMA supports the removal of this condition to widen the environment within which the licence offers a suitable registration framework, provided that in strata scheme settings the licensee has obtained the approval of the owners' corporation to conduct its licensed activities within that strata scheme.

This approach works successfully in other jurisdictions, recognising the different STR requirements strata schemes have over detached accommodation. Importantly, the approval requirement would allow the owners' corporation the reasonable opportunity to contractually set out the terms upon which the licensee can operate within the strata scheme. Such conditions could include certain controls on the licensee conducting short term letting operations, use of common property, knowledge of by-laws and the licensee's exclusivity to operate within the strata scheme.

¹ Section 86 *Property Stock and Business Agents Act 2002*

² Section 23 *Property Stock and Business Agents Act 2002*

Should a potential licensee not hold or obtain the approval of the owners' corporation, a full real estate agent's licence would be required as is presently the case where a prospective licensee does not meet the criteria for an Onsite Residential Property Manager's Licence.

Should a licensee obtain the approval of the owners corporation but fail to adhere to the conditions imposed, the owners corporation would have a mechanism to enforce compliance with the ability to seek contractual remedies and/or revocation of the approval.

Allowing Strata Schemes to Prohibit or Restrict STR in their Schemes

ARAMA agrees it is appropriate to retain (but not expand) current strata laws which allow owners' corporations to manage the impact on common property and insurance by the usage of lots in a strata scheme, including requiring a lot owner to notify the owners' corporation of change of use of that lot.

However, ARAMA disagrees that owners' corporations should have the ability to prohibit or restrict STR in their strata schemes aside from contractual constraints through the licensee approval arrangements noted above.

ARAMA believes the retention of provisions such as section 136 of the *Strata Schemes Management Act 2015* are crucial to preserving the rights of owners to deal with their lots, provided that such dealings and usage do not breach the relevant planning regulatory framework.

Regulation through the Planning System

ARAMA supports the recommendations of the Parliamentary Committee to the continued use of planning instruments to regulate STR. A consistent definition of STR would give clarity to property managers, lot owners, strata schemes and other stakeholders, but ARAMA believes this should not be determined by a 'days per year' or 'number of bedrooms' approach (which could be arbitrary and fail to address the circumstances that contribute most to noise and other complaints). ARAMA supports a definition that references the principal resident/host (except in the case of the registered owner of the property) not being present during STR and a maximum days per stay of 90 consecutive days (to preserve long term tenancy protections under the *Residential Tenancies Act 2010*).

ARAMA favours greater intervention to uphold planning controls, including in tourist infrastructure where long term use of accommodation is prohibited. Unlike Strata scheme by-laws which can change from time to time, planning controls are a matter of public record available to any prospective purchaser.

Summary

Focusing on STR controls through existing licensing and planning frameworks in NSW can alleviate the need for additional direct regulation. This should deliver positive economic and social benefits to the community through allowing a clear platform for STR whilst addressing the potential problems faced by rogue unlicensed commercial operators or the letting of properties ill-suited to STR.

-ENDS-