

Holiday accommodation managers



*National
Tourism
Accreditation
Program
Western Australia*



Program overview

May 2006



Department of Consumer
and Employment Protection
Government of Western Australia
Consumer Protection



For further information about anything contained in this report please contact either:

- 1. The Department of Consumer and Employment Protection (Consumer Protection) on 1300 30 40 54 (local call cost) or email consumer@docep.wa.gov.au***

or

- 2. Tourism Council Western Australia on 9416 0700 or email accreditation@tourismcouncilwa.com.au***

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*Contributing agencies: The Department of Consumer and Employment Protection
Tourism Western Australia
Tourism Council Western Australia
Visitor Centre Association of Western Australia (Inc.)
Western Australian Local Government Association*

Executive Summary

The Department of Consumer and Employment Protection (Consumer Protection) defines a holiday accommodation manager as someone working on behalf of owners of property ordinarily used for holiday accommodation to arrange the letting of their premises for periods not exceeding three consecutive months. Currently, under the *Real Estate and Business Agents Act 1978* (the REBA Act) holiday accommodation managers are required to be licensed as real estate and business agents because their activities fall within the definition of a “real estate transaction”.

The purpose of this document is to outline a revised voluntary accreditation program designed specifically for holiday accommodation managers in Western Australia. It is intended that the voluntary accreditation program will replace the current legislative regulatory framework that applies to the holiday accommodation management industry.

The National Tourism Accreditation Program (WA)

Consultation with stakeholders through the release of an Issues Paper in 2004 revealed that many perceive the REBA Act to be inappropriate for the regulation of holiday accommodation managers, particularly in light of the current low consumer risk identified. Many industry participants suggested making use of the National Tourism Accreditation Program (WA; Accreditation Program) as a mechanism for the self-regulation of the holiday accommodation management industry.

Tourism Council Western Australia (TCWA), a not-for-profit peak industry body, and Tourism Western Australia, the statutory authority responsible for promoting Western Australian tourism both nationally and internationally, jointly own the Accreditation Program. Both organisations gave their in-principle support to a proposal to make amendments to their Accreditation Program for the purpose of strengthening its consumer protection mechanisms.

The Holiday Accommodation Management Review Working Party

The Holiday Accommodation Management Review Working Party (the Working Party) consisting of representatives from Consumer Protection, TCWA, Tourism Western Australia, the Western Australian Local Government Association (WALGA), and the Visitor Centre Association of Western Australia (VCAWA), was formed to reach agreement on the detail of the proposed amendments to the Accreditation Program.

Ministerial and Cabinet endorsement

In 2005, the then Minister for Consumer and Employment Protection, the Hon. John Kobelke MLA (the Minister), endorsed the proposed non-legislative self-regulatory framework based upon the voluntary Accreditation Program for the holiday accommodation management industry. Subsequently, State Cabinet endorsed the proposal to amend the REBA Act to exempt holiday accommodation managers from the need to be licensed under that Act. The amendment was passed by the Legislative Assembly on 20 October 2005, and was introduced in the Legislative Council on 9 November 2005.

Key elements of the accreditation program

The Working Party has agreed to the following key elements of the Accreditation Program, which will retain the same accreditation registration and on-site verification processes as the existing program:

- a requirement for accredited holiday accommodation managers to operate a separate clients' bank account for the purpose of achieving higher standards of financial accountability;
- a new Code of Ethics that extends the customer relations focus of the current Code and applies best-practice business conduct in relation to essential holiday accommodation management activities;
- a new dispute resolution process modelled upon the best-practice benchmarks of accessibility, fairness, independence, accountability, efficiency and effectiveness;
- a new Dispute Resolution Panel with the authority to fine an accredited holiday accommodation manager, revoke their accreditation for a minimum of six months, or to suspend accreditation for up to three months while a decision on accreditation revocation is considered; and
- a new naming policy whereby should a holiday accommodation manager have their accreditation revoked, the Accreditation Committee would make a formal request to the Commissioner for Fair Trading (the Executive Director of Consumer Protection) to publicly name the business.

1.0 Introduction

The Department of Consumer and Employment Protection (Consumer Protection) defines a holiday accommodation manager as someone working on behalf of owners of property ordinarily used for holiday accommodation to arrange the letting of their premises for periods not exceeding three consecutive months. Currently, many visitor centres (also known as tourist bureaux), a number of private individuals, as well as a few real estate agents, travel agents, on-line booking agencies, serviced apartment managers and caravan park managers perform the role of a holiday accommodation manager throughout the State. Property owners who arrange their own holidaying tenants are not classified as holiday accommodation managers, nor are their employees.

Currently, under the *Real Estate and Business Agents Act 1978* (the REBA Act) holiday accommodation managers are required to be licensed as real estate and business agents, or employ the services of a licensed agent, because their activities fall within the definition of a “real estate transaction”. The Real Estate and Business Agents Supervisory Board (REBA), the real estate industry regulator, administers the REBA Act.

The holiday accommodation management industry is unique because of its relatively recent emergence, and because of its hybrid nature in that it crosses both the tourism and real estate industries. Importantly, when the REBA Act was drafted there was no significant holiday accommodation management industry. Hence, it is possible that the REBA Act was not intended to regulate the activities of holiday accommodation managers.

The purpose of this document is to outline a voluntary accreditation program formulated specifically for holiday accommodation managers operating in Western Australia. It is intended that the accreditation program will replace the current legislative regulatory framework that applies to the holiday accommodation management industry.

2.0 Background

In September 2003, the then Minister for Consumer and Employment Protection, the Hon. John Kobelke MLA (the Minister), directed Consumer Protection to commence consultation with stakeholders regarding the appropriateness of the current requirement for holiday accommodation managers to be licensed under the REBA Act.

A document, entitled “Issues Paper: Regulation of Holiday Accommodation Managers” (Issues Paper), was distributed during April 2004 as a vehicle for consulting with stakeholders. The Issues Paper invited submissions from the public and provided information about the activities of holiday accommodation managers, available evidence of consumer risk, and current forms of regulation in Western Australia and other jurisdictions.

Thirty-three submissions were received in response to the Issues Paper. While respondents broadly supported the notion of regulating the activities of holiday accommodation managers, regulation under the REBA Act was generally considered to be inappropriate.

In light of the perceived inappropriateness of the REBA Act in relation to the regulation of holiday accommodation managers and the current low consumer risk, many submissions suggested using the National Tourism Accreditation Program (WA; Accreditation Program) as a mechanism for the self-regulation of the holiday accommodation management industry.

2.1 The National Tourism Accreditation Program (WA)

Tourism Accreditation Australia Ltd (TAA Ltd) established the Australian Tourism Accreditation Standard. The Federal Government gave TAA Ltd the responsibility for managing a new national accreditation system for the tourism industry. Accreditation is known to benefit the tourism industry, tourism businesses and consumers of tourism products. Under the national accreditation system, in each State and Territory an organisation is licensed by TAA Ltd to implement an approved accreditation program. Running parallel to this is the establishment of a web-based portal by the Federal Government which will be available for use by accredited and non-accredited tourism businesses.

Tourism Western Australia, formally the Western Australian Tourism Commission and the statutory authority responsible for promoting Western Australian tourism both nationally and internationally, recognised that high standards of service delivery responsive to consumer demand were a powerful form of advertising. Tourism Western Australia identified quality assurance programs and the accreditation of operators as essential for helping raise service standards to an acceptable level. In 1995, Tourism Western Australia reached an agreement with Tourism Council Western Australia (TCWA), a not-for-profit peak industry body, regarding the licensing and operation of the tourism accreditation program in Western Australia. As the licensee of the accreditation program in Western Australia, TCWA launched, with Tourism Western Australia support, the Accreditation Program in December 1996. The Accreditation Program has become a benchmark in Australia and has been instrumental in the development of a national tourism accreditation system.

As a licensee, TCWA established its own Accreditation Committee comprising of industry and non-industry representatives. Appendix A shows the organisational structure underpinning the Accreditation Program. The accreditation registration process is shown schematically in Appendix B, as is the on-site verification process that occurs within one year of an application for accreditation being approved by the Accreditation Program Manager. Accreditation registration is renewed annually and on-site verification audits occur at least once every three years after the first year.

The Accreditation Program Manager oversees both generic and sector/industry specific programs. The Accreditation Program for holiday accommodation managers is an example of an industry specific program.

2.2 The Holiday Accommodation Management Review Working Party

In August 2004 Consumer Protection initiated dialogue with TCWA and Tourism Western Australia with the objective of proposing to amend their existing Accreditation Program for the purpose of creating a stronger program specifically for holiday accommodation managers. The Consumer Protection proposal was part of establishing a new self-regulatory regime for the holiday accommodation management industry in light of the current low level of consumer risk identified. Both TCWA and Tourism Western Australia agreed in-principle to the Consumer Protection proposal.

Consequently, the Holiday Accommodation Management Review Working Party (the Working Party) consisting of representatives from Consumer Protection, TCWA, Tourism Western Australia, the Western Australian Local Government Association (WALGA), and the Visitor Centre Association of Western Australia (VCAWA), was formed to reach agreement on the detail of the proposed amendments to the Accreditation Program. Working Party members are listed in Appendix C.

The Working Party began meeting on a monthly basis in January 2005. All bodies represented on the Working Party endorse the revised Accreditation Program for holiday accommodation managers. The revised Accreditation Program is an extension of the existing program and, therefore, is based upon the Australian Tourism Accreditation Standard administered by TAA Ltd. The Australian Tourism Accreditation Standard is aligned with international Quality Assurance Management Systems (ISO 9002). Consequently, all the business information, legal, human resource management, staff training, business planning, financial management, operational management and environmental management requirements of the existing Accreditation Program will remain as part of the revised program.

2.3 Cabinet and Ministerial endorsement

The Minister endorsed the proposed non-legislative self-regulatory framework based upon the voluntary Accreditation Program for the holiday accommodation management industry. Subsequently, in April 2005 State Cabinet endorsed the proposal to amend the REBA Act to exempt holiday accommodation managers from the need to be licensed under that Act. The amendment was passed by the Legislative Assembly on 20 October 2005, and was introduced in the Legislative Council on 9 November 2005.

3.0 Key Elements of the Revised Accreditation Program

The Working Party has agreed on how to incorporate five specific elements into the existing Accreditation Program, including:

- making it a requirement for accredited holiday accommodation managers to operate a separate clients' bank account for the purpose of achieving higher standards of financial accountability;
- establishing a stronger Code of Ethics by including definitive statements regarding honesty, integrity, fairness and professionalism in relation to key management practices;
- establishing a formal Dispute Resolution Panel consisting of equal representation from industry and consumer bodies;
- authorising the Dispute Resolution Panel to fine an accredited holiday accommodation manager, revoke their accreditation for a minimum of six months, or to suspend accreditation for up to three months while a decision on accreditation revocation is considered; and
- formulating a naming policy for instances when an accredited holiday accommodation manager has their accreditation status revoked.

3.1 Management of a separate clients' bank account

Any money received by a holiday accommodation manager from a consumer for tenancy/bond payments, or from a property owner, for example, for maintenance work, is received on trust on behalf of the consumer or the property owner respectively.

Although the holiday accommodation manager may be entitled to a commission on some money received on trust, a large proportion of this money does not belong to the holiday accommodation manager. It is best practice for all monies received on trust on behalf of a third party to be kept in a bank account separate to the general business account.

The key requirements and conditions for the management of a separate clients' bank account include:

- all monies received in relation to holiday accommodation management transactions are to be held in a separate client account created in the business name at a bank, building society or credit union;
- there will be no mandatory auditing of separate client accounts;
- any fees and charges associated with the opening or maintenance of the separate client account are to be payable by the holiday accommodation manager;

- holiday accommodation managers will retain interest earned on the separate client account, except under special arrangements agreed between parties from time to time;
- notification from the holiday accommodation manager will be required on the opening, closing or re-naming of a separate client account;
- the client account will not be permitted to be overdrawn at any time;
- a client ledger account is to be opened for each client on whose behalf money would be held and these ledger accounts will not be permitted to go into debit;
- a separate client account ledger shall summarise all of the holiday accommodation manager's client account transactions;
- client money would be required to be banked as soon as is practical but no later than on a weekly basis;
- at least every month the bank's client account statement will be required to be reconciled with the holiday accommodation manager's financial records; and
- holiday accommodation managers will only be permitted to deduct their commissions from the separate client account on the terms agreed with the property owner.

3.2 New code of ethics

The Code of Ethics is an important element of the Accreditation Program because it is a document that outlines specific standards of business conduct. The original Code of Ethics focused on customer relations. The new Code (Appendix D) extends the customer relations focus and applies best-practice business conduct in relation to essential holiday accommodation management activities.

3.3 Formal dispute resolution panel

In the present Accreditation Program, an internal complaints mechanism is required to be established and documented by all accredited businesses, however, there is no independent dispute resolution mechanism. Without an independent dispute resolution mechanism, consumers may be forced to take their unresolved disputes to the courts. The Working Party is of the view that there are financial and non-financial benefits for both consumers and accredited holiday accommodation managers if their disputes can be resolved outside of the legal system.

Importantly, only when a dispute cannot (for whatever reason) be resolved through the accredited operator's internal complaints-handling processes will the Dispute Resolution Panel (the Panel) be called upon.

The new dispute resolution process (Appendix E) is modelled upon the following best-practice benchmarks:

- Accessible
 - The process will be free
 - The process will be informal and non-adversarial (i.e. without legal representation)
 - There will be no requirement for complainants to attend any hearing if a written complaint is lodged
 - The process will be promoted through accredited businesses and industry bodies

- Fair
 - Complainants are to be advised of their right to pursue other options at any stage of the process if they are dissatisfied
 - Each party is to be given an opportunity to put their case in writing to the Panel
 - Each party is to be given an opportunity to respond to the other party's case
 - Face-to-face meetings between complainants and business operators will not be necessary
 - Both parties are to be informed in writing of the presented facts of the case and reason(s) for the Panel's decision
 - Complainants are to be advised in writing why a complaint is not to be pursued by the Panel
 - Panel decisions are to be based on the application of the Code of Ethics

- Independent
 - The Panel will comprise of equal representation from industry and consumer bodies, as well as relevant government agencies
 - Panel members (with deputies) are to be appointed for a fixed term of 1-2 years to ensure reappointments are made on a staggered basis
 - The Chairperson of the Panel is to be elected by Panel members but will be neither an industry nor consumer body representative

- Accountable
 - The Panel is to be accountable to the local Accreditation Committee
 - A written report of each decision and reason(s) for it are to be provided to the local Accreditation Committee
 - Each quarter the Panel will report to the local Accreditation Committee, VCAWA, WALGA, Tourism Western Australia and Consumer Protection, summarising its hearings and outcomes as well as making recommendations about Accreditation Program amendments, policy development and education initiatives
 - The local Accreditation Committee is to review the dispute resolution process quarterly, as part of the regular assessment of the whole Accreditation Program

- Efficient
 - The Panel is to deal only with complaints that relate specifically to alleged breaches of the Code of Ethics or accreditation requirements by an accredited holiday accommodation manager
 - The documented process is to be followed by the Panel in all cases

- Performance targets are to be established for stages of the process performed by the Panel
 - Complaints about the dispute resolution process will be possible through the local Accreditation Committee and any recommendations for changing the process will be adopted by the Panel in a timely fashion
 - The Panel is to maintain up-to-date and accurate records of all complaints and enquiries received, the status of complaints, and the outcomes
 - The Panel will seek formal feedback on its performance from complainants and accredited holiday accommodation management businesses
- Effective
 - The Panel is to have the authority to order accredited holiday accommodation managers to give complainants a full refund
 - The Panel is to have the authority to order accredited holiday accommodation managers to financially compensate complainants, up to a maximum of \$5000, commensurate with any financial loss and/or inconvenience/anxiety that complainants may have suffered as a result of a holiday accommodation manager's action or inaction
 - The Panel is to have the authority to revoke a holiday accommodation manager's accreditation for specific time periods

3.4 Specified periods of accreditation revocation

Consistent with the current Accreditation Program conditions, revocation of accreditation will be considered if:

- an operator is found to be unable to meet and maintain the accreditation requirements;
- a complaint regarding a serious breach, like for example, the intentional misappropriation of money, is substantiated; or
- feedback is received as a result of a breach of accreditation requirements.

When the Panel revokes a holiday accommodation manager's accreditation, the revocation would be for a minimum of six months. However, at the conclusion of the initial revocation period, depending on the prevailing circumstances, the Panel could decide to extend the period of revocation. During the period of revocation, the holiday accommodation manager will be unable to re-apply for accreditation.

The Panel will also have the authority to suspend a holiday accommodation manager's accreditation for up to a maximum of three months while a decision on its accreditation revocation is considered. When a holiday accommodation manager's accreditation is suspended, TCWA will notify all visitor centres and Tourism Western Australia. In addition, the holiday accommodation manager may be required to issue a standard letter, drafted by TCWA, to all its known current and future clients notifying them of the suspension.

3.5 Naming policy

The objective of the naming policy is to ensure that consumers are made aware of any holiday accommodation manager who is no longer worthy of being accredited, whether it be for a designated period of time or indefinitely.

A public naming policy has several advantages because it can be:

- a powerful compliance mechanism to ensure that accredited holiday accommodation managers comply with their accreditation obligations;
- a means of providing an immediate and urgent warning to members of the public who may otherwise potentially suffer personal injury, and financial or non-financial loss, as a result of the inaction or inappropriate conduct of a holiday accommodation manager; and
- an important mechanism for maintaining the integrity of the Accreditation Program.

Although the revocation of accreditation will not prevent an operator from trading, public naming could seriously impact upon the viability of the business, therefore, the Working Party acknowledges that the judicious application of the policy is necessary.

When a holiday accommodation manager has their accreditation revoked, the Accreditation Committee will make a formal request to the Commissioner for Fair Trading (the Executive Director of Consumer Protection) to publicly name the holiday accommodation manager. The request from the Accreditation Committee will include:

- the complete details of the holiday accommodation manager (i.e. business and personal name, business address);
- the conduct in question;
- the effect of their conduct;
- the consequences of naming or not naming;
- any action already taken by Consumer Protection and the Dispute Resolution Panel;
- whether an investigation by the Panel has been performed and if not why not;
- any other actions being pursued by the consumer, like legal action;
- any other options available other than publicly naming the business;
- whether a warning notice has been issued and if not why not; and
- what form(s) the naming should take (e.g. media release, interview).

If the holiday accommodation manager is publicly named by the Commissioner for Fair Trading then the period for which the revocation will apply will be stated within the media communication.

As is the case under the existing Accreditation Program, a holiday accommodation manager whose accreditation is revoked will be required to immediately return all Accreditation Program material to TCWA and will be disallowed from using the accreditation logo while it remains unaccredited. The holiday accommodation manager will also be required to issue a letter, drafted by TCWA, to all its known current and future clients informing them of the revocation.

In the event of accreditation being revoked, the holiday accommodation manager will not be entitled to any refund on accreditation fees paid.

4.0 Conclusion

The recent emergence and uniqueness of the holiday accommodation management industry, as well as the low consumer risk that it presently poses, makes any legislative regulation of the industry seem inappropriate. The new voluntary Accreditation Program, specifically for the holiday accommodation management industry, is based upon a successful national model and is designed to replace the current legislative framework that currently applies under the *Real Estate and Business Agents Act 1978*.

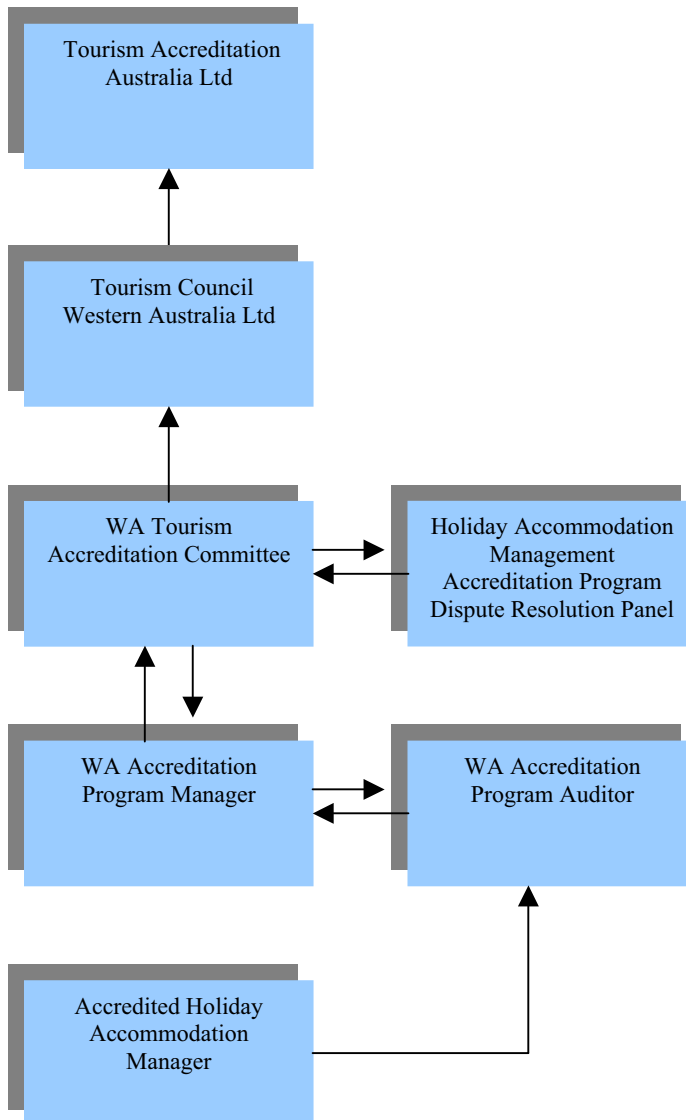
The new Accreditation Program for holiday accommodation managers offers legitimate consumer protection mechanisms and is endorsed by each of the government and industry bodies represented on the Holiday Accommodation Management Review Working Party. Consequently, the Accreditation Program will be proactively promoted by Consumer Protection and Tourism Western Australia to the extent that consumers will be encouraged to deal only with accredited holiday accommodation managers when not arranging their holiday stays directly with a property owner.

The Working Party is confident that the stronger consumer protection mechanisms within the new Accreditation Program will result in higher service standards being achieved within the holiday accommodation management industry, enhancing the already sound reputation of the Western Australian tourism industry locally, nationally and internationally. Therefore, the anticipated success and wider impact of the Accreditation Program could result in key aspects of the model being applied in the future to other segments of the tourism industry.

APPENDIX A

Accreditation program organisational structure

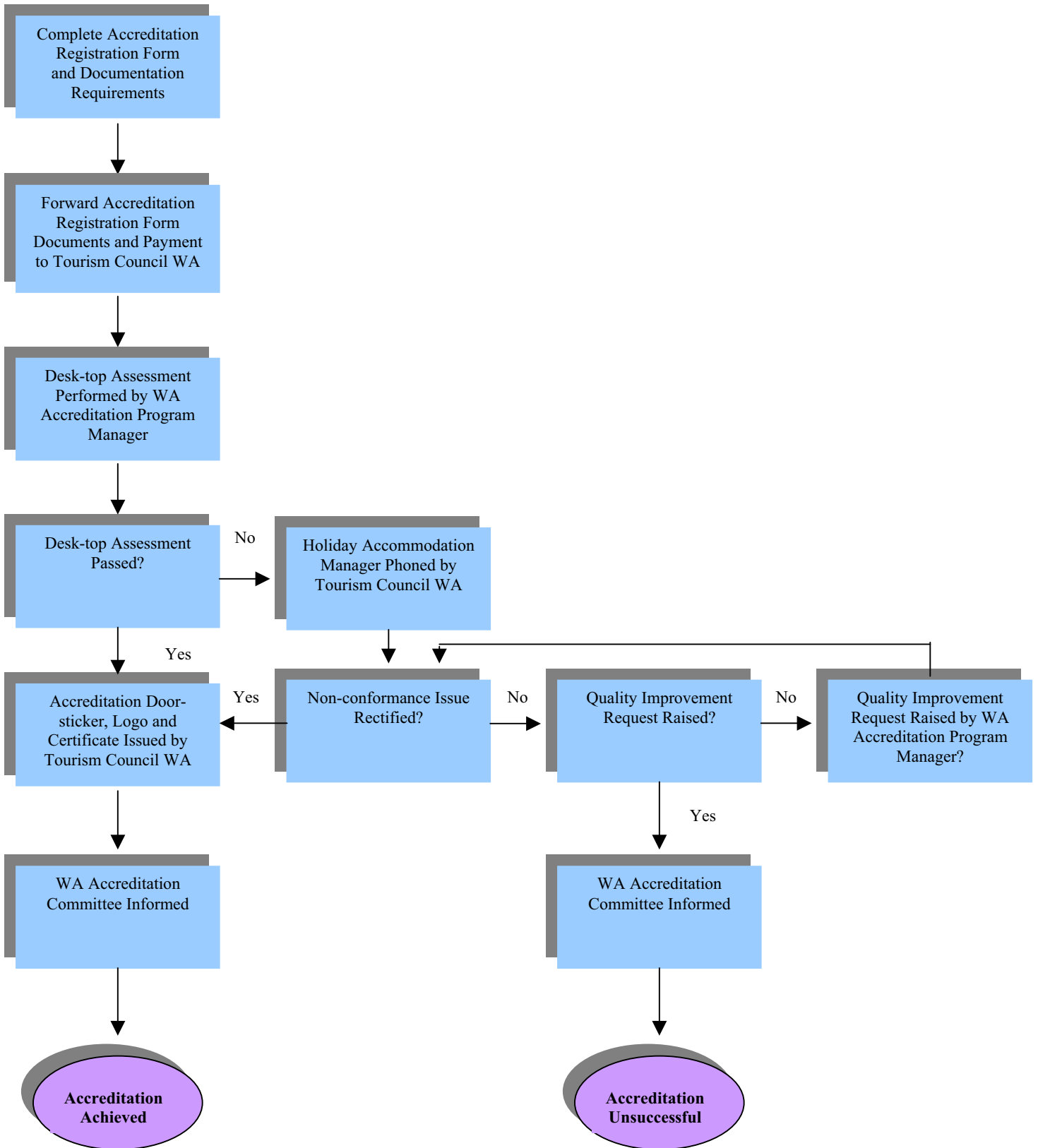
ACCREDITATION ORGANISATIONAL STRUCTURE



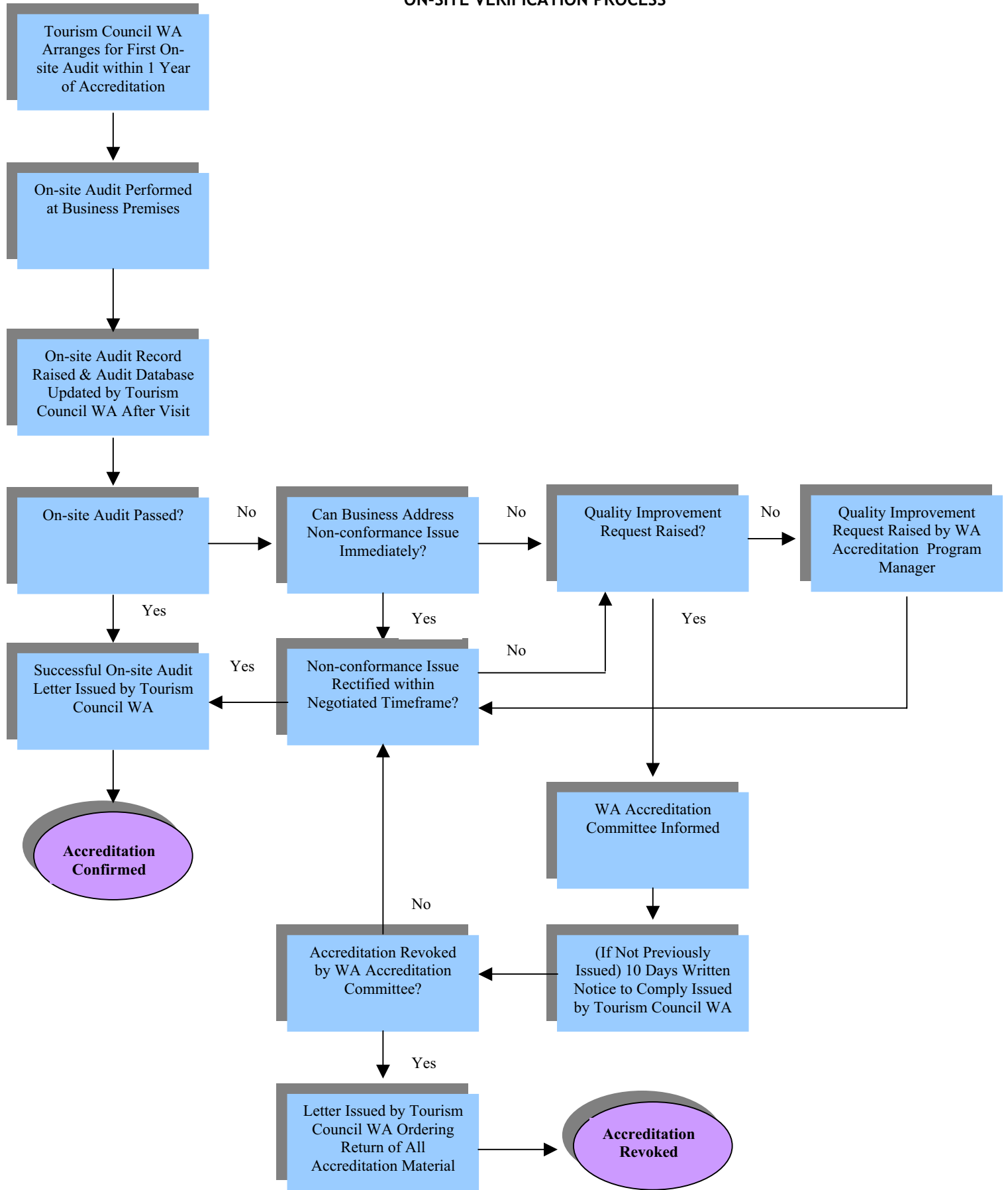
APPENDIX B

Accreditation registration and on-site verification processes

ACCREDITATION REGISTRATION PROCESS



ON-SITE VERIFICATION PROCESS



APPENDIX C

Working party members

Name	Organisation
Gary Newcombe (Chair)	Department of Consumer and Employment Protection
Alistair Conwell	Department of Consumer and Employment Protection
James Hewitt	Tourism Western Australia
Colleen Henry	Tourism Western Australia
Sally Hollis	Tourism Council Western Australia
Wendy Howson (Replaced Sally Hollis between August 2005 and January 2006)	Tourism Council Western Australia
Craig Green	Tourism Council Western Australia
Anita Jarvis	Western Australian Local Government Association
Pauline McLeod (Until 27 June 2005)	Visitor Centre Association of WA (Inc.)
Jennifer Rupp	Visitor Centre Association of WA (Inc.)

APPENDIX D

Accreditation program new code of ethics

CODE OF ETHICS

This Code applies to the businesses involved in the National Tourism Accreditation Program (WA), including any owners, directors, management and employees (collectively referred to as “the Operation”).

Customers include any individual or business desirous of using or receiving the services of the Operation.

Property owners include any individual or business with the authority to lease property ordinarily used for holiday accommodation for no more than three consecutive months at a time.

All appropriate licenses and insurances are current and other legal obligations, including adherence to local, State and federal statutory regulations, have been satisfied.

The Operation shall inform Tourism Council Western Australia of all instances of non-compliance with this Code.

The Operation acknowledges that if found to have breached any aspect of this Code then it may have its accreditation revoked for a period of time. If accreditation is revoked then the Operation will be named publicly, and will be required to issue, as soon as is practical, a letter drafted by Tourism Council Western Australia, to all its known current and future clients informing them of the revocation.

In the event of the Operation’s accreditation being suspended while a decision on revocation is being considered, the Operation:

- (i) agrees that it may be required to issue, as soon as is practical, a letter drafted by Tourism Council Western Australia to all its known current and future clients informing them of the suspension; and
- (ii) understands that Tourism Council Western Australia may inform other bodies within the tourism sector.

Ethical Business Practices and Customer Relations

The Operation agrees to abide by the following ethical practices in all its dealings with property owners and customers:

- Not acting as an agent for a property owner without:
 - (i) prior and appropriate authority to do so; and
 - (ii) first inspecting the premises to be managed and documenting all relevant inventory, and thereafter doing so at least every 12 months.

- Being responsible for all its advertising and promotional activities, and ensuring these activities shall reflect the true and accurate picture of the management service and accommodation being provided.
- Meeting the reasonable expectations of all customers to the best of its ability, and in doing so reserving the right to change its goods and services to meet expectations of its customers.
- Acting professionally with the utmost integrity and in the best interests of both the property owner and customers at all times, and in doing so treating all customers equally.
- Acting fairly and honestly in all dealings and keeping both the property owner and customer fully informed of all material facts (e.g. contractual terms and conditions like terms of payment and cancellation conditions, as well as all pertinent facts about the property) that a prudent holiday accommodation manager would be expected to be aware.
- Clearly informing customers, verbally and in writing, as to the process through which any bond money can be or is collected and refunded.
- Ensuring a full disclosure of all fees, including for bookings and commissions, are made to property owners and customers without compromising standard business confidentiality.
- Exercising the necessary skill, care and diligence in undertaking all tasks expeditiously.
- Not knowingly misleading or deceiving any party to a holiday accommodation transaction.
- Not engaging in harsh or unconscionable conduct.
- Properly supervising any staff and ensuring they comply with all provisions of this Code.
- Avoiding unnecessary work that would increase costs for either the property owner or the customer without their authority.
- Not demanding, retaining or receiving any commissions/fees which are greater than what was agreed with the customer, or which are unjust.
- Excluding essential emergency maintenance to the property, not seeking reimbursement from the property owner for excessive or unreasonable expenses that the property manager may incur.
- Ensuring that customer health and safety at the property is not compromised either before, during or after the lease period.
- Ensuring complete and up-to-date knowledge of this Code.
- Dealing fairly and amicably with all reasonable customer concerns and queries as soon as is practicable through its internal dispute resolution process.
- Abiding by any decisions made by the administering authority of the Accreditation Program, whether in relation to this Code or any other aspect of the Accreditation Program (e.g. dispute resolution).

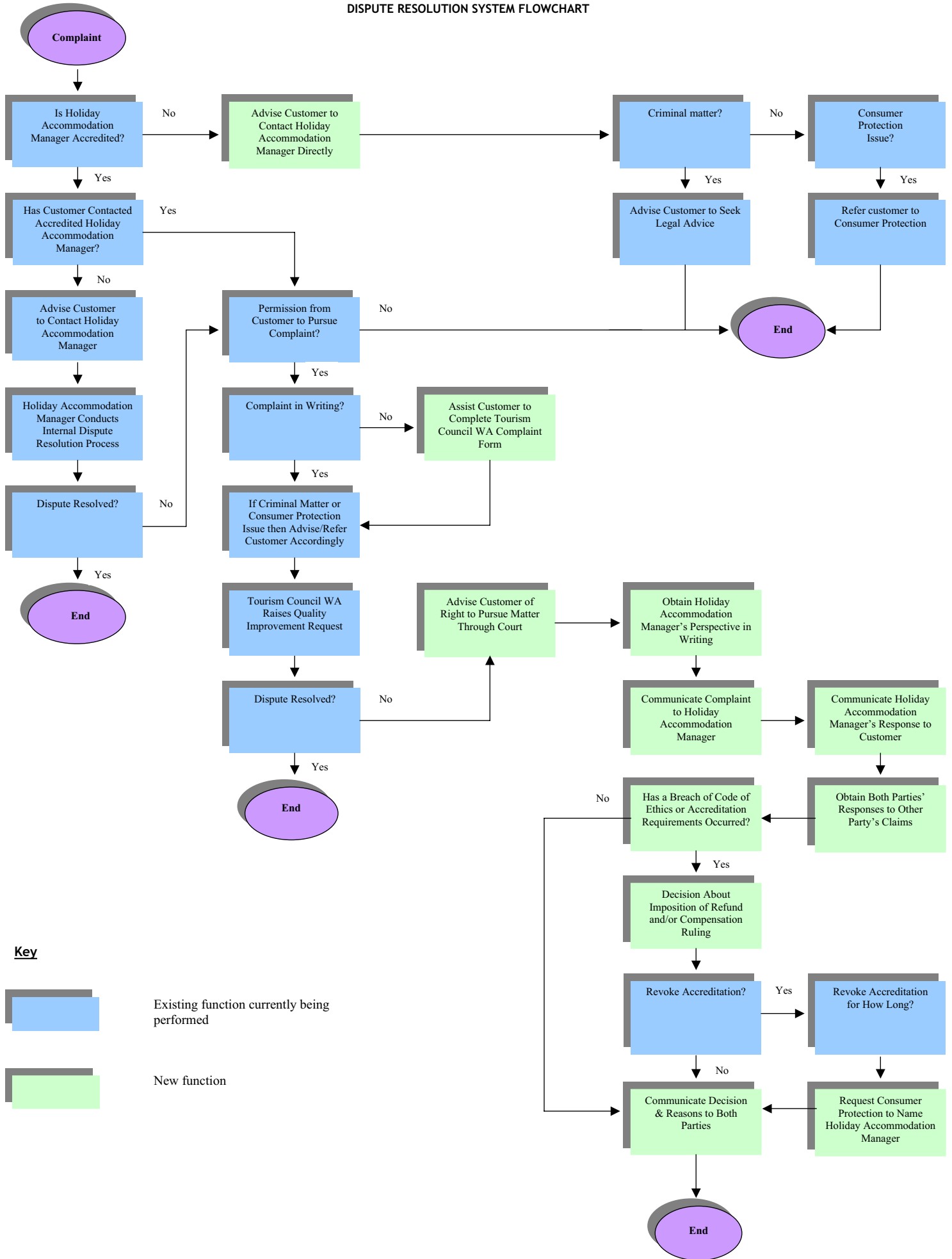
- Maintaining proper accounting records at all times, including a separate clients' bank account for monies received on behalf of property owners and customers.

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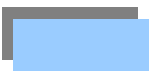
APPENDIX E

Accreditation program dispute resolution process

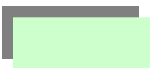
DISPUTE RESOLUTION SYSTEM FLOWCHART



Key



Existing function currently being performed



New function