

**ADEQUACY OF THE REGULATION OF SHORT-TERM  
HOLIDAY LETTING IN NEW SOUTH WALES**

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**Position:** National / NSW CEO  
**Date Received:** 19/11/2015

17 November 2015

Glenn Brookes MP  
Chair  
Committee on Environment and Planning,  
Parliament House, Macquarie Street  
SYDNEY NSW 2000

Dear Mr Brookes,

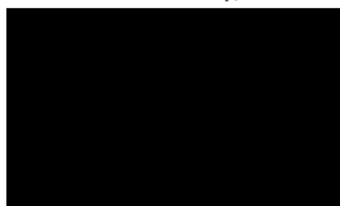
**Re: Inquiry into the adequacy of the regulation of short-term holiday letting in NSW**

Please find attached the submission from Tourism Accommodation Australia on behalf of the accommodation industry.

Please note that we would prefer that our submission is not published until the time of the inquiry. As this landscape is constantly changing we would also appreciate the opportunity to provide additional material in response to the changes.

We look forward to participating in the inquiry.

Yours Sincerely,



Carol Giuseppi  
National/NSW CEO  
Tourism Accommodation Australia



Tourism Accommodation Australia

“Getting Policy Right in the Age of the App”

## **Adequacy of the regulation of short-term holiday letting in New South Wales (Inquiry)**



**November 2015**

Contact:  
Carol Giuseppe  
CEO



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## 1. Tourism Accommodation Australia

Tourism Accommodation Australia (TAA) represents the needs and interests of the major hotels, motels and serviced apartments in Australia's accommodation industry, providing leadership for its members through advocacy, industrial relations and legal support, intelligence, research, education, and networking. TAA is focused on, and committed to, the future development and growth of the accommodation sector within Australia's vibrant tourism industry. TAA is a division of the Australian Hotels Association.

## 2. Tourism Accommodation

Tourism accommodation is a significant contributor to the NSW economy, and one of the largest sub-sectors of the tourism industry. Tourism accommodation directly contributed \$2.2 billion in gross product in 2013-14, and \$2.3 billion in gross value added.

The accommodation industry in NSW directly employs close to 21,000 people, and indirectly supports a further 42,000 jobs.

The tourism accommodation sector is estimated to have contributed approximately \$750 million in tax revenue during 2013-14.

## 3. Position Summary

The issue of unregulated accommodation is not new, but rapid growth in this type of accommodation offering has been fuelled by the popularity of online distribution channels, such as *Airbnb*. Digital platforms create new opportunities for unsophisticated market entrants, and as a consequence, the range of problems stemming from private, short-term accommodation has expanded across NSW.

It is important to note that TAA is not opposed to the "sharing" economy. As long-established market players, hotels understand that competition in the accommodation space encourages innovation, resulting in better services and value for customers. Accordingly, this submission does not set out to prohibit the entrenched practice of holiday letting, nor does it seek to curtail the freedoms of people who rent out spare beds to guests.

Instead, TAA believes that it is possible for governments to manage the issue of short-term accommodation and the problems that have proliferated alongside the digital economy by applying a clear, fair and proportionate regulatory framework to providers ("hosts") and facilitators (online distribution channels).

Evidence presented in this submission demonstrates that the existing legal frameworks are antiquated, resulting in digital distribution channels facilitating commercial-scale operations that are in many cases untaxed, unauthorised and unsafe. At present, the appropriate regulatory controls simply do not exist, or where they do, they can be easily evaded.

The legal "grey area"<sup>1</sup> in which "sharing" services currently exist confuses participants, and frustrates traditional operators that abide by stringent regulations and remit the appropriate level of taxation to revenue authorities.

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<sup>1</sup> [http://www.andrewleigh.com/sharing\\_the\\_future](http://www.andrewleigh.com/sharing_the_future)

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To persist with the status quo, risks:

- Endangering guests by failing to address the legitimate concerns that exist in relation to fire safety and other hazards in non-compliant accommodation;
- Entrenching the un-level playing field that exists between regulated and unregulated operators;
- Undermining confidence and investment in the regulated accommodation sector, which has flow-on economic impacts;
- Restricting the types of accommodation offerings that are available to disabled travellers with accessibility needs;
- Perpetuating tax avoidance, the extent of which is currently unknown;
- Disempowering communities that are adversely impacted by the unfettered growth of unauthorised accommodation;
- Damaging NSW's global reputation as a quality tourism destination.

In addition to devising a sensible and balanced legal framework that gives clarity to the types of accommodation options available, there is a demonstrated need for governments to work together to reduce red tape and cost structures for traditional hotels, leading to a more level playing field in the market.

Jurisdictions around the world are moving towards improving regulation of the short-term accommodation sector, legislating to establish transparency, create parity and improve safety outcomes.

It is the view of TAA that the issues which flow from unregulated accommodation should be addressed, in concert, by Federal, State and local governments, hence this submission makes recommendations aimed at all three tiers of government.

## 4. Key Terminology: “Sharing” is a misnomer

There are a number of interchangeable terms that are frequently used to describe the new economies that have mushroomed around digital platforms (collaborative consumption; peer to peer economy etc.) Many of the leading companies in this space identify as being part of the “sharing economy.” However, there is a growing acceptance among researchers and business analysts that this term is a misnomer. For example, the *Harvard Business Review* argues that the correct term for this phenomenon is the “access economy”:

*“Sharing is a form of social exchange that takes place among people known to each other, without any profit. When “sharing” is market-mediated — when a company is an intermediary between consumers who don’t know each other — it is no longer sharing at all. Rather, consumers are paying to access someone else’s goods or services for a particular period of time. It is an economic exchange.”<sup>2</sup>*

The characterisation of digital exchanges as “sharing” is problematic because it denies the commercial imperative behind each transaction, weighing against arguments for improved government controls, the application of taxes and mandated consumer protections.

The reality is that “sharing economy” channels facilitate big business. Backed by venture capitalists, one popular online accommodation platform – Airbnb – was recently valued at AUD \$34 billion,<sup>3</sup> making this single platform worth more than any international hotel chain.

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<sup>2</sup> <https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all>

<sup>3</sup> [http://www.brw.com.au/p/entrepreneurs/wantrapreneurs\\_read\\_this\\_before\\_XxkXu4XgztpUXJ2NPfxnwk](http://www.brw.com.au/p/entrepreneurs/wantrapreneurs_read_this_before_XxkXu4XgztpUXJ2NPfxnwk)

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For the reasons outlined above, TAA submits that the term “sharing” is misleading when applied to some of the commercial transactions that are facilitated through access economy platforms.

Generally speaking, digital platforms offer three types of accommodation options:

- 1) Shared or private rooms, where a guest rents a bedroom in a premise that is “hosted” (i.e. occupied) by the owner.
- 2) Un-hosted stays, where a guest rents out a person’s entire primary residence. Because the property is a primary residence, it is only available to be let in an un-hosted capacity for a limited number of days each calendar year.
- 3) Un-hosted stays in vacant properties that are not primary residences. The property is either managed by the owner, or a professional management company. Owners may list one or more properties for rental.

TAA regards the first two examples as being part of the true sharing economy. The third category is a type of unregulated commercial activity.

In this submission, TAA uses the term “unregulated accommodation” to describe private, short-term rentals, a phrase that reflects the absence of direct, specific legislation applying to the sector.

## 5. Unregulated accommodation: size and scale

Notwithstanding the growing resistance to the use of the term, digital platforms claim to facilitate “room-sharing.” Individual participants, known as “hosts”, reject the classification “of being in business”, and many online firms undertake PR activities designed to distinguish their services from the market-based activities of the traditional hotel industry. For example:

*“Airbnb was founded by regular people just trying to pay the rent by opening up their own home for a few days, so it is no coincidence that the vast majority of our hosts are doing just that. Airbnb allows long time residents to stay in their homes by earning just a little extra money to help make ends meet.”<sup>4</sup>*

In a submission to the NSW planning White Paper, Airbnb choose to highlight the sporadic listing of primary residences, rather than draw attention to the number of hosts that are responsible for multiple listings:

*“Our hosts generally rent their own homes occasionally – when on vacation or traveling for work or simply as a way to meet travellers from around the world. They are not running commercial enterprises. Rather the supplemental income they earn helps afford increasing costs of living...and even avoid eviction and foreclosure.”<sup>5</sup>*

By facilitating unregulated commercial activity, TAA is concerned that digital platforms have drifted from their original purpose, but have failed to accept this new reality.

A dearth of information makes it difficult to determine the composition of the unregulated accommodation sector, and assess the actual proportion of mum-and-dad, “just trying to pay the rent” operators in the Australian environment. However, studies undertaken in overseas jurisdictions have conclusively proven that commercial activity dominates.

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<sup>4</sup> <http://publicpolicy.airbnb.com/hotels-vs-regular-new-yorkers/>

<sup>5</sup> [http://planspolicies.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5927](http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=5927)

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Of particular note is a landmark report released by the New York Attorney General in October 2014, *Airbnb in the City*. Based on four years of data, this report highlights the number of professional landlords infiltrating Airbnb's online platform. The report is significant because it is one of the few studies based on data obtained directly from Airbnb, which it tendered after initially fighting a subpoena.<sup>6</sup>

### Box 1: Key findings of the New York Attorney General

- Commercial users dominated the platform, accounting for a disproportionate share of rentals by revenue and volume.
- Top commercial users ran multi-million dollar short-term accommodation businesses. One host made more than US\$6.8 million on 272 listings.
- 41 per cent of host revenue was generated in 3 affluent Manhattan neighborhoods. Less than 3 per cent of host revenue came from listings in Queens, Staten Island, and the Bronx, combined.
- Airbnb was forecast to generate \$282 million in revenue from its New York listings in 2014.
- New York City was likely owed \$US33 million in unpaid hotel taxes from illegal short-term rentals.
- Almost three-quarters of Airbnb rentals in New York City violated zoning regulations and other planning laws.

In March 2015, another comprehensive study, released by Los Angeles based think-tank, Laane, corroborated many of the findings of the New York Attorney General. Titled *Airbnb, rising rent, and the housing crisis in Los Angeles*, this study looked at the impacts of short-term rentals on the housing market.

### Box 2: Key findings of the Laane research

- The number of listed properties was far greater than expected, with the number of property listings outstripping the number of hosts, indicating commerciality;
- Almost 90 per cent of revenues were generated by hosts listing entire properties and leasing companies renting out two or more units;
- The renting out of whole units was exacerbating Los Angeles' housing affordability crisis and "hurting renters" by taking long-term rentals off the property market.

Crucially, the authors of the Lanne report explored a number of key "sharing" economy claims. For example:

*"Our data show(s) that the very individuals who are meant to benefit the most from AirBnB's service – 'ordinary citizens' – are more than three times more likely to generate no revenue than hosts with multiple listings."*<sup>7</sup>

With respect to the NSW market, it should be noted that sharing platforms such as Airbnb do not make their data available for analysis. However, the limited information available on the size and scale of the unregulated short-term accommodation industry, points to the increasing professionalism of the sector, which is now flourishing under the guise of "room sharing."

According to *Inside Airbnb*, a website run by an independent researcher, NSW listings follow international trends, with the bulk of Sydney hosts providing entire properties for short-term rental, rather than shared spaces. *Inside Airbnb* believes that shared spaces could comprise as little as 1.4 per cent of all listings. The website, which uses a code to "scape" data from Airbnb's site, also

<sup>6</sup> *Airbnb in the City*, New York State Attorney General, 2014

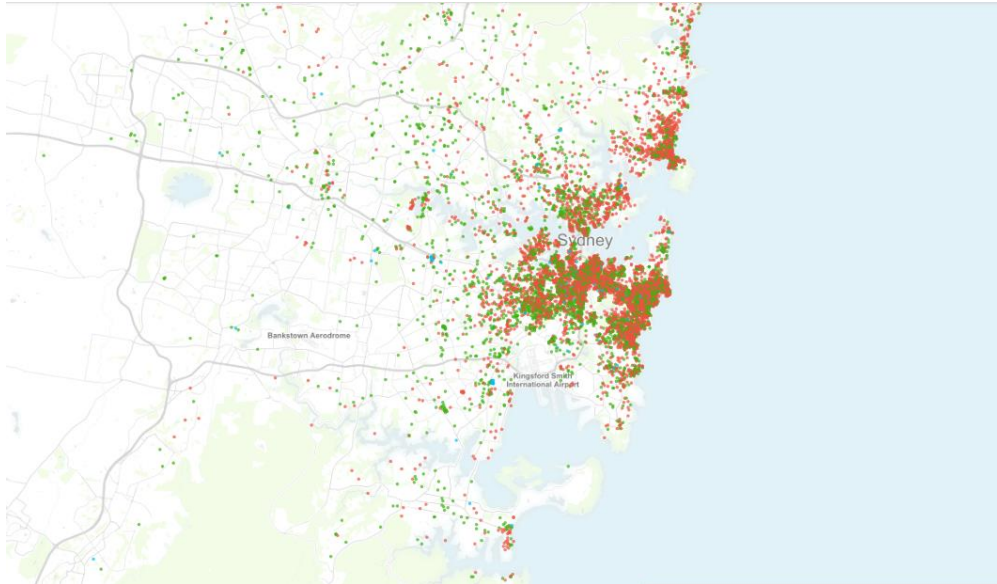
<sup>7</sup> *Airbnb, rising rent, and the housing crisis in Los Angeles*, Laane, 2015

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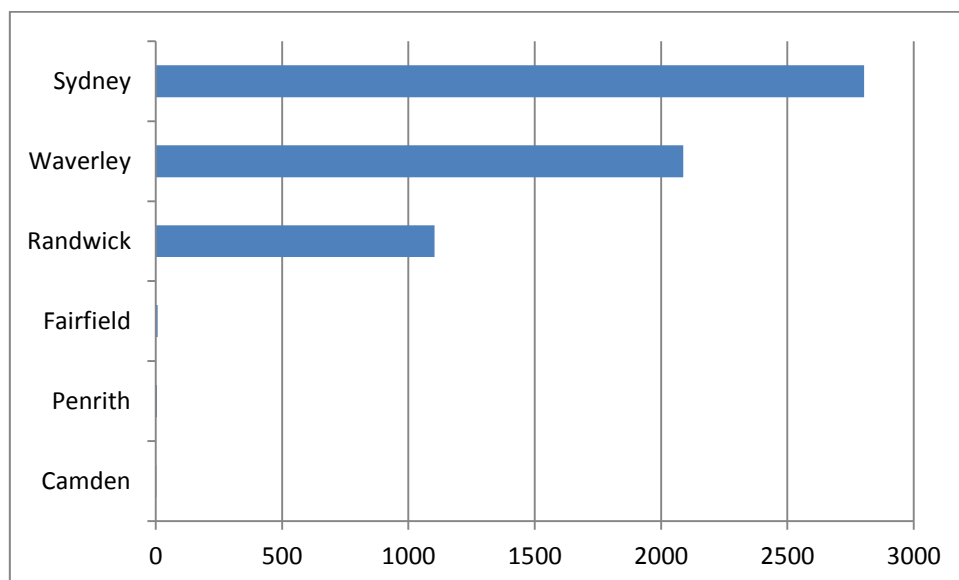
believes that 27% of hosts are responsible for multiple listings. The top Sydney host is responsible for 149 listings.

In line with the New York Attorney General's analysis of Airbnb properties, *Inside Airbnb* suggests that the highest number of listings are concentrated in wealthy areas, such as Sydney's CBD, eastern suburbs and North Shore. The lowest number of listings are found in parts of Western Sydney.

**Image 1: Distribution of Sydney listings**



**Figure 1: Number of listings per local government area**



Source: *Inside Airbnb* ([insideairbnb.com](http://insideairbnb.com))

Another key indicator of commerciality is the number of listings classified as having “high availability” (meaning that they are available to rent 90 days or more each calendar year). *Inside Airbnb* believes that the proportion of listings in the Sydney market with “high availability” is approximately 75 per cent. TAA notes that this statistic is consistent with data presented in the

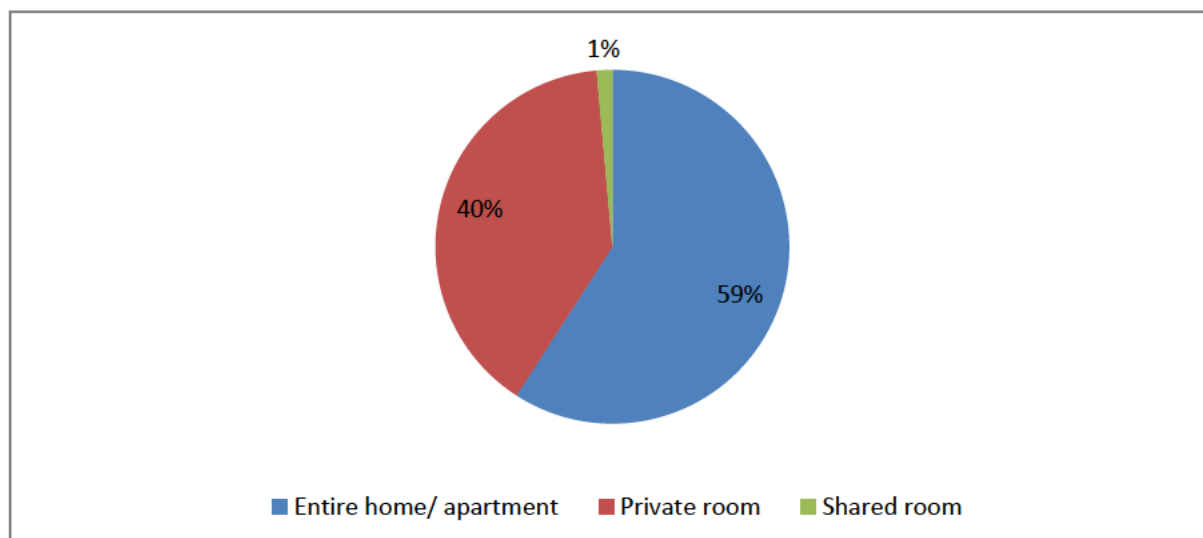
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Lanne report, which found that the occupancy rates of popular Airbnb units in Los Angeles ranged from 66 to 93 per cent, a rate comparable with the average occupancy rate of hotels.

Hotel level occupancy rates, high availability, and absentee “hosts” point away from “supplemental income” and towards commercial activity.

TAA reiterates that it does not object to the existence of private accommodation operators, but rather to the misclassification of these activities as non-commercial, which is used as justification for regulatory non-compliance.

**Figure 2: Percentage of listing types in Sydney**



Source: Inside Airbnb ([insideairbnb.com](http://insideairbnb.com))

## 6. The regulatory environment: hotel sector vs. unregulated accommodation

In assessing the adequacy of regulation of the private short-term accommodation sector the frameworks that apply to the hotel industry provide a good starting point. Accordingly, TAA has summarised some of the major areas of impact, which includes planning and licensing considerations, as well as accessibility requirements.

- *Planning*

The hotel industry has an exceptionally high cost of entry. Licensed hotels operate in a complex regulatory environment that places significant burdens on operators. The majority of hotels engage in a protracted and expensive process to obtain the relevant development consent. A recent report released by Austrade in October 2015 (*Hotel Development Regulations in Australia*) found that it takes 51 weeks to obtain a stage-one approval and 87 weeks to get a stage-two approval in Sydney. According to Urbis, the authors of this report, the required developer contributions for a four-star hotel in Sydney are approximately \$1 million. It should be noted that investors do not get a return on their outlay until they begin trading.

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Other aspects that escalate costs include compulsory design competitions (\$250,000), consultant reports (between \$30,000 and \$50,000) and car parking (adding \$40,000 to \$45,000 per space).<sup>8</sup> These costs and timeframes contrast sharply with the processes of some short-term accommodation operators, who simply open their doors without seeking to determine if relevant development approvals apply.

Under current planning arrangements, councils have the capacity to regulate short-term letting, however, in many areas the legality and expectations of operators remains unclear. A disparate and piecemeal approach that differs from council to council has led to properties that are essentially “defacto hotels” flying under the regulatory radar.

- *Licensing*

Following engagement with local government (and occasionally, state government) at a planning level, hotels typically seek an ‘on-premises’ or ‘hotel licence’ from the NSW government to authorise the sale of alcohol in restaurant and bar areas. Application fees range from \$700 to \$2,500. As part of this process, most applicants are required to undertake a “community impact assessment”, a consultation period that enables the local community to raise any relevant concerns or issues. To assist with this task, many applicants engage professional services from lawyers and/or consultants, adding another layer of expenses.

As licensed premises, hotels are subject to a number of regulatory requirements outlined under the *Liquor Act 2007*. For example, Section 79 of the *Liquor Act*, provides a mechanism for the local council, residents and police to lodge a formal disturbance complaint against a particular licensed premise with the NSW Director General.

By contrast, short-term accommodation providers are not required to be licensed, and are not impacted by a legislated complaints mechanism.

- *Accessibility requirements*

Another area of inconsistency relates to the applicability of the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards), which apply stringent room ratio requirements to class 3 buildings (hotels), but not to class 1 and 2 buildings (private homes; residential apartments).

### Box 3: Current room ratios applicable to Class 3 buildings

1 to 10 rooms	1 accessible room
11 to 40 rooms	2 accessible rooms
41 to 60 rooms	3 accessible rooms
61 to 80 rooms	4 accessible rooms
81 to 100 rooms	5 accessible rooms
101 to 200 rooms	5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100
201 to 500 rooms	9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200
> 500 rooms	19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500

- *Other frameworks*

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<sup>8</sup> *Hotel Development Regulations in Australia*, Austrade, Urbis, 2015

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There are a myriad of other laws that apply to the traditional hotel sector but fail to impact digital economy providers, either because the appropriate frameworks do not exist or because they are sidestepped. To demonstrate the size and scale of the chasm, TAA has attached an Addendum (Addendum 2) which summaries and contrasts the relevant consumer protections, taxes, regulatory process and legislation. It should be noted that this is not an exhaustive list but rather a snapshot of the major areas of differentiation.

Excessive regulatory frameworks equate to cost burdens on operators. A 2015 report commissioned by the ACCC commented on the very real competition issues created by “sharing” services:

*“A bigger issue for competition is ‘regulatory neutrality’ between sharing economy providers and traditional businesses.*

*At present, sharing economy providers have fewer regulations applied to and/or enforced against them, and this affects traditional businesses’ ability to compete.”<sup>9</sup>*

Underscoring this point, a comparative exercise undertaken by Choice shows the disparity in average prices offered by regulated and unregulated accommodation providers.<sup>10</sup>

City	Average Airbnb price	Average hotel price	Difference
Melbourne	\$133	\$177	\$44
Sydney	\$171	\$200	\$29

Source: Choice (Guide to using Airbnb, 2015)

TAA submits that the cost differential is largely a result of the fundamentally different regulatory requirements applied in the marketplace, as well as a reduced contribution to employment by unregulated operators.

Suggestions have been made that unregulated accommodation complements rather than competes with the traditional hotel sector. However, this is not the view of researchers who have studied the phenomenon in the US. For example:

*If AirBnB had no listings in Los Angeles, these guests would have stayed in Los Angeles hotels, supported good jobs for Angelenos, and had a negligible impact on the city’s neighborhoods, all while paying taxes.”<sup>11</sup>*

A different study, undertaken by HVS Consulting, assessed the impact of listings on Airbnb on New York City’s hotel industry over a 12 month period, concluding that it resulted in a direct loss of \$450 million.

Given the current lack of equilibrium in the marketplace, government policies aimed at addressing unregulated accommodation should also promote fair and equitable competition in the tourism accommodation sector.

## 7. The case for accountability and transparency

In addition to competition issues, unregulated accommodation creates a number of risks and challenges for governments and consumers, described in detail below. TAA believes these concerns

<sup>9</sup> *The sharing economy and the Competition and Consumer Act*, Australian Competition and Consumer Commission, Deloitte Access Economics, 2015

<sup>10</sup> <https://www.choice.com.au/travel/accommodation/homestays/articles/guide-to-airbnb>

<sup>11</sup> *Airbnb, rising rent, and the housing crisis in Los Angeles*, Laane, 2015

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can be addressed by establishing a legal framework that promotes transparency with respect to taxation and consumer protection requirements.

- *Taxation*

Australia faces well-publicised challenges in relation to taxation. An aging demographic and growing populace are placing pressures on public spending. Much of the political discourse around tax reform is focused on achieving “fairer” outcomes. However, when it comes to the “sharing economy”, there are suggestions that this segment of the accommodation market is failing to meet its tax expectations. Guidance released by the Australian Tax Office stipulates that income earned from “sharing services” must be declared, but the extent to which this occurs is unclear. Two articles recently published on ABC Online summarise the problem:

*“One of the criticisms of Airbnb is that it functions as a black market, with owners dodging taxes by not declaring their income.”<sup>12</sup>*

*“Tens of thousands of Australians are pocketing extra cash by renting out their house or spare room on home-sharing websites, but much of the money is changing hands in a regulatory twilight zone. Government regulation is lagging way behind the booming sharing economy, leaving many households unsure of the rules or operating on a “don’t ask, don’t tell” basis”.<sup>13</sup>*

The potential for tax evasion in the unregulated accommodation sector should be of concern to Government because the amount of income earned through the access economy is substantial. Estimates based on Airbnb’s self-reported figure for average earnings puts the amount of income raised through this single platform to be in the vicinity of \$300 million.

At a recent Tax Reform Summit, University of Sydney Law School professor Rebecca Millar said there was no justification for tax evasion via “sharing” services:

*“Some people argue that [it is] residential accommodation and it shouldn’t be taxed; well it’s millions and millions of dollars [in lost revenues]. They should all be paying income tax.”<sup>14</sup>*

Given the potential for tax leakage, it is appropriate for the Australian Government to follow examples set by international jurisdictions which have implemented structures to ensure that unauthorised accommodation operators are remitting the correct level of taxation to revenue authorities.

### Case Study: Europe

In Ireland, where Airbnb has a satellite office, the company is legally obliged to pass on details of hosts’ income to Ireland’s revenue authority.<sup>15</sup> Individuals found to be non-compliant with Ireland’s tax laws are liable to receive retrospective tax bills. Ireland’s Tourism Minister, Paschal Donohoe has embraced this policy setting:

*“To my mind anybody who is working with Airbnb must provide absolute clarity regarding the kind of income they’re deriving from working with Airbnb. I think it’s very important that all of these matters are transparently dealt with.*

*It’s important because we need to ensure there’s a level playing field between the type of accommodation Airbnb provide versus other forms of accommodation that are available to tourists who come to our country.”<sup>16</sup>*

<sup>12</sup> <http://www.abc.net.au/radionational/programs/blueprintforliving/hotel-industry-cries-foul-over-airbnb/6323358>

<sup>13</sup> <http://www.abc.net.au/news/2015-08-16/calls-for-regulation-of-home-sharing-economy/6696078>

<sup>14</sup> <http://www.afr.com/news/politics/tourism-minister-richard-colbeck-to-take-close-look-at-uber-airbnb-20150924-gju2i8>

<sup>15</sup> <http://www.irishtimes.com/news/ireland/irish-news/revenue-advises-airbnb-hosts-to-file-tax-returns-or-face-penalties-1.2312974>

In light of the Irish Government's decision, tax experts in the United Kingdom are tipping that similar arrangements will soon be in place for British users.<sup>17</sup>

In France, where cities like Paris face significant problems as a result of illegal accommodation, regulators are considering the introduction of a "tracking system" to ensure that the correct amount of taxation is paid.<sup>18</sup>

In theory, gaining access to accurate information is a straightforward exercise, because all income derived via a "sharing" platform produces an electronic record. In a recent media article, Airbnb General Manager for Australia Sam McDonagh was quoted as saying that the company would adopt a cooperative approach to the issue of taxation:

*"...we'd work with (the ATO) on any request they make of us."<sup>19</sup>*

However, it should be noted that in overseas jurisdictions, the company has not voluntarily been forthcoming with information. For example, in the US City of Portland, City Commissioner Nick Fish criticised Airbnb for arguing against the release of information on privacy grounds, stating:

*We have an obligation to [enforce the law]. The only way we can do that is [if] we know where they live, and you're claiming that's confidential and somehow an erosion of your privacy rights. We are not asking for people's confidential information. We are asking for an address of a home-based business, and under your view because that has an internet component that raises privacy concerns that are different than motels and hotels. We invoke the internet and we claim an exemption from all the other laws and rules of society. If we don't have an enforcement mechanism that works why on earth would we give you the green light to do something that we can't reasonably enforce?"<sup>20</sup>*

Subsequent to this exchange, the City passed laws to address the Commissioner's concerns. As a result, Airbnb must now submit contact information for all hosts for any regulatory or tax purpose, and display a permit number on all listings.

In the Australian context, a further taxation concern relates to the application of GST in the accommodation sector. Whereas traditional hotels pay GST on every transaction, many unregulated accommodation providers currently do not make a GST contribution. This is because under current tax laws, businesses are only required to register for GST if turnover meets a threshold of \$75,000 or more, per annum. TAA notes the reported number of commercial operators in this space, and argues that a mechanism for transparency is required to ensure that the correct level of GST has been applied.

Because short-term rentals operate in a regulatory vacuum, the application of capital gains tax (CGT) could also be an issue. Most real estate, apart from an individual's "main residence", is subject to capital gains tax, meaning that many hosts should be paying CGT on future property sales.

It should be noted that regulated accommodation makes a substantial tax contribution, paying a range of taxes and levies to local, state and federal revenue authorities, including council fees that are set at business rates, payroll tax and company tax. An AEC Group study reported that the tax

<sup>16</sup> <http://www.irishtimes.com/news/politics/airbnb-hosts-must-provide-absolute-clarity-on-earnings-1.2313617>

<sup>17</sup> <http://www.telegraph.co.uk/finance/personalfinance/tax/11796861/Are-shock-tax-bills-on-the-way-for-British-Airbnb-landlords.html>

<sup>18</sup> <http://www.rudebague.com/2015/09/21/taxing-sharing-frances-latest-digital-economy-tax-targets-airbnb-blablacar-others/>

<sup>19</sup> <http://www.abc.net.au/news/2015-08-16/calls-for-regulation-of-home-sharing-economy/6696078>

<sup>20</sup> Video: "City Commissioner Nick Fish Berates Airbnb Lobbyist." Willamette Weekly

contribution by the accommodation sector to the Australian Government exceeded \$750 million in 2011.

- *Consumer Protections*

Hotels are required by law to provide a safe and secure environment for guests, staff and visitors, and have comprehensive standards that cover general safety and fire risks. Hotels are regularly inspected by authorities to ensure that they remain compliant. In addition to mandated requirements, branded hotels, in particular, have an added incentive to maintain “gold standard” safety standards because the reputation of many properties across the globe is tied to a single branding.

**Box 4: Examples of the types of safety measures present in hotel accommodation**

- |                                       |                                   |                                    |
|---------------------------------------|-----------------------------------|------------------------------------|
| • Secure locks on windows/ doors      | • Hard-wired smoke detectors      | • Electrical safety switches       |
| • Safe and secure balconies           | • Fire extinguishers and blankets | • Emergency lighting in stairwells |
| • Sprinklers on ceilings              | • Fire doors and escapes          | • PA systems                       |
| • Fire detection systems              | • Onsite staff contactable 24/7   | • Communications procedures        |
| • First aid kits incl. defibrillators | • Security personnel              | • Staff trained in first aid       |
| • Back-up generators                  | • In-room safes                   | • Incident report registers        |

In addition to general safety measures, as class 3 buildings, hotels are subject to a range of fire prevention controls. The justification for stringent fire controls is based on the assumption that the less familiar a person is with a building or premises, the more assistance and information they require to escape safely in an emergency. Alarms, early detection equipment, emergency lighting, public announcement systems and readily available information relating to escape routes and key emergency services contacts are standard features available in hotel premises. Hotels use clear, internationally recognised symbols and translated signs to overcome language barriers. Hotel staff and/or security personnel are usually onsite, and are available to address concerns and respond to emergency situations as they happen.

In the case of unauthorised accommodation, the risks and responsibilities that are normally absorbed by a well-resourced, regulated company are assumed by individual hosts. For example, an asterisk on Airbnb’s Responsible Hosting page clarifies that:

*“...Airbnb has no control over the conduct of Hosts and disclaims all liability”.<sup>21</sup>*

As a result of this arrangement, safety features are not guaranteed.

A recent article by Choice commented on the “luck of the draw” style approach to safety in unregulated accommodation:

*“Not all places have the same standards, or even adequate standards. Some places could be unclean, others unsafe for kids or [they could] have no smoke alarms.”<sup>22</sup>*

While some platforms provide ‘hosts’ with general guidance on safety, they do not compel providers to conform to common standards, nor do they inspect properties to make sure there are, for example, working smoke alarms or clear exit points. This is despite platforms demonstrating that they have the capacity to offer services to listed properties. Airbnb, for example, can organise for a

<sup>21</sup> <https://www.airbnb.com.au/help/responsible-hosting>

<sup>22</sup> <https://www.choice.com.au/travel/accommodation/homestays/articles/guide-to-airbnb>

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photographer to visit a property at no cost to the owner. The pictures taken are used for marketing purposes.

At present, consumers who choose to stay in unregulated accommodation are left to make their own judgements about safety based on information available online.

An investigative journalist writing for *Business Insider Australia* recently highlighted the shortcomings of online verification systems used to list accommodation:

*To test Airbnb's [safety] system, I signed up as a host. I took a few photos of my house, inside and out, uploaded them to the Airbnb website, and within 15 minutes my place was "live" as an Airbnb rental. No background check, no verifying my ID, no confirming my personal details, no questions asked. Not even any contact with a real human from their trust and safety team. Nothing.*

*I could have used photos of my neighbour's house, or even photos saved from the website of Better Homes and Gardens. Within an hour, I had my first inquiry from a guest. Within a couple of months, I had over a dozen reservation requests that would have netted me at least \$US4000 in short-term rental income. This had the makings of a seriously lucrative enterprise.<sup>23</sup>*

In responding to incidents that are published in the media, digital platforms frequently point to statistics to argue that problems are infrequent and "rare".

However, TAA is of the view that a responsible business does not regard visitor safety as a lottery.

Under the existing legal frameworks, guests that choose to stay in unregulated accommodation are being exposed to a range of risks. Laws should be enacted to ensure that basic safety standards exist, and claims about safety can be verified.

- *Insurance*

The majority of hotels are insured to the value of \$20 million. Conversely, unregulated accommodation hosts may have no insurance, or a policy that can be voided by the act of short term letting. This situation leaves both hosts and guests exposed.

In response to concerns about insurance, some – but not all – platforms are rolling out public liability policies, however TAA cautions that insurance should not be viewed as an adequate substitute for the types of safety protocols that prevent incidents from occurring in the first place. A recent death in an Airbnb property demonstrates the risks associated with the "ambulance at the bottom of the cliff" approach.<sup>24</sup>

It also remains to be seen whether such policies will be effective in circumstances where an injury occurs on common property such as in a lift or hallway. TAA has met with representatives of owners' corporations who have expressed concerns that they may become liable for incidents.

- *Reputation for Safety*

NSW currently enjoys a reputation as one of the safest places to travel in the world. This reputation is essential to attracting high-yield, important segments of the tourism market, such as outbound Chinese visitors. Research has demonstrated that Chinese travellers rank "safety" as a top five consideration when making decisions about destinations. In an interview given about the

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<sup>23</sup> <http://www.businessinsider.com.au/the-two-faces-of-airbnb-2015-10>

<sup>24</sup> <http://www.smh.com.au/technology/web-culture/son-tells-his-anguish-over-the-death-of-his-father-in-airbnb-rental-20151110-gkuyba.html>

preferences of Chinese travellers, Chief Operating Officer of the China Business Network, Dr Adam Wu, commented on the importance of maintaining visitor safety in a competitive tourism market:

*"The perception of a safe [environment] is of paramount importance to all visitors – not just the Chinese. The world is more wired than ever before and bad news travels fast."*<sup>25</sup>

Jurisdictions around the world are legislating standards for private, short-term accommodation. TAA is concerned that the reputation of the wider tourism industry has the potential to be adversely impacted by the 'cowboys' of unregulated accommodation if a culture of safety is not established.

## 8. Impact on communities

Governments should be aware that any benefits that accrue privately to landlords through private, short-term accommodation are offset by wider impacts to the community, including neighbourhood disturbances, the potential for higher rental prices, and a lack of direct employment. To provide the Inquiry with context, TAA has detailed the socio-economic impacts associated with unregulated accommodation.

- *Employment*

The NSW hotel industry is a substantial contributor to the NSW economy, through both direct and indirect employment. Statistics from Destination NSW show that the accommodation industry is the third largest contributor to tourism employment. It is estimated that the hotel sector employs close to 21,000 people across NSW and indirectly supports a further 42,000 jobs.

Compared with other industries, the accommodation sector is very labour intensive, with wages representing a significant cost structure for operators. The industry invests in its workforce through training opportunities, with an average of 15 hours of training given per employee across all positions<sup>26</sup>.

For many people, a job in tourism accommodation is their first entry into paid employment. The industry is also a key employer of young people in regional and remote areas.

### Box 6: Examples of the types of jobs available in the regulated tourism accommodation sector

- |                            |                                       |                              |
|----------------------------|---------------------------------------|------------------------------|
| • Concierge/ desk clerk    | • Housekeeper                         | • Barista                    |
| • Valet                    | • Hotel manager/ assistant manager    | • Bar person                 |
| • Security/ doorperson     | • Sales director/ booking coordinator | • Chef/ cook                 |
| • Administration assistant | • Marketing manager                   | • Functions coordinator      |
| • Baggage handler          | • Social media coordinator            | • Accountant                 |
| • Room attendant           | • Butler/maid                         | • Maintenance person         |
| • Cleaner                  | • Food and beverage attendant         | • Spa therapist              |
| • IT specialist            | • Sustainability advisor              | • Human resources specialist |
| • Gardener                 | • Event planner                       | • Kitchen hand               |

In most cases, unregulated accommodation providers do not make a substantial contribution to employment. This is because it is common for property owners to perform the tasks normally undertaken by cleaners and booking management staff. They also do not offer a suite of services for guests, resulting in reduced employment levels.

<sup>25</sup> <http://www.eturbonews.com/61142/capturing-lucrative-china-outbound-tourism-market>

<sup>26</sup> *Labour Trends in Accommodation Survey*, AEC Group, 2013

Researchers and academics studying the impacts of the “sharing economy” have commented on the shift away from the regular, full-time, stable employment that is provided by traditional industries, towards the types of ad hoc, contract work supported by sharing services. In a speech delivered in early 2015, American presidential candidate Hillary Clinton remarked on the changing nature of the US workforce:

*“Many Americans are making extra money renting out spare rooms, [or] even driving their own car... [It’s] raising hard questions about workplace protections and what a good job will look like in the future.”<sup>27</sup>*

While the provision of short-term accommodation can be lucrative for full-time landlords, it should be noted that digital platforms regard their hosts as contractors rather than employees. *The Economist* believes that this could lead to a situation where “taxpayers will end up supporting many contract workers who have never built up pensions”.<sup>28</sup>

Various international studies have looked at the relationship between unregulated accommodation and employment. The Lanne study, for example, concluded that if the 11,400 Airbnb listings in Los Angeles market were hotel rooms, this would lead to an additional 7,400 hotel workers.

Contrary to claims that sharing services attract new and different clientele, a 2013 Boston University study concluded that Airbnb had a statistically significant impact on hotel revenue (-10 per cent).<sup>29</sup> A similar revenue impact in an Australia would result in job losses from the hotel sector.

Despite being a global company that operates across 33,000 cities and 192 counties with satellite offices in Dublin, London, Barcelona, Paris, Milan, Copenhagen, Berlin, Moscow, São Paulo, Singapore, and Sydney, Airbnb’s LinkedIn profiles advises that the company’s direct contribution to employment is somewhere between 1000 and 5000 people.<sup>30</sup>

Governments at all levels should be aware that growth in unregulated accommodation has the potential to cost jobs and reduce tourism-related employment at a time when the sector is viewed as a key contributor to employment, now and in the future. A press release issued by the Tourism and Transport Forum recently highlighted the growing importance of tourism-related employment:

*“With the unemployment rate at its highest level in more than a decade and jobs declining in old-economy sectors like mining and manufacturing, Australians understand that tourism is the employer of the future.”<sup>31</sup>*

According to Mark Wooden, a research fellow at the University of Melbourne, the accommodation industry in particular is a stand-out employment sub-sector:

*“The reality is that with only a few exceptions (notably, ‘healthcare and social assistance’, and ‘accommodation and food service’) rates of employment growth have declined in all sectors.”<sup>32</sup>*

While access economy firms may spruik the “positive impact of home sharing” on economies through studies that purport to show flow-on employment impacts, a writer for the LA Times,

<sup>27</sup> <http://www.abc.net.au/radionational/programs/latenightlive/uber-jobs-under-spotlight-as-courts-consider-drivers-status/6702398>

<sup>28</sup> <http://www.economist.com/news/leaders/21637393-rise-demand-economy-poses-difficult-questions-workers-companies-and>

<sup>29</sup> *The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry*, Boston University, 2013

<sup>30</sup> <https://www.linkedin.com/company/airbnb>

<sup>31</sup> <http://www.ttf.org.au/Content/mediareleases.aspx>

<sup>32</sup> *Keeping low-skilled, low-paid in jobs a policy challenge*, The Australian, 2 November 2015

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Michael Hiltzik, has cautioned against the uncritical acceptance of claims that feature only in non-independent research:

*"Until [digital platforms] open their books, the "studies" they base on them should be treated skeptically."*<sup>33</sup>

In order to preserve direct tourism employment, the NSW government should comprehensively model and consider the full impacts of policies on employment levels and long-term job prospects in the accommodation sector, prior to legislating in this space.

- *Deteriorating neighbourhoods*

The spread of unregulated accommodation into suburban areas has caused issues for local residents, including increased traffic congestion, a lack of available parking, reduced security, noise complaints and decreased amenity. Many hosts disregard the views of neighbouring property owners who are impacted by short-term accommodation, believing that they have an unchallengeable right to "do what they want" with a purchased property. However, there have always been controls and restraints on commercial and residential property, imposed through planning laws and other regulatory frameworks.

At present, the renting out of residential units as short-term accommodation runs counter to zoning restrictions in some local government areas. In other areas, local planning instruments do not provide clarity on these activities. When the correct planning controls are not in place or enforceable, rate payers lose their ability to make decisions about what kind of environment they are suited to living in. For example, retirees or a young family who move into a residential apartment building may find they are suddenly living next door to what is essentially a 'rogue hotel' that regularly accommodates bucks' and 18<sup>th</sup> birthday parties.

TAA is regularly contacted by frustrated residents seeking resolutions to issues caused by unregulated accommodation providers. It is the view of many residents that local councils are disinterested in dealing with this issue and are only willing to pursue an outcome if the matter directly involves the very specific issue of accommodation overcrowding. TAA has met with local council representatives who say that the very high evidentiary burden required to prove that illegal activity has taken place is a barrier to enforcement because operators simply shut down during any investigative period.

Property law expert Peter Ton, of Grace Lawyers, views the lack of action by local governments in NSW as inherently linked to the broader regulatory framework:

*"[Local government puts unregulated accommodation in the] too hard basket. It costs a lot of money to pursue prosecutions and to be frank, there isn't any direct legislation that applies here; there is a vacuum in the regulation."*<sup>34</sup>

Recognising that there are legitimate community concerns, some states, for example Queensland, have introduced specific legislation to deal with the issue of "party houses" (i.e. premises that are consistently rented by unruly groups of people). However, after meeting directly with affected residents and their representatives, TAA submits that the issue is far broader; "party houses" are merely a subset of issues related to unregulated accommodation.

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<sup>33</sup> <http://touch.latimes.com/#section/-1/article/p2p-84561532/>

<sup>34</sup> <http://www.news.com.au/travel/travel-updates/rising-angst-over-airbnb-operations/story-e6frfq80-1227210877547>

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Under the frameworks that apply to the regulated sector, the community engagement and development processes ensure that neighbours are consulted, and given the opportunity to raise concerns at an early stage.

- *Impact on vulnerable communities*

Though experiencing exponential growth, indications suggest that levels of unregulated accommodation in Australia are well below those experienced internationally. In jurisdictions and cities where digital accommodation platforms have been popular for longer, the full impacts of unfettered growth are demonstrated. For example, in Paris, New York, Los Angeles and San Francisco, a major consequence of unregulated accommodation has been the exacerbation of housing affordability issues. A number of major studies and economic assessments explain the connection between growth in unregulated accommodation, rising rents and reduced housing affordability, including the Lanne research:

*“By incentivizing the large-scale conversion of residential units into tourist accommodations, Airbnb forces neighborhoods and cities to bear the costs of its business model. Residents must adapt to a tighter housing market. Increased tourist traffic alters neighborhood character while introducing new safety risks. Cities lose out on revenue that could have been invested in improving the basic quality of life for its residents. Jobs are lost.*

*Airbnb has created a nexus between tourism and housing that hurts renters. The 7,316 units taken off the rental market by Airbnb is equivalent to seven years’ of affordable housing construction in Los Angeles. Airbnb density overlaps with high median rents and lower rental vacancy.”<sup>35</sup>*

## 9. Impact on investment

Tourism is widely considered to be a “super-growth”<sup>36</sup> sector that is poised to add strength to the economy as the resources boom slows down. A key pillar of economic prosperity, governments invest time and resources in formulating strategic plans for the tourism sector. For example, the *Tourism 2020* strategy recognises the importance of the hotel accommodation sector, linking the goal of doubling overnight visitor expenditure to supply targets for hotel accommodation.

Currently little is known about the impacts of unregulated accommodation on visitor expenditure and investment in the visitor economy. However, it is important to understand that investors in the NSW visitor economy make decisions based on the quality of available information, and the ability to make an attractive return on investment.

Current government statistics fail to accurately categorise and capture the unregulated sector. The absence of a licensing or registration framework (as is the case for regulated liquor and food businesses) means that it is difficult to determine the amount and distribution of inventory added by short-term operators. Whereas hotels are the by-product of extensive market research, considerable investment and planning approval, the low to virtually non-existent barriers to entry for unregulated operators has resulted in explosive growth. For example, Airbnb, has grown rapidly from 3 airbeds in a single San Francisco apartment in 2008 to more than 1.5 million listings worldwide in 2015.<sup>37</sup> There are a reported 42,000 listings in Australia<sup>38</sup>.

<sup>35</sup> *Airbnb, rising rent, and the housing crisis in Los Angeles*, Laane, 2015

<sup>36</sup> <http://www2.deloitte.com/au/en/pages/media-releases/articles/super-growth-sectors-worth-250b-build-australias-lucky-country-081013.html>

<sup>37</sup> <http://www.dailytelegraph.com.au/newslocal/north-shore/airbnb-has-luxurious-poolside-mansions-and-bush-side-villas-for-rent-in-sydney-but-are-they-legal/story-fngr8h9d-1227538853801>

<sup>38</sup> *Ibid.*

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A real risk is that growth in unregulated accommodation has the capacity to undermine confidence in the hotel market and distort the supply targets set by government. When a significant segment of the market operates in the shadows, it is difficult to assess if precincts have the correct level and mix of supply to appeal to high-yield visitors. Longer term, an oversupply of available room stock can lead to a detrimental impact on demand, as poor levels of investment result in an absence of regeneration, reducing pull factors for travellers.

A lack of investor confidence in the tourism market has far-reaching implications for NSW.

Hotels are critical economic infrastructure, not just for the tourism industry, but for the whole economy. For example, in the Sydney region alone, hotels directly employ 14,600 people, and generate \$1.3 billion in Gross Regional Product. A study commissioned by TAA in 2012 found that discouraging hotel investment in Sydney could result in a loss of \$1.7 billion worth of investment by 2020.<sup>39</sup>

The requirement to register short-term visitor accommodation properties would provide key players in the visitor economy with the information they need to make investment decisions, and enable governments to exercise and enforce planning controls.

## 10. International comparisons

In devising a set of regulations to deal with the existing and anticipated issues associated with unregulated accommodation, Australian governments have the benefit of observing actions taken by overseas jurisdictions. It is worth noting that countries which have passed reactive measures – acting only after the problems are acute and widespread – have struggled to set policies that are understood and unenforceable.

International examples also show that regulations are toothless unless digital platforms play a role in making sure they are followed, as demonstrated by the regulatory experiences of the US cities, San Francisco and Portland.

- **San Francisco**

San Francisco is the birthplace of Airbnb. In February 2015, the City amended its planning codes to allow some residential properties to conduct short-term letting without violating the law. This new framework allowed eligible permanent residents (i.e. owners and tenants) to place a residential unit on a government registry, subject to the following conditions:

- Hosts obtain a business registration certification from the tax office;
- Hosts obtain insurance to the value of \$500,000 or higher;
- Units must not have any outstanding planning, building, fire or health code risks or violations;
- Hosts can only register one residential unit.

In addition to these requirements, the law limits “un-hosted” rentals (i.e. where the owner is not present in the unit) to a maximum number of 90 days per year. Violations of this limit can attract a financial penalty.

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<sup>39</sup> [http://www.tourismaccommodation.com.au/wp-content/uploads/2012/08/TAA-SYDNEY-HOTEL-INDUSTRY\\_POSTION-PAPER-APRIL-12-FINAL-v6.pdf](http://www.tourismaccommodation.com.au/wp-content/uploads/2012/08/TAA-SYDNEY-HOTEL-INDUSTRY_POSTION-PAPER-APRIL-12-FINAL-v6.pdf)

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“Hosted” rentals – where the owner is present overnight for the duration of the stay – are not subject to this limit.

At present the law does not require hosting platforms to play a role in upholding these requirements. As a result, it has been estimated that up to 90 per cent of hosts have not registered and many rentals regularly exceed the 90 day limit.

- **Portland**

Legislation introduced in Portland requires hosts to obtain a permit, pass a safety inspection, and pay the appropriate level of taxation to revenue authorities. However, research undertaken after these laws had passed indicated that only 6.5 per cent of rentals had applied for the relevant permit.

As a result of this outcome, legislators in Portland revised the applicable laws, introducing a substantial financial penalty for hosting platforms that enable providers to flout city laws.

Portland officials recently filed a \$2.5 million lawsuit against hosting platform HomeAway.com for breaches of the city’s short-term rental code.

## 11. Getting the regulatory approach right

- *Position on self-regulation*

It has been argued that the review processes established by digital platforms are highly effective, to the point where no further regulatory interference is required. This position is undermined by the sheer volume of problems that have proliferated alongside access economy platforms, described in detail in this submission.

A recent Boston University study which looked at the effectiveness of peer review systems further bolstered the case for regulatory action. Ninety-five per cent of properties on one particular platform boasted an average user-generated rating of either 4.5 or 5 out of 5 stars, leading researchers to conclude such services are “nearly worthless”.<sup>40</sup> Inflated ratings are thought to be the result of a system that requires guests and hosts to review one another.<sup>41</sup>

Perhaps the greatest example of self-regulatory failure can be seen in the impotency of a previous industry code established to apply to holiday letting in NSW. Created in 2012, the *Holiday Rental Code of Conduct* has failed to address the problems it set out to control. For example, a critic of the Code, Mr Doug Luke, coordinator of a group known as “Victims of Holiday Letting”, observed:

The Holiday Letting Organisation supposedly self regulates. It has a hotline that is answered by the president of the organisation, but no-one uses it because nothing happens.<sup>42</sup>

TAA is of the opinion that industry codes are simply not appropriate in this context because the unregulated accommodation sector is disparate, rather than united behind a peak representative body. As a consequence of this arrangement, compliance with any relevant code will only ever occur on an ad hoc basis. Industry codes need strong industry bodies to be effective.

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<sup>40</sup> <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>

<sup>41</sup> *Ibid.*

<sup>42</sup> [www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/06667677d66d04b3ca257c12007a1953/\\$FILE/Transcript%20-%209%20October%202013%20-%20CORRECTED.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/06667677d66d04b3ca257c12007a1953/$FILE/Transcript%20-%209%20October%202013%20-%20CORRECTED.pdf)

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In New York, Airbnb has been criticised for failing to self-regulate because it does not block landlord listings that contravene city laws. When Airbnb issued a statement on 11 November 2015, reiterating the company's commitment to facilitating guest experiences in primary residences and operating transparently, the New York Attorney General issued this stinging rebuke:

*"[This] is a transparent ploy by Airbnb to act like a good corporate citizen when it is anything but. The company has all of the information and tools it needs to clean up its act...no one should take [their statement] seriously."*<sup>43</sup>

Digital platforms, and the wider short-term rental industry, have been given the opportunity to self-regulate but have failed to do so.

- *Key recommendations: 7 steps to sharing success*

After examining the relevant issues, TAA recommends that Governments apply fair and proportionate regulations to the private, short-term accommodation sector. TAA has established 7 key principles to guide this process.

### 1) Embrace true sharing, address unregulated accommodation

TAA is advocating for the introduction of a three-tiered system to classify the distinct types of private, short-term accommodation available. TAA believes the following classifications are appropriate:

1. "Sharing economy" applies to primary residences that are let, "un-hosted", for a maximum of 90 days<sup>44</sup> per year, and all "hosted" stays in primary residences. A property is let on a "hosted" basis if the owner is present overnight for the duration of the guest's stay.
2. "Special residential" applies to short-term visitor accommodation that falls outside of the above definition, where the property is not a regulated accommodation provider (i.e. hotel).
3. "Short-term commercial" applies to regulated accommodation (for example, hotels and motels).

A person that provides "sharing economy" accommodation should not be required to seek development consent prior to accommodating guests.

However, as is the case for "short-term commercial" properties, planning/ change of use approvals should be required for all properties providing "special residential" accommodation.

Councils should retain the right to establish areas where "special residential" accommodation is not appropriate and pursue legal breaches.

### 2) Promote a culture of safety

The State Government should play a role in setting minimum safety standards for "sharing economy" and "special residential" accommodation providers operating out class 1 and 2 buildings.

As is the case for hotel properties, local governments should play a role in inspecting premises that provide private, short-term accommodation on a "special residential" basis.

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<sup>43</sup> <http://nymag.com/daily/intelligencer/2015/11/airbnb-plays-decides-to-play-nice-with-cities.html>

<sup>44</sup> Accommodation stays that are greater than 3 months are subject to the *Residential Tenancies Act 2010*.

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Local governments should work with access economy platforms to identify properties that pose risks to consumers.

### **3) Achieve transparency and accountability through rental registration**

Following examples set by international jurisdictions, the State Government should require “sharing economy” and “special residential” properties to register. TAA notes that the government currently requires “boarding houses” to be registered in NSW, and “short-term commercial” premises are typically already licensed under the *Liquor Act*.

### **4) Require multinationals to be part of the solution**

Fines should apply to digital accommodation platforms that list or advertise properties that are not officially registered under the new system.

To ensure that the integrity of the classicisation system is maintained, fines should also apply to digital accommodation platforms that accept bookings for, or advertise, un-hosted properties that hold a “sharing economy” classification for period which exceeds the 90 day maximum.

Online platforms that continue to list properties with unresolved, identified safety or neighbourhood amenity concerns should be subject to financial penalty. Local councils should play a role in providing digital platforms with the necessary information.

### **5) Address taxation concerns**

Given the recent, rapid explosion in unregulated accommodation, the Australian Government should direct the Australian Taxation Office to consider “sharing services” as an area of special interest when processing all future tax returns.

To assist with this undertaking, relevant information should be sourced directly from hosting platforms. If this proves not to be possible, the Government should consider whether legislation is necessary to compel this outcome.

The Australian Taxation Office should also conduct an online advertising campaign to raise awareness of relevant “sharing economy” tax obligations.

As a matter of best practice, digital economy platforms should provide users with an annual statement for income tax purposes.

As is the case for hotels, properties that provide “special residential” accommodation should pay council fees set at business rates.

### **6) Empower communities**

A complaints mechanism that applies specifically to the private, short-term accommodation sector should be established. Local councils should be given the power to declare problematic short-stay units “nuisance properties”; such a declaration would prohibit the accommodation of short-term visitors under the current ownership.

“Sharing economy” properties (i.e. primary residences) should be exempt from the nuisance property framework on the grounds that either:

- (a) the host is present at all times to exercise a degree of control over activities; or

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- (b) where the host is not present, the restricted number of operational days reduces the likelihood of persistent, on-going issues arising.

It should be noted that licensed hotels are already subject to a complaints mechanism under the *Liquor Act 2007*.

### **7) Reduce the burdens that apply to traditional businesses, preserve employment**

To address the significant competition issues that arise as a result of unregulated accommodation, the State Government should undertake a review of the existing legal frameworks that apply to the hotel sector, with a view to reducing costs and streamlining procedures. As part of this process, TAA recommends that the State Government:

- Writes to the federal Attorney General to request a review of the accessible room ratio requirements contained in the *Premises Standards*. A new set of requirements should align supply with actual usage and projected demand.
- Engages with Tourism Accommodation Australia and other relevant stakeholders to progress the industry-supported recommendations of the *Hotel Development Regulations in Australia* report. Specifically, TAA is advocating for the adoption of a 'one stop shop' for planning approvals.
- Exempts accommodation hotels from the risk-based loadings that attach to the recently introduced liquor licence fee scheme. This would bring costs for accommodation hotels in line with other licence holders that pay only a base fee. This arrangement would better reflect the actual level of "risk" posed by licensed accommodation premises.

Prior to introducing legislation that embraces the types of services that are provided through the access economy, the NSW government should model the full impact of policies on employment levels and long-term job prospects in the accommodation sector.

## **12. Conclusion**

TAA accepts that there is a difference between running a commercial-scale hotel, and an individual using their primary residence as an occasional rental. It is therefore our recommendation that Governments establish policies that embrace true "sharing", and put controls in place to deal with the problems caused by commercial, unregulated accommodation operators.

As evidenced by the failure of some overseas jurisdictions to compel participants to register accommodation premises, it is essential that digital platforms are part of the solution, rather than allowing these operators to persist with the "not my problem" attitude that has frustrated legislators in other countries.

It is standard procedure for any international company that enters a jurisdiction to spend time and resources looking into local laws and understanding how they apply to core products and services. The "ignore our laws and tell us we will all be better for it"<sup>45</sup> approach taken by some digital platforms has been heavily criticised, but helps to explain the meteoric growth rates of such companies.

At present, the legality of private, short-term accommodation exists on a continuum, dependent on the level of clarity provided for by the relevant local planning instrument. The responsibility for

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<sup>45</sup> Blair Davies, quoted in <http://www.smh.com.au/business/are-airbnb-and-uber-creating-a-new-black-economy-20150212-13dg7p.html>

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determining relevant laws and complying with other regulatory requirements is outsourced to the “host” accommodation provider, rather than assumed by multinationals.

A simple, state-wide approach is required to provide clarity to legitimate “sharers”, and ensure that commercial participants are not using digital channels to cheat the system or operate in areas where there is a clear prohibition.

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**Addendum 1: Summary of requirements under TAA's proposed framework**

	<b>"sharing economy"</b>	<b>"special residential"</b>	<b>Digital platform</b>
Seek planning permission	X	✓	NA
Registration	✓	✓	NA
Meet minimum safety standards	✓	✓	NA
Can be fined for non-compliant online advertising/ listings	NA	NA	✓
Provide information to the ATO	✓	✓	✓
Subject to "nuisance property" complaints mechanism	X	✓	NA

**Addendum 2: Regulated vs. the unregulated economy: A comparison of legislative frameworks, regulatory processes, taxes and consumer protections**

	Regulated hotel accommodation	Private short-term accommodation (shared room/ private house/ apartment)														
<i>Environmental Planning and Assessment Act 1979 (NSW) and Regulations</i> (development applications)	<b>Yes</b> , the Act requires hotels engaging in ‘development’ as defined to lodge a development application, undertaken at considerable expense. In Sydney, it takes 51 weeks to obtain a one-stage approval and 87 weeks to get a two-stage approval. Developer contribution costs for a four star hotel are approximately \$1 million. <sup>46</sup>	Technically, these requirements may apply to a change of use, but some 'hosts' are likely to contravene local planning instruments and zoning restrictions by setting up unauthorised accommodation.														
Building Code of Australia (fire safety requirements)	<b>Yes</b> , subject to extensive fire safety requirements prescribed by the Code.	Class 2 (apartments) are required by the Building Code to include fire safety features, but often offer less protection than Class 3 buildings (hotels). For example, many apartments are considered by the Code to be ‘low rise’ and are therefore not required to install sprinklers.														
<i>Environment Planning and Assessment Act 1979 and Regulation (NSW)</i> (fire safety)	<b>Yes</b> . Class 3 buildings (hotels) are subject to regular council fire safety inspections.  Class 3 buildings are also required to submit fire safety certificates, annual statements and comply with a safety schedule. Requirements can include emergency lighting, exit signs, fire doors, fire hydrant systems, sprinklers, and display orders showing exits and fire safety equipment.  Class 3 buildings have stringent requirements for smoke alarms.	<b>No</b> . Class 1a buildings (e.g. suburban homes) are not normally subject to council safety inspections <sup>47</sup> .  Requirements apply to Class 2 buildings (e.g. apartments) but a recent NSW Coroners finding referred to concerns raised in an <i>Engineers Australia</i> report suggesting that NSW apartment buildings are “vulnerable to major fire”. <sup>48</sup>  Less stringent smoke alarm requirements apply to Class 1 buildings.														
Disability (Access to Premises - Buildings) Standards 2010 (room ratio requirements)	<b>Yes</b> . In addition to making common areas accessible, the Premises Standards impose a number of access requirements on hotels, including the requirement that a proportion of rooms and facilities cater to disabled guests. The requirements are as follows: <table><tr><td>1 to 10 rooms</td><td>1 accessible room</td></tr><tr><td>11 to 40 rooms</td><td>2 accessible rooms</td></tr><tr><td>41 to 60 rooms</td><td>3 accessible rooms</td></tr><tr><td>61 to 80 rooms</td><td>4 accessible rooms</td></tr><tr><td>81 to 100 rooms</td><td>5 accessible rooms</td></tr><tr><td>101 to 200 rooms</td><td>5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100</td></tr><tr><td>201 to 500 rooms</td><td>9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200</td></tr></table>	1 to 10 rooms	1 accessible room	11 to 40 rooms	2 accessible rooms	41 to 60 rooms	3 accessible rooms	61 to 80 rooms	4 accessible rooms	81 to 100 rooms	5 accessible rooms	101 to 200 rooms	5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100	201 to 500 rooms	9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200	<b>No</b> , most residential housing falls under Class 1a which is not subject to the Premises Standards. While Class 2 buildings must make <i>common</i> areas accessible if they offer short-term accommodation, there is no requirement to make <i>rooms</i> accessible because the accessible room ratio requirements of the Premises Standards do not apply to Class 2 buildings.
1 to 10 rooms	1 accessible room															
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<sup>46</sup> *Hotel Development Regulations in Australia*, Urbis, 2015

<sup>47</sup> <http://www.cityofsydney.nsw.gov.au/business/regulations/health-and-safety/fire-safety>

<sup>48</sup> <http://www.coroners.justice.nsw.gov.au/Documents/Zhang%20findings%2018%2009%2015%20FINAL.pdf>

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	More than 500 rooms 19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500	
<i>Liquor Act 2007 &amp; Regulation (NSW)</i>	<b>Yes.</b> Obtain a hotel or on-premises licence. Requirements include: <ul style="list-style-type: none"> <li>- Rigorous 'community impact statement' process undertaken</li> <li>- Signage and record keeping requirements</li> <li>- Trading hour restrictions</li> <li>- Staff must be trained in RSA</li> <li>- Compliance with licence conditions</li> <li>- Required to pay annual risk-based licence fee + trading hour loading (up to \$5550)</li> </ul>	<b>No.</b> This is despite some premises being used as party houses, occasionally requiring police intervention. <sup>49</sup> As they are not required to pay an annual licence fee, these operators do not contribute to regulatory costs like hotels do. Commentary from the NSW Police Association suggests 'pre-loading' in private homes is an issue. <sup>50</sup>
<i>Smoke Free Environment Act 2000 &amp; Regulation (NSW)</i>	<b>Yes.</b> Restrictions include: <ul style="list-style-type: none"> <li>- Indoor smoking ban (guests cannot smoke in rooms)</li> <li>- Smoking not permitted in 'commercial outdoor dining areas'</li> <li>- Smoking not permitted within 4 metres of 'pedestrian access points'</li> </ul>	<b>No.</b> The Act applies to 'public places'.
<i>Food Act 2003 &amp; Regulation (NSW); Australian New Zealand Food Standards Code</i>	<b>Yes.</b> Hotels operating restaurants and cafes need to: <ul style="list-style-type: none"> <li>- Register with council</li> <li>- Appoint a trained food safety supervisor</li> <li>- Comply with the Food Standards Code</li> <li>- Are subject to regular council inspections.</li> </ul>	<b>No.</b> The Act applies to food that is for sale. Notwithstanding, many 'hosts' share meals with guests and may or may not observe hygiene and food safety standards.
<i>Innkeepers Act 1968 (NSW)</i>	<b>Yes.</b> Sets out signage requirements, rights and liabilities of 'innkeepers'.	<b>Unclear.</b> 'Common inn' is not defined.
<i>Privacy Act 1988 (Cth)</i>	<b>Yes.</b> Requirement to adopt a privacy policy and abide by the Australian Privacy Principles. As employers, hotels are also subject to the <i>Workplace Surveillance Act 2005 (NSW)</i> which provides privacy protections.	<b>No.</b> Does not apply to individuals or businesses with a turnover of \$3 million or less.
<i>Australian Consumer Law (ACL) protections</i>	<b>Yes.</b>	<b>Yes,</b> however non-compliance is a problem. The ACCC recently named and shamed Airbnb for pricing practices that breach the ACL. <sup>51</sup>
<i>Fair Work Act 2009 (Cth)</i>	<b>Yes.</b>	<b>No.</b> Unlikely to employ anyone.
<i>Superannuation Guarantee (Administration) Act 1992 (Cth)</i>	<b>Yes.</b> Sets out requirements in Part 3 for employers to provide an additional superannuation payment (currently set at 9.5%) on many payments made to employees.	<b>No.</b> Unlikely to employ anyone.
<i>Workers Compensation Act 1987 (NSW) &amp; Workplace Injury Management and Workers Compensation Act 1998 (NSW)</i>	<b>Yes.</b> Under this legislation every employer is required to have workers compensation insurance. This legislation also sets out other liabilities of employers in respect of injured workers.	<b>No.</b> Unlikely to employ anyone.
<i>Work Health and Safety Act and Regulation (NSW)</i>	<b>Yes.</b> Owe a duty of care to guests and workers.	'PCBUs' (person conducting a business or undertaking) have duties under the Work Health and Safety Act, however, some 'hosts' are of the opinion that their activities do not constitute a business.
Public liability insurance	<b>Yes.</b> Contractual arrangements often specify a required minimum amount.	Not all platforms provide specific public liability insurance. In the event that the 'host' is

<sup>49</sup> <http://www.heraldsun.com.au/news/victoria/airbnb-party-animals-leave-trail-of-destruction-in-melbourne/story-fnpp4dl6-1227471592028>

<sup>50</sup> <http://lastdrinks.org.au/wp-content/uploads/2013/08/PANSW-submission.pdf>

<sup>51</sup> <https://www.accc.gov.au/media-release/airbnb-and-edreams-give-undertakings-to-accc-for-improved-pricing-practices>

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	Most hotels take out insurance to the value of \$20 million.	only covered by a home and contents policy that includes public liability, the policy will likely be voided by short-term letting. There is a lack of consistency between insurers. In some cases, insurance does not cover 'common areas'.
<i>Payroll Tax Act 2007 (NSW)</i>	<b>Yes.</b> Employers paying 'taxable' wages to employees are liable under the Act for payroll tax.	<b>No.</b> Unlikely to employ anyone.
<i>Income Tax Assessment Act 1936 (Cth)</i> (corporate tax)	<b>Yes.</b> This is payable on all profits made by the corporate entity.	<b>No.</b> However, the ATO requires income earned by 'hosts' to be declared in their annual tax returns as aggregate income. Media reports suggest that tax evasion is an issue. <sup>52</sup>
<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> (the GST)	<b>Yes.</b> GST is payable on all bookings and services as defined in Division 9 in the Act.	<b>No.</b> 'Hosts' that earn less than \$75,000 do not need to register and collect GST. <sup>53</sup>
<i>Local Government Act 1992 (NSW)</i> (council rates)	<b>Yes.</b> Subject to business rates. Hotels in Sydney's CBD have reported council fees of \$140,000 per year.	<b>Yes, however,</b> land categorised as 'residential' is subject to a lower residential rate. If the local council is unaware of the 'hosts' activities then it is likely they are paying residential rates.
Other commercial fees and charges (liquid trade waste etc.)	<b>Yes.</b> In addition to compulsory fees and charges, hotels invest in environmental and energy efficiency initiatives that reduce reliance on government infrastructure and services.	Unlikely to be applied if the local council is unaware of short-term accommodation activities taking place at the premises.

<sup>52</sup> <http://www.smh.com.au/business/are-airbnb-and-uber-creating-a-new-black-economy-20150212-13dg7p.html>

<sup>53</sup> <http://www.abc.net.au/news/2015-05-20/tax-office-issues-gst-warning-for-uber-and-airbnb/6482590>