

**Submission
No 180**

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

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**Accommodation
Association
of Australia**

**NSW Legislative Assembly Committee on
Environment and Planning inquiry into the
adequacy of the regulation of short-term
holiday letting in NSW –**
Submission of
Accommodation Association of Australia

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EXECUTIVE SUMMARY

- Any public policy development process which has a direct impact on Australia's accommodation industry must support the establishment of a standard, national definition for tourism accommodation (or short-term accommodation).
- The Accommodation Association of Australia supports the Productivity Commission developing a standard, national definition for tourism accommodation which should be that tourism accommodation is any continuous stay which is not longer than 90 days.
- The accommodation industry's position is that there should be less regulation for businesses in the industry in Australia, not more.
- Every local government authority in Australia should formally establish a regime to ensure compliance with building fire safety requirements and, potentially, a standard, national definition of a tourism accommodation establishment.
- Each regime should be funded by significant fines for non-compliance of not less than \$1 million per property.
- Companies which operate online platforms for Australian residential properties to be used for tourism accommodation are avoiding payment of taxes in Australia and are, effectively, "free-riding" on Australia's tourism industry.
- The presence of global offshore giants in Australia's short-term letting market has the potential to significantly diminish the economic benefits to Australia of short-term letting and is driving up the prices of residential housing.
- Illegal short-stay accommodation is creating numerous problems for Australia's tourism industry because:
 - Companies which operate online platforms to promote such accommodation do not employ staff under the same conditions as bricks-and-mortar tourism accommodation businesses
 - Providing such accommodation demonstrates a flagrant disregard for planning laws, building fire safety requirements, disability access and insurance requirements
 - It is placing the safety of consumers, including international visitors, at risk
- Companies headquartered overseas which operate online platforms for Australian residential properties to be used for tourism accommodation on a broad-scale basis are reluctant to publicly disclose key contact details, income earned in Australia and taxation paid in Australia.

INTRODUCTION

1. The Accommodation Association of Australia is pleased to provide the following submission to be considered as part of the NSW Legislative Assembly Committee on Environment and Planning inquiry into the adequacy of the regulation of short-term holiday letting in NSW.

ABOUT THE ACCOMMODATION ASSOCIATION

2. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for Australia's accommodation industry.
3. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced and holiday apartments, bed and breakfasts, guesthouses, backpackers and timeshare establishments in metropolitan, regional and rural Australia across all states and territories.
4. The Association's members include major hotel and motel chains, and serviced apartment groups.
5. The Association's membership base includes almost 2000 properties and more than 110,000 guest rooms.

TOURISM AND ACCOMMODATION – OVERVIEW

6. Tourism directly contributes \$43.4 billion to Australia's gross domestic product (GDP), 2.7 per cent of Australia's total GDP.¹
7. There are 534,000 persons directly employed in the Australian tourism industry – 4.6 per cent of total employment.²
8. Tourism contributes \$27.2 billion or 8.2 per cent of Australia's total export earnings for all goods and services.³
9. Accommodation businesses add \$7.028 billion of gross value to the Australian economy.⁴
10. There are 69,700 people employed in the accommodation sector of the Australian tourism industry.⁵
11. There are 4204 tourism accommodation establishments in Australia.⁶
12. There are 229,646 tourism accommodation rooms in Australia and 635,130 bed spaces.⁷

¹ Tourism Update, September Quarter 2014, Tourism Research Australia

² Australian National Accounts – Tourism Satellite Account, 2013-14, Australian Bureau of Statistics

³ Tourism Update, September Quarter 2014, Tourism Research Australia

⁴ Australian National Accounts – Tourism Satellite Account, 2013-14, Australian Bureau of Statistics

⁵ Ibid

⁶ Tourist Accommodation, Australia, 2013-14, Australian Bureau of Statistics

⁷ Ibid

DEFINING TOURISM ACCOMMODATION

13. Any public policy process which has a direct impact on Australia's accommodation industry must support the establishment of a standard, national definition for tourism accommodation (or short-term accommodation).
14. At present, different local governments across Australia have different definitions, while some do not define it at all.
15. The Australian Taxation Office (ATO) has determined that commercial residential premises are liable for Australia's Goods and Services Tax (GST) under a range of definitions. The common thread within each of these definitions is a guest stay of 28 days.
16. The ATO's current definitions are as follows:
 - Short-term accommodation – When a guest stays for less than 28 continuous days.
 - Long-term accommodation – When a guest stays for 28 or more continuous days.
 - Predominantly long-term accommodation – If at least 70 per cent of individuals in an accommodation establishment stay for 28 or more continuous days.

The ATO states that “as a general rule, if you are registered, or required to be registered, for GST, you are liable for GST on any commercial accommodation you supply to your guests”.⁸

17. Given Australia does not have a national overarching regulatory body for the accommodation industry – and that the industry does not support the introduction of such an authority – the Accommodation Association supports the Productivity Commission developing a standard, national definition for tourism accommodation.
18. While such a determination would not be legally binding, due to the weight which is given to the findings of the Productivity Commission, if the commission was to recommend a standard, national definition for tourism accommodation, then it would significantly influence the definition of tourism accommodation as applied by Australian governments, government agencies and regulatory bodies at all levels.
19. In terms of the specifics of such a definition, it is the submission of the Accommodation Association that tourism accommodation should be defined as any continuous stay which is not longer than 90 days.
20. The Association supports a 90-day threshold because this would capture medium-term guest stays for corporate purposes as being short-term and non-permanent in nature.

POLICY POSITION – REGULATION/DEREGULATION

21. The accommodation industry's base policy position is that there should be less regulation for businesses in our industry in Australia, not more.

⁸ https://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?anchor=Commercial_residential_premises#Commercial_residential_premises retrieved 1 June 2015

22. On behalf of the industry, the Accommodation Association has led advocacy efforts to reduce the level of regulation and administration/compliance or “red tape” which operators of accommodation businesses are confronted with.
23. However, given that in the 2013-14 financial year, there were more than 50 million room nights occupied in Australia, the duty of care to guests who stay in accommodation establishments is paramount.
24. The level of regulation in the accommodation industry must strike a balance between the safety of guests and the cost of “red tape”. An excellent analogy is the promotion of safe activities at the beach where the Australian public is encouraged to “swim between the flags”.
25. This base policy position should be considered during any deliberations about altering existing public policy settings which directly impact on accommodation businesses.

COMPARISON BETWEEN NSW AND OTHER JURISDICTIONS

26. Further to information provided above, responsibility for defining tourism accommodation, by and large, lies with local government authorities across Australia.
27. Such a regime is unworkable because different local governments across Australia have different definitions and some local governments do not adequately define tourism accommodation at all.
28. In many instances, enforcement by local government of the parameters for building use is either scant or non-existent. The potential exception to this is the City of Sydney.
29. It is the submission of the Accommodation Association that local government should be far more proactive in enforcing rules surrounding the use of buildings.
30. In particular, companies which operate an online platform for residential properties to be used for tourism accommodation, as well as the owners and occupiers of the properties, should be the subject of a much stronger compliance regime.
31. The accommodation industry’s position is that every local government authority in Australia – if it hasn’t already done so – should formally establish a regime to ensure compliance with building fire safety requirements and, potentially, a standard, national definition of a tourism accommodation establishment.
32. Each regime should be funded by significant fines for non-compliance of not less than \$1 million per property.
33. Having fines of this quantum in place would assist with ensuring that:
 - The compliance regimes could be self-sufficient from a financial perspective; and
 - They would act as a deterrent to such illegal activity.
34. In Victoria, the City of Melbourne attempted to prevent apartments in a building in the Docklands area of Melbourne from being used for short-stay accommodation.
35. However, following a long-running legal battle with the operator of the apartments in question, a settlement was reached between the operator and the City of Melbourne which enabled the operator to continue to use the apartments for short-stay purposes on the

proviso that the apartments in question were equipped with extra smoke alarms and additional emergency exit signs.⁹

36. In the months following the settlement, it was revealed that the operator of the apartments in question listed the apartments on online platforms which promote residential properties for use as tourism accommodation.¹⁰
37. A subsequent appeal to the Victorian Civil and Administrative Tribunal to try to curb the operator from using the apartments for short-term stays failed in July 2015.
38. This dispute demonstrates that legislation in Victoria does not adequately address the issue of short-stay accommodation and if left as is, the risks to consumer safety and problems associated with noise at the apartments in question, as well as in other similar apartments across Victoria have the potential to significantly worsen.

ONLINE PLATFORMS WHICH PROMOTE RESIDENTIAL PROPERTIES AS TOURISM ACCOMMODATION

39. Online platforms which promote residential properties being used for tourism accommodation are experiencing enormous growth. This is consistent with the global trend across numerous other sectors, such as media and music (e.g. iTunes).
40. An example of their growth is the publication of a study commissioned by Airbnb and conducted by BIS Shrapnel. It found that in the period August 2012 to July 2013 inclusive, Airbnb supported \$214 million of economic activity in Sydney.¹¹
41. Given more than two years have elapsed since then, such platforms have grown even further to the point where it is estimated that Airbnb currently lists approximately 9700 properties in the Sydney metropolitan area.
42. It is also worth noting that the largest players and the overwhelming majority of online platforms do not have their headquarters in Australia and employ very few Australians.

ONLINE PLATFORMS ARE “FREE-RIDING”

43. Unlike hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, companies which operate online platforms for Australian residential properties to be used for tourism accommodation are avoiding payment of taxes in Australia.
44. For example, from April 2014, Airbnb, which extracts a commission in the vicinity of 12 per cent of the cost of a consumer “booking” a room in a residential property for the purposes of

⁹ “Melbourne legal bid to curb short-stay apartments fails”, The Age, 5 November 2014, <http://www.smh.com.au/business/melbourne-legal-bid-to-curb-shortstay-apartments-fails-20141104-11qixq.html>, retrieved 9 November 2015

¹⁰ “Stopping apartment owners from leasing properties through Airbnb is ‘discrimination’, VCAT hears”, The Age, 20 May 2015, <http://www.theage.com.au/victoria/stopping-apartment-owners-leasing-properties-through-airbnb-is-discrimination-vcata-hears-20150520-gh5oge.html>, retrieved 9 November 2015

¹¹ Airbnb Media Release, <https://www.airbnb.com.au/press/news/new-study-airbnb-community-contributes-aud-214-million-to-sydney-and-its-suburbs-brings-tourists-to-new-neighbourhoods> retrieved 1 June 2015

tourism accommodation via its website, channelled revenue from Australian-based consumers to an Irish subsidiary.¹²

45. Despite having an estimated worth of \$10 billion, Airbnb has requested an exemption from corporate rules in Australia which require companies to disclose their earnings in a financial report.¹³
46. By operating on this basis, Airbnb is clearly attempting to avoid paying its fair share of tax in Australia.
47. In addition, online platforms make minimal contributions to tourism.
48. As an example, Tourism Australia, the Australian Government's international tourism marketing organisation, has an annual budget which is in the vicinity of \$130 million.
49. The cost of funding for Tourism Australia is almost entirely borne by the Federal Government, through payment of taxes.
50. By avoiding payment of tax in Australia, companies which operate online platforms for Australian residential properties to be used for tourism accommodation are directly benefitting from the tourism marketing initiatives undertaken by Tourism Australia, but are making minimal direct financial contributions to Tourism Australia's major funding source.
51. Such companies also directly derive benefits from state and territory tourism marketing organisations – such as Destination NSW – but, again, they make little or no direct financial contributions to these organisations.
52. Such companies are, effectively, “free-riding” on Australia's tourism industry.

ECONOMIC IMPACTS OF SHORT-TERM LETTING

53. The emergence of global offshore giants in Australia's short-term letting market has the potential to significantly diminish the economic benefits to Australia of short-term letting.
54. In real terms, benefits which used to be generated at a local level – particularly among coastal communities in regional Australia – are now going offshore due to owners of such properties choosing to list them on online platforms which promote residential properties for use as tourism accommodation, instead of advertising the properties themselves or through their local real estate agent.
55. A prime example of benefits going offshore is Airbnb, which has publicly stated:
“Airbnb Ireland develops and manages Airbnb's business operations outside of the United States. All transactions relating to users outside of the United States, including guests and hosts in Australia, are hosted by Airbnb Ireland, pursuant to applicable laws and regulations.”¹⁴

¹² “Airbnb pays tax on Australian profit offshore”, Australian Financial Review, 9 September 2014, <http://www.afr.com/business/tourism/airbnb-pays-tax-on-australian-profit-offshore-20140909-jeg0t>, retrieved 1 June 2015

¹³ bid

¹⁴ Submission to Senate Economics References Committee inquiry into corporate tax avoidance, Airbnb, 23 September 2015

56. Another significant economic issue which has been created by the emergence of online platforms which promote residential properties being used for tourism accommodation is an increase in the cost of residential housing.
57. Prices of residential housing, particularly in the inner suburbs of Sydney, are being driven up as a result of less properties being available for permanent residences.

PROBLEMS WITH ILLEGAL SHORT-TERM LETTING

58. Companies which operate a business from which Australians can purchase a product or service must comply with Australia's workplace relations regime.
59. Specifically, such companies must employ staff in accordance with the requirements set out in Australia's Workplace Relations Act.
60. Companies which generate business by operating an online platform for residential properties to be used for short-stay tourism accommodation are displaying a flagrant disregard for:
 - Planning laws;
 - Building fire safety requirements for tourism accommodation businesses;
 - Disability access requirements; and
 - Insurance requirements.
61. By doing so, both the companies that operate the platform and the residential properties themselves are conducting business within Australia's accommodation market through questionable means.
62. Of most concern, though, is that companies that operate an online platform for residential properties to be used – illegally – for tourism accommodation are severely compromising the safety of guests.
63. Among other things, these requirements impose significant costs on compliant tourism accommodation businesses which reduce their income, in turn reducing the amount of tax paid and therefore, negatively impacting the broader economy.

TRANSPARENCY ISSUES

64. Companies which have their headquarters overseas that operate online platforms for Australian residential properties to be used for tourism accommodation on a broad-scale basis (not holiday rentals) are displaying a lack of transparency.
65. Specifically, the Accommodation Association is not aware of one such platform which prominently displays on its website the address and phone number of its main office in Australia.
66. By contrast, hotels, serviced apartments, resorts, motels and other regulated tourism accommodation businesses in Australia are easily identified by consumers, regulators and

other stakeholders – through their street addresses and phone numbers which are located on their respective websites and in other marketing communication.

67. Consideration should be given to recommending stricter disclosure measures for accommodation businesses operating in Australia. For accommodation businesses which do not comply with these measures, a dedicated website should be established and maintained which, effectively, serves as a “watch list” for non-compliant accommodation businesses.
68. In terms of revenue earned from Australians and taxation paid within Australia, overseas companies that operate online platforms for Australian residential properties to be used for tourism accommodation are very reluctant to disclose this information.
69. For example, the Accommodation Association is not aware of Airbnb publicly releasing information about income and profit that Airbnb has earned from Australian-based consumers and tax paid by Airbnb in Australia at any time for the period in which it has been operating in Australia.

CONCLUSION

70. The Accommodation Association would be pleased to provide the committee with further information in relation to our submission by appearing at a public hearing or through another appropriate form of engagement.

Date: 9 November 2015