



Tourism Accommodation Australia submission to  
The Federal Opposition Discussion Paper:

**Sharing the future:**

**Getting policy right in the Age of the App**



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## 1.0 Introduction

As outlined in the Federal Opposition discussion paper ‘Sharing the Future’, the sharing economy is currently having a significant impact on the way Australians buy and sell services. The sharing-economy model is not new, but it has exploded in popularity thanks to increasing awareness and improvements in technology.

As outlined by Juliet Schor, following her significant research in this space, much of this growth has been influenced by the for-profit nature of successful models. For-profit platforms push for revenue and asset maximisation. The most successful platforms – Airbnb and Uber, valued at \$10 billion and \$18 billion respectively – have strong backing from venture capitalists and are highly integrated into existing economic interests. The introduction of venture capitalists into the space has changed the dynamics of these initiatives, particularly by promoting more rapid expansion.<sup>1</sup>

In this paper we will focus on the ‘sharing economy’ as it relates to accommodation. The paper will highlight how the potential for the sharing economy to have negative impacts on the profile of tourism and accommodation is considerable, as it promotes an increase in non-compliant accommodation.

## 2.0 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 AHA.

## 3.0 Contribution of the Accommodation sector to the Economy

The tourism accommodation sector is comprised of establishments which provide predominantly short-term non-residential accommodation (ie. accommodation which is not leased, and which is provided to guests who would generally stay for periods of less than two months).

	<b>Establishments (15 or more rooms)</b>	<b>Rooms</b>	<b>Takings from Accommodation ('000)</b>
<b>Licensed Hotels &amp; Resorts</b>	849	88,296	\$1,003,301
<b>Motels, Private Hotels, Guesthouses</b>	2372	84,428	\$525,867
<b>Serviced Apartments</b>	983	56,922	\$559,385

ABS Tourist Accommodation, Australia, 2013-14

The sector also contains visitor hostels and caravan parks.

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<sup>1</sup> Debating the Sharing Economy Juliet Schor, October 2014

Australia's tourism industry directly contributed \$41.8 billion to GDP in 2013-14 (with \$38.3 billion through direct GVA). The leading contributor to Australia's tourism industry in 2013-14 was tourism accommodation with \$7.0 billion in GVA (23.9% of total tourism GVA).

In 2013-14, Australia's tourism accommodation sector was estimated to have directly generated approximately \$6.9 billion in gross product (0.4% of Australia's total gross product in 2013-14). Flow-on activities contributed an additional 0.8% of Australia's gross product.

Australia's tourism accommodation sector directly supports 69,700 jobs, which is 13% of direct tourism employment and 0.6% of Australia's total employment. Australia's tourism accommodation sector is estimated to support a further 118,000 jobs through flow-on impacts in 2013 -14. Jobs supported by the tourism accommodation sector contributed over \$9.3 billion to Australian household incomes.

The 2014 Tourism Investment Monitor released by Austrade indicated that accommodation investment amounted to 12,000 expected new rooms, representing \$7.4 billion investment in 2013. In addition 42 mixed-use projects in the accommodation investment pipeline, valued at \$21.7 billion, are likely to add another 8,600 new rooms if realised.

The above demonstrates that the visitor accommodation sector is a significant contributor to the Australian economy.

Finally it is important to note that a hotel is more than just a place to sleep but is a valuable community service, providing a place to eat and drink and a venue for business, social and community gatherings.

#### **4.0 Competition & Differentiation**

The issue of unregulated accommodation has been around for a long time across all sectors of the accommodation industry. As much of the legislation relating to property development approvals sits at a State and local council level, standardisation of responses has proved difficult and the result has been a lack of enforcement and little incentive for compliance.

However the issue has gained in importance as the development of technology platforms has resulted in an escalation of opportunities for unregulated accommodation, with AirBNB stating that there are approximately 35,000 Australian hosts offering properties as of early 2015.

Currently there is little transparency around the number and location of unregulated short-term accommodation rooms and therefore no understanding of the potential impact this has on the market. This paper seeks to look at the available facts and legislation and put forward recommendations on how we can embrace emerging, disruptive technologies, while protecting the safety and well-being of visitors and ensuring investor and operator confidence within the accommodation sector.

## a) Legislative Framework

In Australia, local governments have immediate responsibility to enforce building codes but most put the issue of unregulated short term accommodation in the “too hard basket”. It costs a lot of money to pursue prosecutions and there is no direct legislation that applies. The gaps in the law mean that it is often left to the body corporate to take action.

### - Commonwealth Legislation

Federally, the Premises Standards and the Building Code of Australia outline the classifications applying to buildings. Subject to the classification of the building, a range of standards apply to the construction and use.

Under most areas of the Building Code of Australia, Class 2 and Class 3 buildings are grouped together. However for Class 3 buildings there are far more stringent disability access requirements, energy efficiency requirements, fire safety obligations and car parking ratios. Please refer *Addendum 1* for details.

### - State and Territory Legislation

Each State or Territory in Australia has local legislation that outlines the standards applying to the construction of buildings in the State or Territory. This legislation requires that all buildings be classified against their purpose of use and meet the applicable standards. Please refer *Addendum 1* for details.

### - Overseas Legislation

Overseas jurisdictions, particularly the United States, are becoming more proactive in introducing legislation in a bid to improve transparency and protect customer safety. Please refer *Addendum 2* for details.

In October 2014, the Office of the New York State Attorney General, issued a paper on “*Airbnb in the city*”.<sup>2</sup> This together with the Boston University School of Management paper on “*The Rise of the Sharing Economy: Estimating the impact of Airbnb on the Hotel Industry*”<sup>3</sup>, published in February, 2014 are the first analysis of actual Airbnb listed short-term rentals in cities. Both papers, based on real data, point to the following findings:

- i. **Short-term Rentals experienced explosive growth.** In New York in the period from 1 January 2010 to 2 June, 2014 short term bookings increased more than tenfold and associated revenue, nearly doubled year on year.
- ii. **Multi-unit hosts (commercial users) accounted for a disproportionate share of Private Short-Term Rentals by volume and revenue.** Both reports show that while multi-unit hosts account for a smaller percentage of inventory, they make up the largest percentage of listings. In the New York city report they point to “well over 100 Commercial Users each controlled 10 or more unique Airbnb units, accepting 47,103 private short-term reservations and earning \$59.4 million in revenue.”

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<sup>2</sup> *Airbnb in the City*, The Office of the New York Secretary General, October 2014

<sup>3</sup> *The Rise of the Sharing Economy: Estimating the impact of Airbnb on the Hotel Industry*, Boston University School of Management, February 2014

- iii. **Airbnb penetration is negatively correlated with hotel revenue, and lower-end hotels incur most of the financial impact.** (Boston University School of Management study). The study pointed to cities in which Airbnb has a significant presence, showing that revenue at budget hotels decreased by 5 percent over a two-year period ending in 2013. The study predicts that the amount of business that Airbnb takes away from low-end hotels could increase to an estimated 10 percent by 2016.
- iv. **Most short-term rentals are illegal.** In the New York case, the paper found that most short-term rentals booked in New York City violate their laws (Multiple Dwelling Law – prohibits rentals in a ‘Class A’ multiple dwelling for less than 30 days, unless a ‘permanent resident’ is present during the rental period. In addition the New York City Administrative Code, prohibits changes to the use, occupancy or egress of a building”).

In San Francisco and Portland, new rental laws introduced this year legalising short term rentals, require hosts to register and obtain a city business license. Short-term rentals will be listed and tracked by the city in a registry and are required to be covered by liability insurance with at least \$500,000 in coverage. (Please refer *Addendum 3* for details of the legislation).

To date less than 10% of all hosts have registered reinforcing the issues around the legality of short term accommodation. One of the key issues that has been identified overseas is that what began as a platform for homeowners with spare rooms to make a bit of pocket money on the side, is becoming overrun with property entrepreneurs looking for lucrative short term gains.

This points to the need to have Federal/State co-ordination of any regulation and the need to work in conjunction with sharing economy websites such as Airbnb, Roomorama, HomeAway, to ensure any regulation is enforced not only on a state basis but nationwide.

## 5.0 Key areas of impact

- 1. **Lack of transparency.** Governments have set targets for increased growth in accommodation investment to meet the needs of a growing visitor market. However we currently have no real clarity on supply.

TRA figures point to an 8.8% increase in international visitor nights spent in hotels, motels, resorts and motor inns to 23.7 million for the year ending September 2014<sup>4</sup>. The other big area of growth was ‘*Other private accommodation*’ (excluding own property and friends & relatives property). This category represents private home/apartment stays and is now 20.9 million visitor nights, with a growth of 8.7%.

As indicated above ‘private home stays’ are now rivalling stays in hotels, motels, resorts and motor inns, yet there is no understanding of the distribution of ‘private’ supply and the impact it has on commercial accommodation. This results in inaccurate assessments of supply needs, which can potentially lead to oversupply in the market, negatively impacting investor returns and therefore confidence in the market.

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<sup>4</sup> International Visitor Survey year ending September 2014, Tourism Research Australia (TRA)

## **2. Minimum Contribution to the Economy**

As outlined below non-compliant short term accommodation provides little contribution to the economy. Most hosts do not pay income tax on their earnings or superannuation, nor do they contribute to employment or training of a future workforce in the hospitality sector. As the practice becomes more widespread, we need to question what that means for the services we expect from our tax dollars – in particular health, education and infrastructure.

This is not about individual providers and customers, but about the implications for changes to investment and flow-on impacts to the overall economy. Particularly, if aggregation occurs, and property entrepreneurs enter the market as indicated by the New York and Boston actual data.

## **3. Taxation**

The accommodation sector contributes to the economy through the payment of company tax where applicable, council rates, land tax and stamp duty. Operators pay payroll tax, taxes on car parks and GST on all transactions.

Under current legislation, hosts that are leasing a room or apartment must include the rental income received in their tax return and they may be liable for capital gains tax (CGT) on any future sale of the property. Tax treatment of B&Bs or holiday accommodation depends on rates charged, services provided, where hosts advertise and the regularity of income.

However current GST legislation states that “if you rent your holiday apartment for short term accommodation you don’t pay GST. Even if you have a number of apartments you rent out you don’t pay GST, nor can you claim GST credits.”

We would point to the findings from New York and Boston, which show that “Multi-unit hosts (commercial users) account for a disproportionate share of Private Short-Term Rentals by volume and revenue”. Many of these owners are in the business of supplying short term accommodation in residential premises and are competing with commercial accommodation in that regard. We would therefore argue that this is ‘residential accommodation changed to commercial use’ and as such GST should be charged.

TAA does not seek to change current tax laws as they apply to short-term accommodation. We do however point to an increase in non-compliant short-term accommodation (ie. contravenes building code, contravenes development consent etc) that is unlikely to be declaring income on their earnings and an increase in ‘multi-unit hosts’ that are in the business of short-term accommodation. There is a need for registration of these properties to ensure the correct tax treatment applies.

#### **4. Employment**

As outlined above, Australia's tourism accommodation sector directly supports 69,700 jobs, which is 13% of direct tourism employment and 0.6% of Australia's total employment. Australia's tourism accommodation sector is estimated to have supported a further 118,000 jobs through flow-on impacts in 2013 -14.

As a major employer, the accommodation sector is also responsible for a significant investment in training with an investment in an average of 15 hours of training per employee across all positions<sup>5</sup>, and much greater than that for certain individual positions.

Non-compliant short term accommodation providers simply provide a room. They generally do not employ, nor do they train.

#### **5. Public Safety and Amenity and Consumer Protections**

Buildings originally designed and engineered to be used as residential apartment buildings are being used partly or wholly as short-term accommodation. This is creating a variety of problems from both a resident and visitor/consumer point of view.

- i. Noise and anti-social behaviour;
- ii. Owner's Corporation rules not being followed;
- iii. Increases in building 'wear and tear' in relation to carpets and wall finishes due to the more frequent movement of tenants and luggage in and out of the building.
- iv. Increases in Owner's Corporation fees, levies and sinking funds for all owners as a result of the actions of short-stay occupants, where such owners insurance does not cover damage.
- v. Reduced lift performance with extended waits, over-crowding and increased maintenance, if the number of short-term guests is in excess of the contemplated residential guest numbers.
- vi. Overloading of recycling and rubbish facilities.
- vii. Devalues adjoining properties- the permitting of checkerboard short term tenancies results in the overall degrading of amenities and capital values, for those buildings designated as residential.

The issue of liability and insurance coverage is a major issue for unregulated short-term accommodation. In most cases short-term visitor rentals contravene the building's development consent as a residential apartment/dwelling. Therefore if there is an incident at the apartment that results in hospitalisation etcetera, for example, the recent case in Argentina where a host's Rottweiler savaged a visitor, or the case in Calgary where \$150,000 worth of damage was done by short term renters in a drug-induced orgy it is unlikely that it will be covered by the host's insurance.

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<sup>5</sup> Labour Trends in Accommodation Survey, AEC Group, 2013

Typical homeowner insurance policies only provide coverage when you're occupying your own home. In fact, insurance companies may deny claims and cancel policies if short-term letting is occurring contrary to the building's planning zoning.

If an insurance claim is rejected all owners in an apartment building need to foot the bill for extra expenses and become jointly and severally liable. Thus, the business operations of a few non-compliant accommodation operators may result in other owners facing significant financial losses in an insurable event. Airbnb does not provide liability coverage.

## **6. Visitor/Consumer Issues**

Visitor safety, access and amenity are key issues when short-term accommodation occurs in buildings designed for residential accommodation. A number of cases exist of bookings not being honoured and misrepresentation of product and location.

These risks aside hotels and apartments designed for short-term accommodation have some important differences in fires safety and accessibility requirements. In particular hotels and apartments/guest houses require:

- i. Improved smoke detection and early warning systems.
- ii. Fire orders showing the location of exits and fire safety equipment.
- iii. A proportion of accessible apartments and facilities provided for persons with a disability. In addition in Class 3 buildings there is a requirement for accessible access pathways to rooms, fully accessible common areas and accessible toilets. These buildings must also contain appropriate signage to assist people with disabilities in accessing facilities.

## **6.0 Recommendations**

Based on the above and on a review of the existing measures in place in Australia<sup>6</sup> and overseas<sup>7</sup> to deal with the issue of non-compliant short term accommodation, our recommendations centre around improving the transparency and visibility of this essentially 'black market', in order to provide confidence to current investors and operators of compliant commercial short-term accommodation.

### **a. Requirement for registration of short-term rentals**

To date both overseas and in Australia a ban on non-compliant short-term rental has had no real impact because it is too hard to enforce, the relevant legislation (where it exists) is unclear and most people have little idea that they are doing anything wrong.

If however, legislation is passed, similar to San Francisco<sup>8</sup> (restricting the length of stay, requiring minimum amenity and safety provisions and ensuring the Letting Agent/Owner and Owners Corporation are notified), this sends a clear message that the activity is illegal unless it is registered

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<sup>6</sup> Addendum 1 Short Term Accommodation Legislative Framework in Australia

<sup>7</sup> Addendum 2 Short Term Accommodation Legislative Framework Overseas

<sup>8</sup> Addendum 3 San Francisco 'Airbnb' Law

and conforms to certain conditions that protect visitor safety, ensure the payment of taxes and provide a clear understanding to investors and operators of accommodation supply in the market.

We believe that regulations should apply in a proportionate way, in that resident landlords should not be subject to the same regulations as non-resident commercial landlords of privately rented property, or houses in multiple occupation. However, it is vital that health, safety, tax and other regulations apply when non-residential commercial landlords are commercially letting out rooms through sharing economy platforms.

We would advocate for council to have greater powers to manage and monitor registrations of shorter term rentals/residential accommodation and ensure the overall figures are made publicly available. The letting out of individual rooms by non-resident commercial landlords needs to be separately classified to permit application of any relevant agreed regulation, to differentiate from commercial accommodation. For example it could be classified as 'special residential', with a distinct and separate category for 'short stay' commercial accommodation.

We would also see the need for the consumer and tenancy tribunals in each state to have the power to make orders in relation to short-term letting arrangements, where there has been a pattern of problems.

- ACT Residential Tenancies Tribunal
- New South Wales Consumer, Trader & Tenancy Tribunal
- Northern Territory Consumer and Business Affairs and Northern Territory Department of Justice
- Queensland Residential Tenancies Authority
- South Australia Residential Tenancies Tribunal
- Tasmania Consumer Affairs and Fair Trading and the Residential Tenancies Commissioner
- Victorian Civil and Administrative Tribunal
- Western Australia Department of Consumer and Employment Protection and a Magistrates Court

#### **b. Regulation of length of stay/safety provisions/accessibility provisions.**

Our recommendation is that registration is supported by a suite of legislative measures that restrict the commercialisation of the activity and protect the safety and amenity of visitors.

- I. A requirement for a maximum length of time that the property can be rented out, where the host is not present.
- II. Hosts are required to register and obtain a permit from the relevant planning authorities to engage in short-term renting. Short-term rentals will be listed and tracked by the city in a registry. Please note that we are not seeking to prevent the short-term letting of a room by an individual, if this is controlled and limited, but to prevent the commercialisation of this activity.
- III. Hosts are required to be covered by liability insurance with a minimum value of coverage set if letting commercially.
- IV. Hosts are required to state that the accommodation is kept in 'good working order' and in 'a clean, sanitary and hygienic condition'.
- V. Apartment owners, where the building is restricted to residential need to notify the owner's corporation if they are letting out their unit for short term rentals.
- VI. Equally it needs to be reinforced that a tenant is required to notify their landlord before they engage in short-term rental. Many lease agreements prohibit sub-letting

### **c. Federal/State coordination**

The federal and state governments should cooperate to ensure a consistent national approach to the sharing economy. Ultimately the lack of consistent and appropriate legislation around short-term letting of rooms has led to the unfettered growth in non-compliant short term accommodation with an impact on taxes, investment and visitor amenity and safety.

We would advocate for model legislation which can be adopted across all states and territories. This would include both the requirement for registration of properties by hosts.. Equally there is the requirement that all online sharing economy channels such as Airbnb, HomeAway and Roomorama, have an obligation to ensure that all rooms listed on their sites are registered in Australia and provide a licence number which ensures they are compliant.

## **7.0 Conclusion**

The rise of the sharing economy has been fuelled by the increase in readily-accessible online distribution channels such as Airbnb. This in turn has resulted in the growth in non-compliant short term accommodation with Airbnb alone advising that it has over 35,000 rooms in Australia for rental. And this number will increase as more channels enter the market.

The result is a lack of transparency in supply which impacts investment in compliant, commercial accommodation; minimum contribution to investment in employment, training or taxation; growing concerns re visitor safety and amenity; and the long term impact that will have on the reputation of the destination.

In order to address this, TAA recommends the introduction of model legislation agreed by the State, Territory and Commonwealth governments and that this model legislation requires the registration of premises that are used for commercial short stay accommodation but are not meeting a range of health, safety, tax and regulatory requirements.

Please note that as outlined in this paper regulations for those providing accommodation should be proportionate to the scale of operation ie. someone renting out a spare room a few nights a year should not be subject to the same level of regulation as a business renting out 100 rooms year-round. To differentiate the application of regulation, separate and distinct categories should be established. For example this type of letting could be classified as 'special residential' and commercial accommodation as 'short-stay'.

To prevent misuse, there will need to be an organised system of licencing, which can be administered at local government level. All sharing economy channels will be required to ensure that all rooms listed on their sites have a valid licence number, indicating that they are compliant with Australian laws and have in place consumer protections.

Proper regulation and registration will provide a safeguard against short-stay 'special residential' accommodation being misused for illegal activities.

Ultimately the accommodation industry is seeking to provide certainty for investors in compliant commercial accommodation in Australia, protect jobs and ensure an excellent traveller experience that generates repeat visitation.

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