



**Accommodation
Association
of Australia**

“Sharing the Future” Federal Opposition
Discussion Paper –
Submission of
Accommodation Association of Australia

Accommodation Association of Australia – Principal Contact
Mr Richard Munro
Chief Executive Officer
Phone: +61 2 8666 9015

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.
- Companies which operate a business from which Australians can purchase a product or service must comply with Australia's workplace relations regime.
- Residential properties in Australia which are used – illegally – for tourism accommodation are severely compromising the safety of guests.
- All buildings which are used for tourism accommodation must comply with disability access standards.
- Companies which operate a business from which Australians can purchase a product or service must be liable for all taxes payable under Australian law, including company tax and payroll tax.
- Unlike hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, companies which operate platforms for Australian residential properties to be used for tourism accommodation are avoiding payment of taxes in Australia.
- Unlike hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, online travel agencies and online room-rate comparison websites which have their headquarters outside of Australia but operate Australian subsidiaries are avoiding payment of taxes in Australia.
- Companies which operate platforms for Australian residential properties to be used for tourism accommodation and online travel agencies as well as online aggregators of online travel agencies which have their headquarters outside of Australia but operate Australian subsidiaries are, effectively, "free-riding" on Australia's tourism industry because they make minimal direct financial contributions to government tourism marketing organisations, including Tourism Australia.
- Another option for policy-makers could be the introduction of a point-of-consumption tax.
- Online tourism businesses which derive income from Australians and do not pay taxes in Australia, such as company tax and payroll tax, must make direct financial contributions to a new "Australian Tourism Promotion Fund".
- Consistent taxation rules must apply to all companies which are operating in Australia's accommodation industry.
- Companies which have their headquarters overseas that operate platforms for Australian residential properties to be used for tourism accommodation, as well as online travel agencies and online travel aggregators which are headquartered offshore and operate Australian subsidiaries are displaying a lack of transparency.

INTRODUCTION

1. The Accommodation Association of Australia is pleased to provide the following submission to be considered in response to the release by the Federal Opposition of a discussion paper, “Sharing the Future”.
2. The Association has lodged this submission on the basis that the Opposition should take into account policy positions that the submission outlines when the Opposition is developing policy platforms to take to the next Federal Election.

ABOUT THE ACCOMMODATION ASSOCIATION

3. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for the Australian accommodation industry.
4. 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.
5. The Association’s members include major hotel and motel chains, and serviced apartment groups.
6. The Association’s membership base includes almost 2000 properties and more than 110,000 guest rooms.

TOURISM AND ACCOMMODATION – OVERVIEW

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

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

12. There are 4204 tourism accommodation establishments in Australia.⁶
13. There are 229,646 tourism accommodation rooms in Australia and 635,130 bed spaces.⁷

BACKGROUND – DEFINING TOURISM ACCOMMODATION

14. 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).
15. At present, different local governments across Australia have different definitions, while some do not define it at all.
16. 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.
17. 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

18. 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.
19. 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.
20. 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.
21. 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.

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

⁷ Ibid

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

POLICY POSITION – REGULATION/DEREGULATION

22. The accommodation industry's base policy position is that there should be less regulation for businesses in our industry in Australia, not more.
23. 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.
24. 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.
25. 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".
26. This base policy position should be considered during any deliberations about altering existing public policy settings which directly impact on accommodation businesses and, by extension, businesses entering and exiting our industry.

POLICY AREA – WORKPLACE RELATIONS

Relevant Discussion Paper questions:

- *How can we ensure the most vulnerable Australian workers are protected as the sharing economy grows?*
- *What key standards should be enforced to protect workers' rights in the sharing economy?*
- *Workers in the sharing economy are generally classed as independent contractors to the companies they deliver services for – is this an appropriate definition of the relationship?*
- *How can we ensure that workers and companies in the sharing economy share the costs and risks of delivering services in a fair way?*

27. As far as compliance with Australia's workplace relations regime is concerned, there must be a level playing field for all tourism accommodation businesses, no matter whether they are hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, and any other building which is used for tourism accommodation, including residential properties which accommodate visitors through online platforms.
28. On this basis, companies which operate a business from which Australians can purchase a product or service must comply with Australia's workplace relations regime.
29. Specifically, such companies must employ staff in accordance with the requirements set out in Australia's Workplace Relations Act.
30. Under the act, among the many requirements that 'bricks and mortar' tourism accommodation businesses must comply with are:

- Payment of wages according to awards, including payment of penalty rates (if applicable);
- Payment of superannuation;
- Provision of annual leave;
- Ensuring a safe working environment;
- Ensuring occupational health and safety; and
- Ensuring all relevant insurances are in place.

POLICY AREA – CONSUMER SAFETY

Relevant Discussion Paper questions:

- *What are the basic public safety standards that sharing economy providers should be required to meet?*
- *What role should government licensing and inspection schemes play in guaranteeing standards amongst sharing economy providers?*
- *What kinds of insurance should sharing economy providers be required to hold?*
- *How effective are public ratings systems as a mechanism for regulating service quality in the sharing economy?*

31. Companies which generate business by creating a 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.

32. By doing so, both the companies that create the platform and the residential properties themselves are operating within Australia’s accommodation market through questionable means.

33. Of most concern, though, is that companies that create a platform for residential properties to be used – illegally – for tourism accommodation are severely compromising the safety of guests.

34. 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.

POLICY AREA – DISABILITY ACCESS

Relevant Discussion Paper questions:

- *What is the most effective way to ensure sharing economy services are accessible for people with disability?*
- *What role should governments play in monitoring and enforcing access standards for sharing economy services?*

35. All buildings which are used for tourism accommodation must comply with the Disability (Access to Premises – Buildings) Standards, no matter whether they are hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, and any other building which is used for tourism accommodation, including residential properties which accommodate visitors through online platforms.

36. The requirements are onerous and impose significant additional costs on accommodation businesses. Nonetheless, they must be applied to all buildings used for tourism accommodation in Australia.

37. Residential properties used for tourism accommodation which do not comply with the standards are, effectively, discriminating against people with disability. It also places such properties at an unfair advantage to others that do comply.

POLICY AREA – PAYMENT OF TAXATION

Relevant Discussion Paper questions:

- *What is the most efficient way to ensure sharing economy providers can easily declare and pay tax on their income?*
- *How can we ensure that global sharing economy services pay an appropriate amount of company tax in Australia?*

38. Australia's accommodation industry strongly supports the position that any company which operates a business from which Australians can purchase a product or service must pay tax within Australia.

39. Companies which operate a business from which Australians can purchase a product or service must be liable for all taxes payable under Australian law, notably company tax and payroll tax.

40. Unlike hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, companies which operate platforms for Australian residential properties to be used for tourism accommodation are avoiding payment of taxes in Australia.

41. For example, from April 2014, the platform "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 tourism accommodation via its website, channelled revenue from Australian-based consumers to an Irish subsidiary.⁹

42. 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.¹⁰
43. By operating on this basis, Airbnb is clearly avoiding paying its fair share of tax in Australia.
44. Unlike hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, online travel agencies who have their headquarters outside of Australia but operate Australian subsidiaries are avoiding payment of taxes in Australia.
45. Similarly, online aggregators of online travel agencies – or room-rate comparison websites – which derive revenue from Australian consumers and/or operate Australian-based subsidiaries are avoiding payment of taxes in Australia.
46. Tourism Australia, the Australian Government’s international tourism marketing organisation, has an annual budget which is in the vicinity of \$130 million.
47. The cost of funding for Tourism Australia is almost entirely borne by the Federal Government, through payment of taxes.
48. By avoiding payment of tax in Australia, companies which operate platforms for Australian residential properties to be used for tourism accommodation and online travel agencies as well as online aggregators of online travel agencies who have their headquarters outside of Australia but operate Australian subsidiaries 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.
49. Such companies also directly derive benefits from state and territory tourism marketing organisations, but, again, they make little or no direct financial contributions to these organisations.
50. Such companies are, effectively, “free-riding” on Australia’s tourism industry.
51. Another option for policy-makers could be the introduction of a point-of-consumption tax for online tourism companies which has recently been successfully implemented in another sector in the UK.
52. In addition, the South Australian State Government has flagged the introduction of a point-of-consumption tax regime¹¹ in a sign that if the Commonwealth Government does not choose to impose a tax of this nature, then state and territory governments could do so.
53. The Accommodation Association rejects the notion that changes to the regulatory regime would result in overseas-based online tourism companies closing down their Australian subsidiaries. The fact that the Australian tourism industry is predicted to grow strongly in coming years and that local expertise in tourism is invaluable mean that such companies will only abandon Australian-based subsidiaries as a very last resort.

⁹ “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-jeq0t>, retrieved 1 June 2015

¹⁰ Ibid

¹¹ “Bigger payout sought from net gambling”, Sunday Mail – Adelaide, 1 March 2015

ESTABLISHMENT OF AN AUSTRALIAN TOURISM PROMOTION FUND

54. Despite directly deriving income from Australian consumers, companies which operate platforms for Australian residential properties to be used for tourism accommodation and online travel agencies as well as online aggregators of online travel agencies who have their headquarters outside of Australia but operate Australian subsidiaries have failed to take the initiative to self-regulate, i.e. develop a system where such companies make direct financial contributions which benefit the tourism industry (from which these companies and agencies benefit).
55. This contrasts with another sector of the sharing economy. Overseas-based companies which have Australian-based subsidiaries in the online betting industry make direct financial contributions to racing and sporting bodies in return for offering bets on the events that these bodies are in charge of. In some Australian jurisdictions, this is mandated by law. In other states and territories, these financial contributions are voluntary, but if payments are not made, voluntary payments would almost certainly be replaced by a legislative requirement to make substantial direct financial contributions.
56. It is the submission of the Accommodation Association that similar arrangements should be introduced for the tourism industry. Online tourism businesses which derive income from Australians and do not pay taxes in Australia including company tax and payroll tax – such as Airbnb – must make direct financial contributions to a newly-established “Australian Tourism Promotion Fund”.
57. Revenue accumulated within the Australian Tourism Promotion Fund would go towards funding Tourism Australia.
58. Overseas-based online tourism companies with Australian subsidiaries should be compelled to make direct financial contributions to this fund, based on revenue earned from Australian-based consumers or be liable for payment of company tax in Australia.

POLICY AREA – CONSISTENCY OF REGULATION

Relevant Discussion Paper questions:

- *What steps need to be taken to create a level playing field between sharing economy companies and traditional service providers?*
- *How can markets which have formerly faced limited competition be made more open in ways which recognise the existing value that traditional service providers have invested in their businesses?*
- *What aspects of existing regulation for traditional service providers should be reconsidered or revised as part of efforts to regulate the sharing economy?*

59. The ATO has determined that if you make a car available for public hire and use it to transport passengers for a fare, you are required to be registered for GST regardless of your turnover.¹²
60. However, if you make a room in your residential property available for public hire and charge a fee, GST doesn't apply.¹³
61. Therefore, the taxation system deals with companies which operate platforms for Australian residential properties to be used for tourism accommodation in an inconsistent manner to companies which operate platforms for cars to be made available for public hire.
62. It is the submission of the Accommodation Association that consistent taxation rules must apply to all companies which are operating in Australia's accommodation industry.
63. In line with this, all companies operating in Australia's sharing economy must pay the same taxes as 'bricks and mortar' companies, including GST and company tax.
64. Unless lack of consistency of regulation is addressed, it will inhibit investment in the accommodation industry.

OTHER ISSUE – TRANSPARENCY

65. Companies which have their headquarters overseas that operate 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.
66. A similar lack of transparency is apparent among online travel agencies and online aggregators of online travel agencies which are headquartered offshore and operate Australian subsidiaries.
67. Specifically, the Accommodation Association is not aware of one such platform or online travel agency which prominently displays on its website the address and phone number of its main office in Australia.
68. 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.
69. 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 by Austrade – or another appropriate government department or agency – which, effectively, serves as a “watch list” for non-compliant accommodation businesses.
70. In terms of revenue earned from Australians and taxation paid within Australia, overseas companies that operate platforms for Australian residential properties to be used for tourism accommodation and overseas companies that operate online travel agencies which

¹² <https://www.ato.gov.au/business/gst/in-detail/managing-gst-in-your-business/general-guides/the-sharing-economy-and-tax/>, retrieved 1 June 2015

¹³ <https://www.ato.gov.au/general/property/your-home/renting-out-part-or-all-of-your-home/>, retrieved 1 June 2015

Australians purchase products or services from are very reluctant to disclose this information.

71. As an example, Airbnb publicised a study conducted by BIS Shrapnel which found that in the period August 2012 to July 2013 inclusive, Airbnb supported \$214 million of economic activity in Sydney.¹⁴ Yet the Accommodation Association is not aware of Airbnb publicly releasing information about income and profit that Airbnb earned from Australian-based consumers and tax paid by Airbnb in Australia during this same period or in any 12-month period since then.

CONCLUSION

72. The Accommodation Association would be pleased to provide further information in relation to our submission through a meeting or other appropriate form of engagement and/or consultation.

Date: 5 June 2015

¹⁴ 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