



**Accommodation
Association
of Australia**

Draft State Planning Provisions, Tasmania –
Submission of
Accommodation Association of Australia

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EXECUTIVE SUMMARY

- There must be a level-playing field for any individual or business which charges fees (or room rates) for the provision of tourism accommodation in Tasmania.
- While there should be less regulation for tourism accommodation businesses, not more, we support tighter controls being introduced – and enforced – on tourism accommodation promoted through sharing economy platforms (such as Airbnb).
- The level of regulation in the accommodation industry must strike a balance between the safety of guests and the cost of “red tape”.
- The Accommodation Association supports a requirement that any property or development which is used for tourism accommodation is exempt from requiring a planning permit if it is used for no more than 30 nights in any calendar year.
- In the interests of ensuring tourism accommodation in remote – and often wilderness – areas is not adversely affected, operators of such properties should be able to apply for a variation to the 30-night threshold up to a maximum threshold of 90 days.
- The focus of the 30-night threshold should be on the major cities of Hobart, Launceston and Devonport.
- The current high level of investment in traditional tourism accommodation businesses in Tasmania will not continue if sharing economy platforms are not properly regulated.
- Local councils should enforce rules and the penalty for non-compliance should be a fine of not less than \$1 million.
- Of most concern is the emergence of “quasi-hotels” – apartment buildings or a group of properties with the same owner – which are offering vacant apartments as a direct alternative to traditional hotels and other tourism accommodation businesses.
- The exponential growth of online platforms which facilitate residential premises being used for tourism accommodation and the broad reach such platforms now have means they must be properly regulated – to ensure guests stay in a safe environment and to reduce the risk to investment in “bricks-and-mortar” tourism accommodation.
- 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, disability access requirements and insurance requirements.
- Regulatory change in Tasmania could set a national precedent, as no other state or territory has regulated sharing economy tourism accommodation.
- A significant economic issue 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 and permanent rental properties.

INTRODUCTION

1. The Accommodation Association of Australia is pleased to provide the following submission to be considered as part of the consultation process on Tasmania's Draft State Planning Provisions.
2. Accommodation businesses are an integral part of the tourism industry, which is one of the most important industries in Tasmania.

ABOUT THE ACCOMMODATION ASSOCIATION

3. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for Australia's 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 \$47.5 billion to Australia's gross domestic product (GDP), 3.0 per cent of Australia's total GDP.¹
8. There are 580,800 persons directly employed in the Australian tourism industry – 5.0 per cent of total employment.²
9. Tourism exports (international visitor consumption) were \$30.7 billion in 2014-15, a 9.6 per cent share of total Australian exports.³
10. Accommodation businesses add \$7 billion of gross value to the Australian economy.⁴
11. There are 87,500 people employed in the accommodation sector of the Australian tourism industry.⁵
12. There are 4464 tourism accommodation establishments in Australia.⁶

¹ Tourism Satellite Account 2014-15, Australian Bureau of Statistics

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Tourist Accommodation, Australia, 2014-15, Australian Bureau of Statistics

13. There are 248,573 tourism accommodation rooms in Australia and 678,361 bed spaces.⁷
14. In Tasmania, there are 153 accommodation establishments which have 6895 tourism accommodation rooms and 18,929 bed spaces.⁸

KEY POLICY POSITION – LEVEL-PLAYING FIELD

15. There must be a level-playing field for any individual or business which charges fees (or room rates) for the provision of tourism accommodation in Tasmania.
16. While there should be less regulation for tourism accommodation businesses, not more, we support tighter controls being introduced – and enforced – on tourism accommodation promoted through sharing economy platforms (such as Airbnb).
17. For existing “bricks and mortar” accommodation businesses, including hotels, resorts, motels, motor inns, serviced and holiday apartments, bed and breakfasts, guesthouses, backpackers and timeshare establishments, restoring a level-playing field is vital to the economic viability of these businesses.

REGULATION OF THE ACCOMMODATION INDUSTRY

18. 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.
19. However, given that in the 2014-15 financial year, there were more than 57 million room nights occupied in Australia – including more than 1.5 million in Tasmania – the duty of care to guests who stay in accommodation establishments is paramount.
20. 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 public is encouraged to “swim between the flags”.
21. This base policy position should be considered during any deliberations about altering existing public policy settings which directly impact on accommodation businesses.

DEFINING TOURISM ACCOMMODATION

22. At present, different local governments across Australia have different definitions of what constitutes tourism accommodation, while some do not define it at all.
23. No state or territory government has a standard definition of tourism accommodation and it’s a policy area the Federal Government is yet to formally mandate a definition either.

⁷ Ibid

⁸ Ibid

24. It should be noted the NSW State Government could soon make a clearer ruling on a definition of tourism accommodation because the Parliament of NSW Legislative Assembly Committee on Environment and Planning is currently conducting a major inquiry into the adequacy of the regulation of short-term holiday letting in NSW.
25. In addition, the Australian Taxation Office (ATO), a Federal Government agency, 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.
26. 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”.⁹

27. The Accommodation Association notes the section of the Draft State Planning Provisions which states any property or development which is used for “visitor accommodation in a dwelling” is exempt from requiring a permit if the use is for “no more than 42 nights in any calendar year”.¹⁰
28. The Accommodation Association has consulted extensively with its Tasmanian-based members, as well as other member accommodation properties across Australia, given the potential national consequences of this determination, to arrive at the following policy position.
29. The Accommodation Association supports a requirement that any property or development which is used for tourism accommodation is exempt from requiring a planning permit if it is used for no more than 30 nights in any calendar year.
30. In addition, the Tasmanian Government should consider mandating in legislation all tourism accommodation properties which require a permit and are currently Class 1a buildings must apply for a development application to a Class 1b building.
31. While many in our industry were supportive of there being no exemption from requiring a planning permit at all, the Association has reached this policy position taking into consideration all member properties, holiday rentals and consumer preferences (online platforms like Airbnb are growing exponentially).
32. It is the submission of the Accommodation Association a 30-night threshold is a more than reasonable incentive for online platforms, such as Airbnb, to become regulated in Tasmania, instead of operating outside of existing regulatory and legislative requirements, as it currently appears to be doing.

⁹ https://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?anchor=Commercial_residential_premises#Commercial_residential_premises, retrieved 18 May 2016

¹⁰ Tasmanian Planning Scheme – Final Draft State Planning Provisions, Page 14

INVESTMENT/INVESTMENT IN REGIONAL AND REMOTE AREAS

33. The investment environment in Hobart is currently peaking, with many new hotels planned for the city including:

- Liverpool Street – Crowne Plaza, 187 rooms;
- Argyle Street – Raadas Property, 115 rooms;
- Macquarie Street – Fragrance Group, 296 rooms; and
- Waterfront – Federal Group, 113 rooms.

The 296-room property would be Tasmania's largest hotel.

34. Accommodation occupancy in Tasmania is improving – in 2014-15, occupancy for the September quarter was 47.4 per cent and in the March quarter, it was 75.6 per cent.¹¹ This compares to 44.1 per cent in the September quarter of 2006-07 and 71.9 per cent in the March quarter of the same financial year.¹²

35. While occupancy and revenue per available room (one of the most important performance indicators for the accommodation industry) has significantly improved in Hobart, the same cannot be said for accommodation businesses which are located in regional and remote areas of Tasmania.

36. While the Government has been responsible for triggering growth in tourism and deserves to receive credit for this, further progress is still required for accommodation businesses outside of Tasmania's three major cities – Hobart, Launceston and Devonport – to provide adequate returns to investors.

37. The Accommodation Association urges the Tasmanian Government to take the views of investors into consideration before finalising new State Planning Provisions.

38. This is because the higher level of investment in traditional tourism accommodation businesses in Tasmania will not continue if sharing economy platforms are not properly regulated.

39. Further investment could lead to the establishment of a new convention centre on the waterfront in Hobart, which, in turn, would generate even more investment in tourism and more local jobs.

40. The Association acknowledges that in some parts of regional and remote Tasmania, it is almost certain a hotel or motel of any significant size, i.e. 50 rooms or more, will never be established because the investment proposition in these locations does not and is highly unlikely to stack up in the medium-term future.

41. Therefore, in the interests of ensuring tourism accommodation in remote – and often wilderness – areas is not adversely affected, operators of such properties should be able to apply for a variation to the 30-night threshold up to a maximum threshold of 90 days.

42. The focus of the 30-night threshold should be on the major cities of Hobart, Launceston and Devonport.

¹¹ Tourist Accommodation, Australia, 2014-15, Australian Bureau of Statistics

¹² Tourist Accommodation, Australia, 2006-07, Australian Bureau of Statistics

PLANNING LAWS – COMPLIANCE/ENFORCEMENT

43. Further to information provided above, responsibility for defining tourism accommodation, by and large, lies with local government authorities across Australia, although the Tasmanian and NSW state governments are moving closer to creating one standard state-wide definition of tourism accommodation.
44. The regime of local government authorities defining tourism accommodation has, to date, been unworkable because different local governments across Australia have different definitions and some local governments do not adequately define tourism accommodation at all.
45. This was the major reason for the Accommodation Association adopting a position that there should be one standard national definition for tourism accommodation, as determined by the Productivity Commission or another appropriate Federal Government agency.
46. But in the absence of this recommendation being taken up, the next-best thing would be for each state and territory to develop a definition. If possible, each state and territory should adopt the same definition.
47. Confusion over the definition, together with a lack of action from local government authorities has meant enforcement of the parameters for building use in Australia is either scant or non-existent.
48. However, should a standard state-wide definition be developed in Tasmania, the Association is hopeful this will see local government authorities become far more vigilant in performing what is an important regulatory function.
49. Therefore, the Association's position is local councils should enforce rules and the penalty for non-compliance should be a fine of not less than \$1 million.
50. A penalty of this nature would have a significant impact on two aspects of regulation of the accommodation industry in Tasmania:
 - It would act as a powerful deterrent to any person who is considering flouting the law; and
 - It would be a potential source of revenue for local government authorities which would help fund monitoring and enforcement activities.
51. 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.
52. 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.¹³

¹³ "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-20141104-11gixg.html>, retrieved 18 May 2016

53. In the months following the settlement, it was revealed the operator of the apartments in question listed the apartments on online platforms which promote residential properties for use as tourism accommodation.¹⁴
54. 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.
55. Another test case is looming in Victoria, with the landlord of an apartment in St Kilda launching a Supreme Court challenge to tenants charging guests to stay at the apartment via Airbnb.
56. This follows the tenants being successful when the issue came before the Victorian Civil and Administrative Tribunal.
57. Despite this, tribunal member Ms Kylea Campana reportedly described Airbnb's relationship with the residential tenancy market as "unregulated and controversial".¹⁵
58. These disputes demonstrate 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.
59. The issue of compliance and enforcement is critical in attempts to minimise the negative consequences on permanent residents directly resulting from the growth of online platforms.
60. The presence of short-term guests in close proximity to permanent residents, notably in apartment buildings, has significantly disrupted the amenity of such properties through, among other things, increased noise and increased wear and tear.
61. These negative consequences have been compounded by the fact that in strata-titled buildings, the body corporate has limited capacity to control short-term guests who engage in disruptive behaviour.

QUASI-HOTELS

62. It should be clearly stated the Accommodation Association is not advocating for a protectionist regime for operators of "bricks and mortar" tourism accommodation businesses which are compliant with existing regulation and legislation. As stated above, we are pushing for a level-playing field.
63. The starkest example of tourism accommodation businesses in direct competition with each other, but operating under different regimes is a quasi-hotel.
64. This refers to the practice of a common owner of several apartments – many of which could be in the same building – listing vacant apartments on online platforms which promote residential properties for use as tourism accommodation.
65. Effectively, such arrangements could appear to consumers to be very similar to apartment hotels, but the quasi-hotels meet very few, if any, of the standards which traditional tourism

¹⁴ "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-vcac-hears-20150520-gh5oqe.html>, retrieved 18 May 2016

¹⁵ "Legal stoush as landlord catches tenant renting St Kilda apartment on Airbnb", Herald Sun, 28 April, 2016

accommodation are required to. Such standards include planning laws, building fire safety requirements, having adequate insurance in place and ensuring access for people with disability.

66. The Accommodation Association is aware of at least one quasi-hotel which is operating in Hobart.
67. This is another reason why the focus in Tasmania for regulatory change should be on major cities.

ONLINE PLATFORMS – GROWTH

68. 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).
69. 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.¹⁶ Given it's almost three years since that period, there has been significant further growth of these platforms since then.

BROADER COMPLIANCE/CONSUMER SAFETY

70. The exponential growth of online platforms which facilitate residential premises being used for tourism accommodation and the broad reach such platforms now have – Airbnb has 70,000 sites across Australia – means they must be properly regulated. There are two principal reasons for this:
 - a. To ensure guests stay in a safe environment; and
 - b. To reduce the risk to investment in “bricks-and-mortar” tourism accommodation.
71. Companies which operate a business from which Australians can purchase a product or service must comply with Australia’s workplace relations regime.
72. Specifically, such companies must employ staff in accordance with the requirements set out in Australia’s Workplace Relations Act.
73. 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.

¹⁶ 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 18 May 2016

74. By doing so, both the companies that operate the platform and the residential properties themselves are conducting business within Australia's tourism accommodation market through questionable means.
75. 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.
76. Every tourism accommodation business which requires a permit (i.e. it is above the proposed 30-night threshold) should carry a minimum \$10,000,000 public liability insurance.
77. 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.

ONLINE PLATFORMS – LIMITED ECONOMIC CONTRIBUTION TO AUSTRALIA

78. The largest players and the overwhelming majority of online platforms do not have their headquarters in Australia and employ very few Australians.
79. 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.
80. 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 tourism accommodation via its website, channelled revenue from Australian-based consumers to an Irish subsidiary.¹⁷
81. Despite having an estimated worth of \$10 billion, Airbnb requested an exemption from corporate rules in Australia which require companies to disclose their earnings in a financial report.¹⁸
82. By operating on this basis, Airbnb is clearly attempting to avoid paying its fair share of tax in Australia.
83. In addition, online platforms make minimal contributions to tourism.
84. As an example, Tourism Australia, the Federal Government's international tourism marketing organisation, has an annual budget which is in the vicinity of \$140 million.
85. The cost of funding for Tourism Australia is almost entirely borne by the Federal Government, through payment of taxes.
86. 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.

¹⁷ "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-ieg0t>, retrieved 18 May 2016

¹⁸ Ibid

87. Such companies also directly derive benefits from state and territory tourism marketing organisations – such as Tourism Tasmania – but, again, they make little or no direct financial contributions to these organisations.
88. Such companies are, effectively, “free-riding” on Australia’s tourism industry.

ONLINE PLATFORMS – PROFITS GO OFFSHORE

89. The emergence of global offshore giants in Tasmania’s short-term letting market has the potential to significantly diminish the economic benefits to Tasmania of short-term letting.
90. In real terms, benefits which used to be generated at a local level – particularly among coastal communities in regional areas of the state – 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.
91. 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.”¹⁹
92. Another significant economic issue 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 and permanent rental properties.
93. Prices of residential housing are being driven up as a result of less properties being available for permanent residences and prices of permanent rental properties are increasing as well because of reduced availability.

ONLINE PLATFORMS – TRANSPARENCY ISSUES

94. 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.
95. 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.
96. 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.

¹⁹ Submission to Senate Economics References Committee inquiry into corporate tax avoidance, Airbnb, 23 September 2015

97. Consideration should be given to recommending stricter disclosure measures for accommodation businesses operating in Tasmania. 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.
98. 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.
99. 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.

NATIONAL CONSEQUENCES

100. As stated above, the policy decision made by the Tasmanian Government on this issue could set a national precedent and this should be reflected in the level of consultation which is specifically conducted on it.
101. The reason for the potential national precedent is no Australian state or territory has regulated sharing economy tourism accommodation.

CONCLUSION

102. The Accommodation Association would be pleased to provide further information in relation to our submission by direct engagement, should this be required.

Date: 18 May 2016