2020

Submission to Queensland Government Residential Accommodation Industry Reference

About the Accommodation Association.

The Accommodation Association is the peak industry association representing close to 3,500 accommodation operators and over 100,000 rooms across Australia. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced apartments, bed and breakfasts and guesthouses. These members directly contribute $3.2 billion in GVA to the Queensland economy.

Our membership is representative of the entire Accommodation sector including AccorHotels (incorporating Mantra Group); Intercontinental Hotels Group; Lancemore Group; Hilton; Toga Far East Hotels (TFE); Wyndham Hotel Group; Choice Hotels, Best Western, Big 4 Holiday Parks and Quest Apartment Hotels.

The Accommodation Association is committed to the future development and growth of a sustainable accommodation sector within Queensland economy.

Introduction.

The Accommodation Association is pleased to provide the following submission to the *Queensland Government's Short-Term Resident Accommodation Industry Reference Group*.

The Submission reflects the collective views of our membership and draws on our extensive experience engaging with government across Australia on this issue, as well as trends in global regulation.

This Submission has been created by the Accommodation Association to provide our view on the specific issues discussed in the round table in December 2019. In this meeting there was board agreement on the need for registration to ensure compliance with a yet to be drafted code of conduct which would apply to those operating in sharing economy not those currently operating regulated tourist hotel accommodation.

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. The accommodation industry is simply advocating for a level-playing field for those who are seeking to provide overnight accommodation to the visitors of Queensland.

Summary of Requested Actions.

- The Queensland Government establish a compulsory online registration system for those operating an unregulated short-term rental in residential premises
- That the register be made available to local government and state emergency services
- Establishment of a code of conduct, that will ensure platforms and hosts comply to meet the agreed standards
- Establish the minimum levels of insurance that are required to be consistent with those apply currently to the regulated accommodation sector
- Establish a night cap that applies to unregulated short term stays in residential premises (i.e. a shared economy experience).

Industry alignment.

The reasons the Queensland Government is seeking to review the short term residential industry is acknowledged. It is important to note that any new legislation be targeted to address the issues identified. That means recognising traditional operating of managed properties (often known as "Management Rights" or "MLR") that has been ongoing for some time, without the concerns that have arisen of late with growth of the sharing economy. Queensland has led the way in building, structuring and tailoring legislation that has resulted in the Management Rights industry being the success it is today.

In making these submissions, certain matters must be considered to ensure that the long-standing operation of Management Rights does not suffer irreparable damage. The NSW Government has acknowledged this concern and in turn has indicated its intention to exclude Management Rights operations from the reforms in that State.

As we see it, the difference between the sharing economy and the more traditional managed properties, is the regulation, control and management applied by Management Rights operators. This is particularly so in Queensland where a detailed legislative structure for these Management Rights (i.e. the Body Corporate and Community Management Act (and its Regulations) and the Property Occupations Act) have been implemented.

Onsite agents have a greater control over the occupants of lots because of their presence onsite and as such control the adverse effects caused by unsupervised rentals. As such, Management Rights operators should be considered differently from those operating short term rentals without the requisite management and control that Management Rights operators provide.

We therefore submit that properties with onsite management (see proposed definition below) be excluded from any reforms given the working legislative structure already in place.

A proposal would be to exclude properties that fall within the below definition:

> ***"onsite managed residential apartments*** *means each apartment that is under the management or control of a party that has either:*
>
> *(a) an onsite presence by way of a natural person resident manager or reception located in the complex within which the residential apartment is contained; or*
>
> *(b) a current written authorisation from the Owners Corporation to operate a letting business from common property for the complex in which the residential apartment is contained."*

In drafting new legislation we urge the legislature to ensure that the Management Rights industry (and with it the livelihood of many Management Rights operators) is not adversely affected.

Compulsory Registration System.

The Accommodation Association believes that residential properties that are used for tourism accommodation without onsite oversight and the owners and occupiers of those properties, should be the subject to a more rigorous compliance regime.

A single state-wide compulsory registration system is an essential first step in creating a level playing field for the industry and enables accurate monitoring of community impacts. It creates the principle that any property that is utilised for short term accommodation and caters for visitors in Queensland, must be registered either through state or local planning laws.

Online registration process:

The online registration system should be a simple process that seeks to collect the necessary information that allows local and State governments to ensure compliance with the relevant legislation including any applicable Code of Conduct. The system should be accessible for individuals, platforms, strata schemes and management companies to upload the necessary information.

The online registration process needs to be develop, managed and owned by the Queensland Government. Community and industry trust in the way that this data is collected, managed, stored and used, is important to successful implementation. A centralised approach will also ensure consistent, streamlined data and reduce likelihood of variance or incomplete data if each local government authority had its own registration regime.

Data to be collected:

The data to be collected should be limited to the information required for the Government to ensure compliance. While the datapoints will need to be further reviewed, the fields below outline the initial information that should be collected through the registration process:

- Address of the property
- Name and contact details of the owner of the property
- Name and contact details of the strata manager
- Agreement to comply with the minimum standards and confirmation that these standards are met (Code of Conduct)
- Number and compliance of fire extinguishers and smoke alarms on the property
- Self-declaration of compliance with building by-laws;
- Current insurances are in place (private and coverage provided by platforms for public liability)

Access to the data and funding of registration system:

Data should be collected with the highest level of privacy protection. Granular data should only be made available to the responsible department, local government and emergency services. Compulsory registration must be industry funded through an non-refundable application fee payable at the time of applying of application.

Compliance with registration system:

International best practice has shown that there is a need to have to have a compliance process in place, including clearly articulated consequences such as fines for the individual and platform to act as a deterrent against those who do not wish to register. This system should be contained within the Code of Conduct.

Code of Conduct.

A Code of Conduct is important to provide a framework for unregulated short-term rental accommodation industry participants. A Code of Conduct would outline a compliance and enforcement approach and facilitating oversight.

It is essential that a complete review of the existing requirements in Queensland are considered to avoid duplication. The Accommodation Association believes that the NSW Code of Conduct be used as a foundation document to develop the Queensland Code of Conduct for unregulated short term letting. The Accommodation association believes it provides holistic and fair approach to rights and obligations of industry participants, complaints and compliance and enforcement.

A central pillar in the NSW Government's proposed Code of Conduct is the introduction of night caps to ensure there is a clear delineation of those operating a regulated accommodation provider and those seeking to truly deliver a shared economy product.

Any cap on short term accommodation must provide the appropriate recognition for MLR's which is defined earlier in this submission. The critical point is that there is recognition of properties that operate under an MLR as these properties already have appropriate controls in place, by way of the Body Corporate and Community Management Act and its regulations and the Property Occupations Act.

Given the size and complexity of the State, a one size fits all approach would not support the continued growth of the Sector. The development of a night cap must consider the different requirements of regional and cities to develop a cap that supports the overall economy. Additional research and investigation must be conducted to identify the correct night cap that supports continued economic growth of the tourism sector.

Comment on the NSW Code of Conduct.

Overall the Accommodation Association has supported the proposed NSW Code of Conduct. The below details are concern of the night caps contained within the proposed NSW Code of Conduct.

180 day threshold:

Our primary concern was that 180-day threshold for the short-term rental market in metropolitan Sydney is too generous. The basis of our concerns are as follows:

- The use of 'day caps' has been implemented worldwide as one of several economic measures seeking to ensure residential apartments are maintained for the purpose for which they are intended. They are designed to protect both housing and tenant affordability and availability. Gurran & Phibbs in their 2017 study[1] on Sydney short-term rentals pointed to "*the considerable potential for Airbnb (or other online holiday accommodation platforms) to remove whole homes from the permanent rental supply and therefore considerably increase pressures on rents, a pressure even more marked in certain parts of Sydney*".

  In line with several researchers (refer AHURI study below) we believe at 180 days it becomes more attractive to put a property on the short-term rental market, rather than maintain its primary residential use.

  Gurran & Phibbs in their study point to the high concentration of Airbnb listings (note that this doesn't include HomeAway and other channel listings) in Waverley and City of Sydney. '*The number of whole dwellings frequently available on Airbnb is more than three times the vacancy rate in Waverley. This suggests that Airbnb rentals has a sizeable impact on the availability of permanent rental housing in the Waverley local government area with consequent pressure on rents. In the city of Sydney, a total of 1,268 properties, equivalent to 144% of the city's vacant rental stock, are available for holiday rental via Airbnb, a figure we would also expect to substantially affect rental availability and costs.'*

  Inside Airbnb show that currently the city of Sydney has a total of 2,135 properties with high availability via Airbnb. This is almost a doubling of stock used for short term rental in the period between 2017 and 2019.

- The Australian Housing and Urban Research Institute study in 2018[2] advised that '*two main factors —decreasing bond lodgement rates, and increasing levels of property vacancy—point to the likelihood that STL is removing properties from the long-term rental (LTR) market, thereby contributing to increasing unaffordability in the private rental sector (PRS)'.*

  In the study the authors noted that '*while the new NSW regulatory regime adopts a limit of 180 days, we have chosen 90 days as the threshold. This is consistent with approaches taken in other parts of the world (see Chapter 5) and represents a period of time that is considered to be the maximum period that long-term occupants could vacate their property without having to seek alternative long-term accommodation themselves.'*

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[1] Nicole Gurran & Peter Phibbs (2017) When Tourists Move In: How Should Urban Planners Respond to Airbnb?, Journal of the American Planning Association, 83:1, 80-92, DOI: 10.1080/01944363.2016.1249011
[2] Crommelin, L., Troy, L., Martin, C. and Parkinson, S. (2018) *Technological disruption in private housing markets: the case of Airbnb*, AHURI Final Report 305, Australian Housing and Urban Research Institute Limited, Melbourne, http://www.ahuri.edu.au/research/final-reports/305, DOI:10.18408/ahuri-7115201.

- Their study and a review of overseas jurisdictions, shows that a 180-day cap is one of the most generous thresholds worldwide (New York & San Francisco, 30 days primary residence only; Denmark, 70 days if share data; Ireland, 90 days in the year and for a maximum of 14 days at a time; Vancouver, 30 days, primary residence only; Montreal, 30 days; Hong Kong, 28 days). These jurisdictions recognise the potential impact on housing affordability and availability.

21 Day reset:

Given the fact that 180 days is too generous as a cap, we have considerable concern that without consultation, a further 21 or more consecutive day permission has been granted, where the host is not present. The stated rationale is that 'longer bookings tend to have fewer amenity impacts and are a key support to a mobile workforce'. The reality is that this simply makes it easier to convert residential apartments into short-term rental and that even with a registration scheme and requirement for compliance, there is little way of monitoring what is now effectively a 365-day cap.

Please note that many serviced apartment operators, who comply with development requirements, fulfil the need for executive stays. We therefore do not support the necessity to create another category. The new proposal to enable stays of 21 days or more not to count towards the cap, is essentially a loophole to permit year-round short-term letting in premises that are zoned residential.

The hardest violators to remove, according to researchers, are hosts who run de facto hotels and take permanent housing off the market. "The biggest problem are the commercial short-term rentals" since "the risk might be worth it to stay operating," says Shirley Nieuwland, a doctoral candidate at Erasmus University in the Netherlands who co-authored a study[3] on cities' attempts to regulate Airbnb.

Ultimately the more days permitted for short-term rentals, the more likely it is to be viable to convert the property from residential to commercial and, as outlined above, be prepared to ignore any fines for non-compliance.

[3] Shirley Nieuwland &Rianne van Melik (2018) Regulating Airbnb: how cities deal with perceived negative externalities of short-term rental, https://doi.org/10.1080/13683500.2018.1504899

Policy Context International.

There was discussion at the most recent round table of international examples of the regulation of the short term letting. The following examples have been drawn from the Curtin University study and are an example where governments around the globe are tightening regulations on short term letting.

London

- Amended standard tenancy agreements to remove explicit ban on sub-letting
- Allowing home sharing for up to 90 days per year without government approval
- Properties are automatically banned on Airbnb website once the 90-day limit has been reached

New York

- Amended specific laws to make it illegal to rent out a residential apartment for
- Less than 30 days, unless the permanent resident is present
- Amended laws to make it illegal to advertise a property in a residential multiple dwelling building (without the owner present)
- Implemented fines for breaking this law, $1,000 for the first instance, $5,000 for the second and $7,500 for each further violation
- Airbnb hosts must collect and pay all relevant taxes (i.e. Hotel Unit fee, Hotel Room Occupancy Tax and sales tax)

San Francisco

- Amended local codes to allow units to be rented for up to 90 days (without the host present) and no max number of nights if the permanent resident is present
- Units must be registered, and hosts must provide quarterly activity reports
- Hosts buy $50 registration fee that is valid for two years
- Tenants may not charge more than their monthly rent when renting out their residential property
- Proof of insurance for $500,000 or more must be provided what the time of applying for registration
- Only one residential unit may be registered by any person
- Airbnb collects the hotel tax for all rentals
- Hosting platforms must ensure that advertised properties are registered and face $1,000 per day fine if the premises is not

Barcelona

- Registration of any dwelling rented for a fee for up to 31 days, two or more time per year
- Tourist tax must be collected and paid and details of guests must be sent to the City
- Both guests and neighbours are provided a telephone number for queries and complaints

Amsterdam

- City of Amsterdam signed an agreement with Airbnb regarding local regulations
- City provides legal information on home sharing to hosts
- Airbnb collects the City's tourism tax
- Automatic blocking of rentals from Airbnb's platform if they exceed the rental cap of 60 days per year
- Neighbour complaint online tool and dedicated hotline
- Provision and tracking of activity