

Owners Corporations Amendment (Short-Stay) Accommodation Bill 2016

Submission to the Environment and Planning Committee



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1. About TAA (VIC) and AHA (VIC)

The Australian Hotels Association (AHA) is an organisation of employers in the hotel and hospitality industry registered under the Fair Work (Registered Organisations) Act 2009. AHA is represented in Victoria by AHA (VIC). Tourism Accommodation Australia (VIC) is a division of the AHA (VIC) and represents the needs and interests of the major licensed accommodation hotels in Victoria's accommodations sector. Together, TAA (VIC) and AHA (VIC) have a diverse membership of more than 400 accommodation properties, including pub-style hotels, apartments, backpacker accommodation and three, four and five star international accommodation hotels located across metropolitan and regional Victoria.

TAA (VIC) and AHA (VIC) welcome the opportunity to make a joint submission to the Environment and Planning Committee on the Owners Corporations Amendment (Short-Stay Accommodation) Bill 2016. The purpose of this submission is to demonstrate that without regulatory neutrality between all commercial operators of short-term accommodation, the Government's proposed amendments contained in this bill are insufficient to ameliorate the impact on residents, owners and owners corporations of the broad-scale conversion of residential strata title into quasi-hotels.

2. Introduction

To clarify that industry's position, the different categories of accommodation in the "sharing" economy need to be defined. Nationally, TAA has adopted the following definitions:

Sharing accommodation: Primary residences let un-hosted for a maximum total of 90 days per financial year.

Hosted accommodation: All hosted stays in primary residences.

Commercial-residential accommodation: Short-term accommodation that falls outside the above definitions of sharing and hosted accommodation, and the property is not a regulated commercial accommodation provider. This includes properties offering un-hosted short-term accommodation for a cumulative total of more than 90 days per year, and entire properties short-term let by operators with multiple listing.

Short-term commercial accommodation: Regulated commercial accommodation (traditional short-term accommodation providers).

State and Commonwealth Governments across Australia should embrace sharing and hosted accommodation.

The monetisation of an under-utilised asset, such as a family home, should be allowed to continue as long as that asset predominately and demonstrably continues to function as an owner-occupier's primary residence.

In the hosted accommodation category, any perceived risks or possible detrimental consequences for neighbourhood amenity are considerably mitigated by the physical presence of the host. As such, hosted accommodation in a private or shared room should not have limits imposed on permissible lengths of stay.

These two accommodation categories diversify the accommodation sector's product offering, increase competition in a historically competitive commercial environment, encourage innovation and lead to growth throughout the entire accommodation sector.

While TAA (VIC) welcomes genuine sharing and hosted accommodation, it is gravely concerned that entrepreneurial commercial operators are exploiting regulatory grey-areas to run commercial short-term accommodation businesses in residential communities, particularly in strata buildings. TAA (VIC) refers to this category of accommodation as commercial-residential accommodation, and will use this term throughout this submission. The relevant distinction is that while short-term commercial (traditional, regulated) accommodation is classified as "Class 3" under the Building Code of Australia, commercial-residential accommodation offers ostensibly the same product in a "Class 1a" or "Class 2" building.

Commercial-residential accommodation is most acutely observed in metropolitan strata-title. Either through the aggregation of lots by a single investor, or the short-term letting of separate lots by multiple investors, residential strata titles now can be easily and quickly converted into year-round quasi-hotels. Under present practice and duplicitously labelled as "home-sharing"¹, such an event does not require a change of use permit or development application. As such, TAA (VIC)'s primary concern is that without the implementation and enforcement of appropriate regulatory controls, allowing commercial operators to convert residential housing into year-round quasi-hotels will undermine confidence in regulated Class 3 hotel investment.

The collapse of investment in traditional, regulated accommodation supply in favour of commercial-residential accommodation will compromise the functionality and character of a city's visitor economy and decrease direct employment in the accommodation sector. Additionally, the conversion of residential strata title into quasi-hotels will alter the character of a neighbour through a rise in unaccompanied transient guests, diminished supply of residential housing, and decreased rental affordability.

3. Reality of Short-term Letting in Melbourne and Victoria²

Analysis of listings on Airbnb from early December 2016 shows that there are 5104 entire house/apartments offering commercial-residential accommodation in metropolitan Melbourne. This equates to 41.93% of the 12,174 total listings on Airbnb. By comparison, private rooms account for 40.90% of Airbnb's Melbourne listings, while shared rooms account for a miniscule 2.46%.

This commercial-residential component has grown by 21.26% since April 2016 when there were 4209 commercial-residential listings in Melbourne.

Of the 5104 commercial-residential listings in Melbourne, 3567 (69.89%) are apartments.

¹ "Home-sharing" is a misnomer, because by definition the term should not be extended to the short-term letting of properties that are not primary residences.

² The figures were obtained by TAA from Inside Airbnb. Unlike the regulated accommodation sector, Airbnb does not publicly disclose data regarding rooms available, room nights available and occupancy rates.

In a demonstration that Airbnb facilitates more than owner-occupier home-sharing, the top five hosts on Airbnb in Melbourne have a combined 279 entire home/apartment listings. It is increasingly a platform for commercial operators to offer short-term accommodation without the regulatory constraints imposed upon traditional accommodation providers.

In Melbourne, particularly in the CBD, some residential apartment buildings have already become quasi-hotels where in excess of 40% of the lots are being used exclusively for short-stay accommodation. Those lots are owned by commercial operators who let them as hotel rooms.³

Melbourne Metro Listings	Apr-16	Dec-16	Growth (%)
a) Entire House/Apartment let un-hosted AND annual availability of >90 days	1756	1905	8.49
b) Entire Home/Apartment let un-hosted, AND operator has >1 listing	2453	3199	30.41
Total Commercial-Residential	4209	5104	21.26
Total Listings	9988	12174	21.89
Commercial-Residential Percentage ⁴	34.88%	41.93%	n/a

4. Uneven Regulatory Playing Field

The regulatory and legislative requirements imposed by Commonwealth, State and local governments upon traditional accommodation providers but not imposed upon commercial-residential accommodation (outlined in Appendix 1) demonstrate the unevenness of the short-term accommodation playing field. This jeopardises future investment in new accommodation supply.

Regulations add costs for operators. A 2015 report commissioned by the ACCC determined that ‘regulatory neutrality’ is a significant issue affecting competition between traditional operators and commercial operators in the “sharing” economy, who have “fewer regulations applied to and/or enforced against them” which “affects traditional businesses’ ability to compete.”⁵

Hence, it is evident why commercial operators are moving away from traditional hotel investment, instead aggregating and converting residential apartments into quasi-hotels. Commercial-residential operators are not required to comply with food safety, fire safety, disability access or liquor licensing regulations, or with employment or taxation requirements. They do not have the same regulatory or holding costs associated with a hotel development application, and can move stock out of the long-term rental market into the short-term accommodation market without any barriers to entry. They do not have the same staffing requirement as traditional hotels (which employ an average of 0.42

³ Victoria, Legislative Council, 2016, *Owners Corporation Amendment (Short-Stay Accommodation) Bill 2016*, November 8, p5864.

⁴ Categories a) and b) are both indicative of a commercial accommodation enterprise, not “home-sharing”.

⁵ Deloitte Access Economics, 2015, *The sharing economy and the Competition and Consumer Act*. Available at <https://www.accc.gov.au/system/files/Sharing%20Economy%20-%20Deloitte%20Report%20-%202015.pdf>.

employees per available room), and workers they do require are often employed as contractors instead of employees – transferring business risk and associated responsibilities on to the individual worker. Airbnb listings create 80% less employment than comparable hotels.⁶

Individually, these regulatory impositions are unlikely to be threshold factors to discourage hotel investment. However, their cumulative impact - and that commercial-residential accommodation is allowed to continue as an investment alternative without adherence to the same regulatory framework – substantially impacts investment decisions. With dramatically reduced overheads, these commercial-residential operators can multiply unhindered and undercut the room rate of heavily regulated, traditional accommodation providers.

5. Owners Corporation Amendment (Short-stay Accommodation) Amendment Bill

The Owners Corporation Amendment (Short-stay Accommodation) Bill is a step in the right direction to address complaints relating to safety and security of residents and buildings, increased building maintenance and upkeep, and an inability for residents to develop a sense of community due to an increase in transient, short-term guests. However, we contend that the Bill should also consider the regulatory imbalance in the accommodation sector that currently encourages broad-scale conversion of residential lots into short-term accommodation and, in turn, causes potential significant disruption to neighbourhood and community amenity in residential strata title.

Government is encouraged to intervene to ensure commercial-residential accommodation and traditional operators are required to comply with the same regulatory framework, otherwise the complaints of residents and apartment owners will not be properly resolved. They could, in-fact, be exacerbated as investors consider further conversion of residential lots into quasi-hotel rooms.

Fair and equitable competition in the accommodation sector through the even application of regulations will discourage the conversion of residential lots into quasi-hotel rooms, which in turn will minimise the disruption currently endured by residents, owners and owners corporations.

Recommendations

An informed and considered Government response is required to level the playing field between commercial operators and investors offering short-term accommodation, maintain regulated hotel investment and to address the concerns of residents, apartment owners and owners corporations.

1. One Host, One Home

A single host with multiple listings across different addresses indicates a commercial operation. In San Francisco and New York, Airbnb has agreed to a *One Host, One Home* policy limiting hosts from advertising listings at more than one address. In these cities, Airbnb has declared that commercial

⁶ Laane, 2015, *Airbnb, Rising Rent and the Housing Crisis in Los Angeles*, p17. Available at <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>.

operators are “unwelcome”⁷⁸ on their platform, and has committed to removing those listings⁹. TAA (VIC) believes that a *One Host, One Home* policy, enforced through registration of hosts with the Victorian State Government, is as necessary in Melbourne as it is overseas. An enforceable *One Host, One Home* policy to remove commercial operators would significantly mitigate the concerns of residents, apartment owners and owners corporations that are symptomatic of an uneven regulatory playing field.

2. Limit Un-hosted Nights in Entire House/Apartment Listings

The *Airbnb Policy Tool Chest* states that ‘at a certain point ... [short-term letting] becomes a more commercial activity requiring additional regulation.’¹⁰ Short-term letting an entire house/apartment beyond an annual threshold of nights indicates a commercial activity.

As in San Francisco, London, Amsterdam, New Orleans and Paris, un-hosted entire house/apartment listings in Melbourne should be limited to a certain number of nights per year.

In Amsterdam and London, Airbnb has installed a night-counter (a record of each listing’s annual nights sold) that tracks booking activity and blocks booking functionality once the annual limit has been reached. A similar system should be implemented in the Melbourne so that booking functionality for un-hosted entire house/apartment listings is blocked above an annual threshold of nights.

As with the *One Host, One Home* policy, TAA (VIC) believes that a night-counter (with booking activity disclosed to the Victorian State Government) is as necessary in Melbourne as it is in London and Amsterdam. Blocking booking functionality above an annual threshold of nights would significantly mitigate the concerns of residents, apartment owners and owners corporations that are symptomatic of an uneven regulatory playing field.

3. Registration

All short-term letting listings should be required to register with the Victorian State Government, and the Government should maintain a publically accessible register of listings available for short-term let. This register should include the owner’s name, the property address and the number nights per year an entire house/apartment is let un-hosted. Additionally, the registration process could ensure appropriate and adequate insurance and risk management advice.

A registration system would allow investors to accurately quantify the supply of short term lets in Victoria, and make informed investment decisions in response. It would ensure that *One Host, One Home* and night-counter policies are being adhered to by the platform.

⁷ <https://san-francisco.airbnbcitizen.com/airbnb-in-san-francisco-by-the-numbers/>

⁸ <https://new-york-city.airbnbcitizen.com/economic-impact-reports/one-host-one-home-new-york-city/>

⁹ <https://san-francisco.airbnbcitizen.com/one-host-one-home-san-francisco/>

¹⁰ Airbnb, 2016, *Airbnb Policy Tool Chest*, p7. Available at https://www.airbnbcitizen.com/wp-content/uploads/2016/12/National_PublicPolicyTool-ChestReport-v3.pdf.

As the international experience has demonstrated, it is important that Governments and short-term letting platforms work together to ensure that unregistered listings are not advertised on their websites. The registration process should be a light-touch regulatory control that encourages transparency of short-term accommodation supply. This may involve (as agreed to by Airbnb in New Orleans) a system where advertising a short-term let in Victoria on an online platform automatically triggers registration with the Victorian State Government. A registration number should be required to be displayed on short term letting advertisements, and fines should apply for advertisements that do not display the registration number.

4. Empower Owners Corporations

Owners Corporations in strata buildings should be empowered to make and enforce their own by-laws regulating un-hosted short-term accommodation without requiring ongoing litigation.

Conclusion

TAA (VIC) believes that State and Commonwealth Governments across Australia should embrace sharing and hosted accommodation. These two accommodation categories diversify the accommodation sector's product offering and strengthen the visitor economy.

TAA (VIC) is gravely concerned that commercial operators are offering short-term accommodation in metropolitan residential strata title without any of the regulation impositions with which traditional accommodation providers, such as hotels, must comply. Forty-one percent of all Airbnb's listings in Melbourne are run by commercial operators impervious to the regulations relating to food safety, fire safety, disability access, liquor licensing, development applications, employment and taxation that are designed to protect hosts, operators and workers. This is an uneven playing field, applying different regulatory requirements for different operators supplying ostensibly the same accommodation product.

The unevenness of the short-term accommodation playing field incentivises the conversion of residential strata title into quasi-hotels. The complaints of residents, apartment owners and owners corporations are merely symptomatic of this. Without regulatory neutrality more commercial operators will consider further conversion of residential lots into quasi-hotels, with the consequence that complaints relating to short-term letting will be exacerbated. The proposed amendments in the Government's Owners Corporation Amendment (Short-Stay Accommodation) Bill are insufficient to prevent this exacerbation of complaints, instead only creating a dispute and resolution process. Only an even regulatory playing field for all commercial operators in the accommodation sector will minimise the disruption currently endured by residents, owners and owners corporations.

TAA (VIC) recommends the enforcement of the *One Host, One Home* and night-counter policies that Airbnb has implemented overseas. Registration with the Victorian State Government is crucial to ensure enforcement of these policies, and to quantify the supply of short-term lets in Victoria to allow investors to make informed investment decisions. Finally, owners corporations should be



empowered to make and enforce their own by-laws regulating un-hosted short-term accommodation.

Appendix 1

Regulatory Environment for Hotels

A lack of regulatory clarity in this accommodation sector has created two vastly different regulatory regimes for ostensibly the same accommodation product; i.e. short-term accommodation provided by commercial operators is subject to two vastly different regulatory regimes depending on whether it is in a Class 1a/Class 2 or Class 3 building.

In the accommodation sector, the apparent purpose of regulation is to protect guests, workers and operators. This principle ought to apply equally, regardless of whether the accommodation is in a Class 1a, Class 2 or Class 3 building.

1. Food Safety

Food businesses in Victoria, including restaurants and cafes in hotels, are required under the Food Act 1984 and the Australian New Zealand Food Standards Code to register with the local council, comply with the Food Standards Code and are subject to regular council inspections.

Commercial-residential accommodation, which may provide food for guests as part of the product offering, is not subject to the same regulations in the Food Act.

2. Fire Safety

Traditional accommodation (hotels, motels and serviced apartments) in Class 3 buildings is subject to extensive fire safety requirements prescribed by the Building Code of Australia. Additionally, hotels are subject to regular council fire safety inspections, often including requirements for emergency lighting, exit signs, fire doors, fire hydrant systems, sprinklers. Class 3 buildings have stringent requirements for smoke alarms.

These controls are more relaxed for commercial-residential accommodation in Class 2 buildings (apartment blocks), despite the fire risks being greater in Class 2 buildings. Each lot has its own kitchen (unlike a hotel room), and unlike most hotel rooms smoking on balconies and inside apartments is permitted.

3. Disability Access

In hotels, common areas must be accessible for guests with a disability. Additionally, the *Disability (Access to Premises – Buildings) Standards 2010* dictates the proportion of rooms that must cater to guests with a disability. The cost of constructing or renovating an accessible room has a 30% premium over a standard room, and delivers a weaker return on investment than a standard room.

Commercial-residential accommodation is not required to offer accessible rooms because the accessible room ratio requirements do not apply in Class 2 buildings.

Total Rooms Available	Accessible Rooms Required
1 to 10 rooms	1 accessible room
11 to 40 rooms	2 accessible rooms
41 to 60 rooms	3 accessible rooms
61 to 80 rooms	4 accessible rooms
81 to 100 rooms	5 accessible rooms
101 to 200 rooms	5 accessible rooms plus 1 for every 25 rooms or part thereof in excess of 100
201 to 500 rooms	9 accessible rooms plus 1 for every 30 rooms or part thereof in excess of 200
More than 500 rooms	19 accessible rooms plus 1 for every 50 rooms or part thereof in excess of 500

4. Liquor Licensing

Under the Liquor Control Reform Act 1998 and the Liquor Control Reform Regulations 2009, hotels serving alcohol are required to maintain a valid liquor license and are subject to oversight from Victoria Police, local councils and the Compliance Division of VCGLR.

Obtaining a liquor licence is an essential requirement for virtually all four and five star hotel operators. Urbis notes that the process of obtaining a liquor licence is generally “relatively small but overly complex”, and that “modest bars situated within hotels represent a very low risk development which is not reflected in the approval requirements.”

Commercial-residential accommodation, which may supply alcohol for guests as part of the product offering, is not subject to the same burdensome regulatory control or enforcement to which accommodation hotels are subjected.

5. Development Applications

Commercial-residential accommodation occurs in contravention of local planning instruments and the zoning restrictions established by local councils, without any barriers to entry.

By contrast, hotels undertake exhaustive, protracted and expensive development applications. In Melbourne, a 300 room four star CBD hotel development takes about 35 weeks to secure approval, and has direct regulatory costs (including development application fees, building fees and construction certificates) of over \$100,000. Average total regulatory costs in Melbourne are in excess of \$200,000. Site holding costs in Melbourne average in excess of \$500,000.

As noted in the Urbis report, various representation to Austrade by the tourism industry have suggested that the planning environment in Australia is discouraging and even hostile to efficient hotel investments, and that there is a risk that efficient commercial investment will be delayed or even deterred by inappropriate and lengthy regulatory processes.

Commercial-residential accommodation can enter and exit the market without any comparable development-related regulatory costs or site holding costs.

6. Employment in Hotels

The traditional, regulated accommodation sector employs tens of thousands of Victorians, directly and indirectly, through extensive value-chains. It is estimated that state-wide, hotels, motels and serviced apartments employ over 20,100 workers directly including over 13,200 in metropolitan Melbourne.¹¹

At a minimum, workers are employed under the Hospitality Industry (General) Award 2010 which guarantees a rate of remuneration, working conditions and ensures compliance with FairWork principles. In addition to this, employers make significant investment in workforce training and development, and maintain appropriate workers compensation insurances.

Commercial-residential accommodation does not make a comparable contribution to direct employment. In fact, the Laane Report (2015) estimated that if Los Angeles' 11,400 entire house/apartment Airbnb listings had been hotel, motel or serviced apartment rooms an additional 7,400 workers would have been employed. The Laane Report also found that, at best, Airbnb listings create 80% less employment than comparable hotels.¹² A decrease in direct employment in the accommodation sector adversely impacts state governments' payroll receipts.

7. Taxation

At present, there is no way for governments to monitor commercial-residential accommodation income, meaning there is no means of preventing income-tax avoidance by commercial-residential accommodation operators. There is also no means of monitoring properties that become liable for Capital Gains Tax.

Current guidance from the ATO is that income generated by renting out a residential house or apartment is exempt from remitting GST. Commercial-residential operators are included in this exemption. Conversely, traditional short-term accommodation providers pay GST on all transactions.

Traditional short-term accommodation providers pay council rates and charges set at business levels, whereas commercial-residential accommodation – despite operating as a business – attracts a much lower residential council rate.

¹¹ Based on an industry average of 0.42 employees per room, with the 2016 ABS Survey of Tourist Accommodation numbering accommodation rooms in Victoria at 48,038 and accommodation rooms in Melbourne at 31,630.

¹² Laane, 2015, *Airbnb, Rising Rent and the Housing Crisis in Los Angeles*, p17. Available at <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>.