

Where to from here?

Equitable regulation of shared accommodation in Victoria



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Key Recommendations

Tourism Accommodation Australia (Victoria) and the Australian Hotels Association (Victoria), in representing accommodation hotel operators across Victoria, embrace the diversity of accommodation offer that sharing platforms like Airbnb offer consumers. However, we contend that regulation is required to account for consequences created by such platforms.

Our key recommendations build on similar regulations that are already in place in other communities where sharing accommodation platforms operate. Sensible regulation will ensure that the significant annual growth in the shared accommodation inventory in Victoria can be managed to appropriately address consumer safety concerns; regulatory imbalances for similar asset classes; resultant attractiveness of investment in particular asset classes; resident amenity issues; housing affordability, and the fair application of relevant taxes.

In this submission, TAA (Vic) and AHA (Vic) make four key recommendations:

Recommendation One:

The government should implement a registration system for short stay accommodation hosts, consistent with that already in place in San Francisco, Denver, Chicago and New Orleans.

Recommendation Two:

A registration system should monitor the requirement for hosts to only list one property on sharing accommodation platforms (One Host, One Home) and restrict booking capability to a threshold of 90 nights per year.

Recommendation Three:

To address the regulatory imbalance between the short-stay and traditional accommodation sectors, all newly constructed Class 2 buildings should be subject to the same building code requirements, with regard to fire safety and disability access, as Class 3 buildings, given the close association of activity, in buildings where short stay accommodation is provided.

Recommendation Four:

Owners' Corporations in buildings with mixed use (private and shared accommodation) should be able to make and enforce their own by-laws regulating un-hosted accommodation in the building, particularly in the event an agreed majority of residents support a particular course of action.

Introduction

The rapid growth of the sharing economy has enabled consumers to leverage advances in technology and a willingness, particularly in the case of millennials, to borrow, rent or share, and use platforms like Airbnb. These platforms allow them to share goods and services and capitalise on the unused capacity of an asset they own¹. In the tourism sector, operators of 'traditional hotels' embrace the room sharing economy, given it provides a diversity of accommodation offer that supports tourism growth. However, the hotel industry does not support the widespread conversion of residential apartments into Airbnb style hotels, on the basis that these types of operations lack building, fire safety and disability access controls designed to protect consumers, hosts, operators and workers.

Transactions undertaken in the sharing economy often occur in environments that do not necessarily fit into the realm of existing regulation, thus trading activities may, essentially, be self-regulated by the companies engaging in the delivery of the activity.²

Airbnb's functional resemblance to the hotel industry raises questions about how to deal with the regulatory and legislative requirements imposed by Commonwealth and State Governments that bind traditional accommodation providers, but are not imposed on commercial-residential accommodation providers. Airbnb facilitates market exchanges between people seeking temporary accommodation, from people willing to rent their home. It is not unusual for hosts to provide services and amenities similar to those guests would experience in hotels. Given this apparent close association of predominant activity, TAA (Vic) and AHA (Vic), through our response to the recent Environment and Planning Committee Inquiry into the Owners Corporations Amendment (Short-Stay) Accommodation Bill (the Inquiry), asserted that the Inquiry process afforded the Victorian State Government (the government) a timely opportunity to bring the sharing accommodation economy in line with the regulatory environment in which traditional hotels operate, in essence, to create an even regulatory playing field.

This uneven regulatory playing field currently renders commercial-residential apartments a more attractive investment proposition for developers and investors than traditional hotel investments, compromising future investment in new accommodation supply for Victoria. It also jeopardises future employment opportunities for thousands of Victorians given Airbnb-style accommodation listings create 80 per cent less employment than comparable hotels³.

Consumer safety critical to maintain Victoria's visitability

Our submission to the Inquiry referenced the food safety, fire safety, disability access, liquor licensing, development application, building amenity, employment and taxation provisions

¹ Interian: [Up in the air: Harmonizing the sharing economy through Airbnb regulations](#)

² Al Ramandan et al, [Behind Uber's Soaring value](#)

³ Laane, 2015 [Airbnb, Rising Rent and the Housing Crisis in Los Angeles](#), p. 15

traditional hotels adhere to, that are designed to protect consumers, hosts operators and workers. Victoria has an enviable reputation as a highly desirable destination of choice for domestic and international visitors alike that is central to the State's tourism offer and must be maintained. The safety and security of our valued guests, while enjoying the amenities and services offered by Victoria's accommodation providers should not be compromised through obvious disregard to aforementioned regulatory standards. In the absence of these provisions the 'safety of guests, hosts and neighbours is more at risk than when they stay in regulated hotels.'⁴

In recently formulating a taskforce to investigate flammable cladding on Victorian buildings, following the deadly London tower fire, the government demonstrated an understanding of the importance of auditing buildings to ensure they adhere to safety standards. When making the taskforce announcement, Planning Minister, Richard Wynne acknowledged that "there's nothing more important than public safety, and for people to have confidence that Victoria's buildings are constructed properly."⁵

Other jurisdictions

To determine the appropriate balance to employ when considering regulation of sharing accommodation platforms, the government must assess the consumer's opportunity to satisfy another consumer's demands and, in doing so, generate a legitimate supplementary income, with the need to moderate consequences created by such platforms. This includes addresses safety concerns; regulatory imbalances for similar asset-use classes; resident amenity issues; housing affordability and fair application of taxes.

In suggesting an appropriate course for the government to take to regulate sharing accommodation, our submission made four key recommendations:

1. Adoption of a 'One House, One Home' policy to prevent a single host having multiple listings across different addresses;
2. The implementation of a booking threshold to limit unhosted nights in entire house or apartment listings on sharing accommodation platforms, above which short term letting becomes a commercial activity;
3. Adoption of a registration system to accurately quantify the supply of listings available for short term letting, and
4. The empowerment of Owners' Corporations to make and enforce their own by-laws regulating un-hosted accommodation.

⁴ Linda Rosenthal, New York State Assembly member, [Something in the Airbnb: hosts anxious as New York begins crackdown](#)

⁵ The Age: [Victorian government appoints Ted Baillieu to lead urgent probe into flammable cladding](#)

Our submission referenced that there are existing regulatory precedents to support the logic of these recommendations, when reflecting on how other jurisdictions across the world regulate the manner in which sharing accommodation platforms like Airbnb operate.

In doing so, it is also useful to consider commentary contained within Airbnb's *Policy Tool Chest* that appreciates "communities may want to enact sensible limits that meet their needs" to "distinguish between amateur hosts who only occasionally share space and commercial hosts who offer their space on a more frequent basis."⁶ The *Tool Chest* also acknowledges "many cities believe that residents should be able to rent a room or home occasionally, but at a certain point (for example, a threshold of days rented per year), or after operating a couple of listings renting becomes a more commercial activity requiring additional regulation (Ibid)." Airbnb also states a desire to "work cooperatively with local government partners as they consider and put in place a range of policies to try and ensure rules are fair and clear.(Ibid)"

It is prudent for government to consider the regulatory controls for sharing accommodation that apply in other jurisdictions:

City	Requirements for sharing accommodation
New South Wales	<ul style="list-style-type: none"> Looking to legalise and regulate, following a Parliamentary Inquiry in 2016. The Berejiklian Government has accepted many of the recommendations, but is yet to finalise a regulatory framework. The Berejiklian Government will impose new rules on property owners who let out spare rooms or entire homes, but is yet to finalise details, including "considering restricting rentals, and capping how many days a property can be let without a development application".⁷
San Francisco	<ul style="list-style-type: none"> Owners must have liability insurance, occupy the residence for at least 275 days per year (reflecting a threshold of 90 days for shared accommodation usage), obtain a permit from their municipal authority and have no building code violations. Hosts are only able to rent out their permanent residence and not rent out more than one unit. They also need to obtain permission from landlords or their body corporate equivalent. A 'One Host, One Home' limits hosts from sharing listings at more than one address.

⁶ [Airbnb Policy Tool Chest](#), p.7

⁷ AAP: [A parliamentary inquiry into homesharing sites such as Airbnb wrapped up six months ago but the NSW government says it still needs to conduct more consultation.](#)

London	<ul style="list-style-type: none"> • Hosts can share their homes for up to 90 days per year, without this being considered a change of use, requiring planning permission. • Hosts across the United Kingdom are able to earn up to £7,500 per year from renting part of their primary residence or £1,000 from renting their whole home without having to pay income taxes on it.
City	Requirements for sharing accommodation
New York	<ul style="list-style-type: none"> • Owners allowing apartments to be let for less than 30 days are fined \$1,000 for first violation, \$5,000 for second and \$7,500 for a third. Also, if the guest was to suffer burns from an upturned kettle, the apartment is burgled an insurer may refuse to pay because the guest is occupying the premises illegally.⁸
Amsterdam	<ul style="list-style-type: none"> • Hosts must be registered with municipal authorities as residing at the address, must pay local and national taxes and can only house up to four guests at a time, for no more than 60 days per year. • Host must ensure they meet all fire and safety rules. • Airbnb collects all applicable bed and tourist taxes. • A limiter on Airbnb website, ensures a listing disappears from the site, for the rest of the year, once apartments have been rented for 60 days.
Barcelona	<ul style="list-style-type: none"> • A special licence is required for short term rentals. Fines are applicable for Airbnb, if offering unlicensed accommodation on its site.
Paris	<ul style="list-style-type: none"> • Hosts can only rent investment property to short term guests if also renting an equivalent property to a permanent tenant. This regulation addresses the availability of affordable rental housing.

Who should be targeted?

When making the 'One Host, One Home' and 'threshold for limiting unhosted nights in entire houses or apartments' recommendations in our submission, TAA (Vic)/AHA (Vic) recognise an important distinction to not to hunt down individuals who have one home and rent it out for a few weeks per year, rather target commercial players essentially operating Airbnb style hotels in a residential settings, where aforementioned regulatory controls do not provide adequate consumer protection. This includes individuals or entities who may own one apartment in a building, but then sublet a number of additional apartments on sharing platforms.

⁸ Gebicki: [Major blow for Airbnb users: New law to restrict New York City apartment rentals](#)

Indeed, in an interview with Reuters in November 2016, Airbnb CEO, Brian Chesky acknowledged that he “did not anticipate and appreciate there would be so many property management companies and unscrupulous landlords that would list so many properties (on Airbnb) in some cities,” and that this is a “problem”.⁹

Parliamentary Inquiry

The published report of the Victorian Legislative Council Environment and Planning Committee (the Committee) into the Inquiry made three key recommendations that support TAA (Vic)/AHA (Vic)’s contentions.

Recommendation 1: *That the Victorian Government investigates a mechanism to improve data collection on short stay accommodation.*

This recommendation recognises the variability of data and reported impact of short stay accommodation, including the prevalence of listings, across Victoria. This led the Committee to find that there is inadequate and inconsistent data relating to the prevalence and locations of short stay accommodation in the state.

Uneven regulatory playing field

The Committee acknowledged that “there are uneven regulatory arrangements for short-stay accommodation providers compared with those in the traditional accommodation industry.” They asserted that this issue required further consideration by the government when making their third recommendation.

Recommendation 3:

That the Office of the Commissioner for Better Regulation reviews the regulatory imbalance between the short stay and traditional accommodation sectors.

This recommendation recognises “the need to regulate short stay accommodation that falls within the scope of commercial residential accommodation” and makes an important distinction between “low impact hosted accommodation” and commercial-residential accommodation acknowledging, in instances where owners are present there is “little impact on the amenity and safety of other residents.” Accordingly, the Committee agreed that hosted accommodation should be embraced by the government.

Recommendation five also relates to the merit of a registration and compliance regulatory framework for short stay accommodation and encourages the government to consider an appropriate framework to do so.

Recommendation 5:

That, as recommended by TAA (Vic), the Victorian Government investigates the costs and benefits of introducing a registration and compliance regulatory framework for commercial-

⁹ Reuters: [Here’s How Airbnb Would Like to Be Regulated](#)

residential short stay accommodation providers where properties are listed for more than 90 days and a single owner, whether a person or entity, has multiple listings.

The way forward

Registration and monitoring

The *Airbnb Tool Chest* acknowledges that “thoughtfully targeted registration programs have the potential to provide information to local governments, while not posing undue burdens on people who share their homes.”

During the Inquiry, TAA (Vic)/AHA (Vic) fielded questions from panel members regarding how a registration and monitoring system might be established and monitored in Victoria.

Adopt a system that already works

In Airbnb’s home city of San Francisco, a registration system has recently been implemented that requires hosts of short term rentals to obtain a business licence and register with the city. To assist hosts to comply with this regulatory requirement, a ‘Pass Through Registration’ system exists (as it does in Denver, Chicago and New Orleans). Pass Through Registration allows the host to complete a simplified registration to register their short term rental with their local Office of Short Term Rentals and receive a business registration number via the Airbnb website. Listings on Airbnb and similar sites must also display the registration number. Both the host and booking platform are liable for non-compliance.¹⁰

Recommendation One:

The government should implement a registration system for short stay accommodation hosts, consistent with that already in place in San Francisco, Denver, Chicago and New Orleans.

A publically accessible registration platform would enable prevalence and location data to be determined by interested parties and be monitored by local government. The cost of local government monitoring compliance should be met on a user-pays basis, through the application of an appropriate registration fee.

Registration of guests staying in shared accommodation properties would also contribute important visitation data to state and national tourist accommodation statistics. If remaining unregistered, important economic and demographic data will not be captured, thus will not inform future tourism-related planning decisions.

The registration system could also address the following criteria for a host:

- Required residency status (Australian citizen or permanent resident);

¹⁰ USA Today: [Airbnb rentals in San Francisco may dive with new host rules](#)

- Authority for use – the requirement to be the dwelling owner or tenant with landlord or body corporate permission to use the property for short stay accommodation;
- Restricted use zoning – short stay accommodation not permissible in a public housing unit or dwelling that is not zoned for residential use;
- Public liability insurance requirements (noting that a minimum threshold of \$500,000 coverage exists in San Francisco);
- Taxation thresholds - as is the case with the provision of sharing accommodation in London, thresholds should be set for hosts renting out part or all of the property, above which they should be liable to pay income tax on revenues received.

Once registered, hosts should receive a registration number from local government that must be displayed on any promotional material advertising their property as being available for rent. They should also be liable to reporting requirements, including the provision of a quarterly occupancy report.

A public register of short stay accommodation providers could include information such as the provider's registration number, the company or individual who owns the property, its physical address and the number of nights it has been let, unhosted, in the current financial year.

Recommendation Two:

A registration system should monitor the requirement for hosts to only list one property on sharing accommodation platforms (One Host, One Home) and restrict booking capability to a threshold of 90 nights per year.

In London and Amsterdam, Airbnb has agreed to take on the responsibility of policing limits of the number of days per year a full unit can be let through its system. They make sure hosts stick to local limits for short term rentals.¹¹ In San Francisco, Airbnb promote "responsible home sharing" through a commitment to remove listings that breach the state's 'One Host, One Home' policy. This resulted in 1,339 listings being removed from Airbnb since the policy came into effect (April 1, 2016 – April 1, 2017)¹²

TAA (Vic) and AHA (Vic) strongly contend that a 90 day booking cap would not impact the ability for short stay accommodation hosts who wish to temporarily rent out their home during a holiday to do so. In fact, Airbnb Australia/New Zealand head of public policy, Brent Thomas recently asserted that "the vast majority of our hosts in Australia share their primary residence, the home they live in, for an average of 30 nights per year".¹³ Stayz advisor,

¹¹ The Guardian [Airbnb regulation deal with London and Amsterdam marks dramatic policy shift](#)

¹² Airbnb citizen: [April update on One Host, One Home: San Francisco](#)

¹³ The Australian Financial Review [Sydney inner city residents oppose Airbnb letting as 'full-time investment'](#)

Richard Collbeck is also quoted as appreciating that a “reasonable framework” is required for short term rentals to address “genuine amenity concerns,” particularly in strata blocks (Ibid).

In addition, Airbnb remits state taxes on behalf of operators in a number of other jurisdictions. Indeed, Airbnb have multiple agreements worldwide to collect and remit taxes and acknowledge that “it is important for us to be part of that system and pay our fair share”¹⁴. This level of involvement with hosts reflects Airbnb’s status not as a ‘detached facilitator’ but an “indispensable participant in the transaction”.¹⁵

These standards and practices evident in other jurisdictions should also be imposed on hosts of sharing accommodation listings in Victoria. Particularly given the technological capability exists for Airbnb and other short stay accommodation listing aggregators to ensure, and assist hosts with, compliance.

Recommendation Three:

To address the regulatory imbalance between the short-stay and traditional accommodation sectors, all newly constructed Class 2 buildings should be subject to the same building code requirements, with regard to fire safety and disability access, as Class 3 buildings, given the close association of activity, in buildings where short stay accommodation is provided.

As described in our submission, two vastly different regulatory regimes exist for ostensibly the same accommodation product, depending on whether this service is provided in a Class 1a/Class 2 or Class 3 building. TAA (Vic) and AHA (Vic) acknowledge that determining how to address this regulatory imbalance is challenging for government. We appreciate, for example, that requiring **existing** Class 1a and Class 2 buildings to be retrofitted to bring them up to the building code standards required for fire safety and disability access standards in Class 3 buildings is cost prohibitive and unlikely to garner full agreement from all residents of the particular building, some of whom will be permanent residents and not supportive of additional cost burdens to meet short stay accommodation requirements.

New hotels proposed for Victoria in the coming years include mixed use developments of residential apartments and hotel rooms by Singaporean, Malaysian and Chinese developers. These mixed use developments are common in Asia.

For **newly constructed** mixed use Class 2 buildings that will create a supply of short stay accommodation, TAA (Vic) and AHA (Vic) contend that this intended use should render these developments liable to the same building code requirements as Class 3 commercial buildings, given the close association of activity on a commercial scale.

¹⁴CBC News [Canada's biggest cities move to regulate Airbnb, but it's no easy task](#)

¹⁵ See 1.

Recommendation Four:

Owners' Corporations in buildings with mixed use (private and shared accommodation) should be able to make and enforce their own by-laws regulating un-hosted accommodation in the building, particularly in the event an agreed majority of residents support a particular course of action.

For both existing and newly constructed buildings, TAA (Vic) and AHA (Vic) are supportive of *Recommendation 4* the Committee made, reflecting that the "Victorian Government considers the appropriateness of giving owners corporations of strata complexes power to regulate short stay accommodation in their building"¹⁶.

Summary

The rapid proliferation of home sharing must be regulated to account for the consequences created by such platforms. This includes the need to avoid building conversions from residential buildings to quasi-Airbnb style hotels, with adverse safety and investment consequences. The benefits sharing accommodation platforms like Airbnb offer does not warrant the deterioration of regulatory structures that have been long established in commercial settings to ensure consumer safety.

The tables listed in Appendix One demonstrate significant annual growth in Victoria (April 2016 – April 2017) for the letting of entire homes and apartments, with availability in excess of 90 nights per year (52.09 per cent growth) and letting of an entire home or apartment, where the host has more than one listing (increase of 69.96 per cent). Apartments listed for short term accommodation in Melbourne also reflect rises of 45.49 per cent and 26.03 per cent respectively.

Should this significant growth continue unabated, without regard to registration, listing restrictions and building regulation provisions listed above, sharing accommodation platforms like Airbnb will be encouraged to disregard existing rules and regulations, continue to grow exponentially and, ultimately, become so big that government will find it very difficult to impose any form of regulatory control on them in the future.

In the state of Victoria, the government has the opportunity to use learnings from other jurisdictions to determine ways sharing accommodation platforms like Airbnb can coexist with local regulations that are beneficial to the company, its users and those impacted by their presence¹⁷.

¹⁶ Parliament of Victoria: [Inquiry into the Owners Corporations Amendment \(Short-stay Accommodation\) Bill 2016](#)

¹⁷ See 1.

In their Toolkit, “Airbnb has expressed an eagerness to work with officials at every level of government toward (the development of) smart, forward looking rules for home sharing” There is sufficient evidence that they have done so successfully in the past, following eight years of collaboration with hundreds of governments worldwide.

Now is the time for all sharing accommodation platforms to do so in Victoria!

Appendix One: Airbnb listings in Melbourne and Victoria

Melbourne metro listings	Apr 2016	Dec 2016	Apr 2017	Annual growth
a) Entire Home/Apartment AND host has 1 listing AND annual availability of >90 days	1756	1905	2416	37.59%
b) Entire Home/Apartment AND host has >1 listing	2453	3199	3738	52.38%
Total Commercial-Residential	4209	5104	6154	46.21%
Total Listings	9988	12174	14435	44.52%
Commercial-Residential Percentage	34.88%	41.93%	42.63%	n/a
Total VIC listings	Apr 2016	Dec 2016	Apr 2017	Annual growth
a) Entire Home/Apartment AND host has 1 listing AND annual availability of >90 days	3740	3682	5688	52.09
b) Entire Home/Apartment AND host has >1 listing	4014	4713	6822	69.96
Total Commercial-Residential	7754	8395	12510	61.34
Total Listings	15149	16624	23352	54.15
Commercial-Residential Percentage	51.18%	50.50%	53.57%	n/a

Melbourne metro listings – Apartments Only	Apr 2016	Dec 2016	Apr 2017	Annual growth
a) Entire Apartment AND host has 1 listing AND annual availability of >90 days		1154	1679	45.49
b) Entire Apartment AND host has >1 listing		2413	3041	26.03
Total Commercial-Residential Apartments		3567	4720	32.32
Total Listings (Apartments)		6815	8393	23.15
Total Listings (All)		12174	14435	18.57
Commercial-Residential Percentage		29.30	32.70	n/a

Source: Inside Airbnb