

40TH PARLIAMENT



Economics and Industry Standing Committee

Report 7

LEVELLING THE PLAYING FIELD

*Managing the impact of the rapid increase of Short-Term Rentals in
Western Australia*

Presented by
Ms J.J. Shaw, MLA
September 2019

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Economics and Industry Standing Committee

Levelling the Playing Field

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Presented by

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Laid on the Table of the Legislative Assembly on 26 September 2019

Chair's Foreword

When the Committee initiated this Inquiry into Short-Stay Accommodation, we anticipated a straight-forward exercise that would take a comparatively short period of time to complete. There had been a groundswell of public agitation from the South West of the State, voicing concerns about the emergence of online accommodation platforms and, so it seemed, a high level of consensus about the nature of the 'problem'.

However, more than any other Inquiry we have yet tackled, this issue has proven remarkably complex and polarising. It has drawn a record number of submissions from around Western Australia and exposed an issue that is having a broad range of impacts, triggering a wide array of policy and community responses. The lengthy time this Inquiry has taken to complete, and the difficulty the Committee has experienced in developing a set of practical recommendations, perhaps reflects the complexity of this topic and the wide range of perspectives within and between communities.

In this Inquiry, we have differentiated between two main types of Short-Stay Accommodation: Traditional Accommodation and Short-Term Rentals.

'Traditional Accommodation' properties have long existed and have usually been specifically developed to provide Short-Stay Accommodation for the recreation and business travel markets. They have been appropriately licensed and registered and include hotels, motels and licensed bed and breakfasts.

'Short-Term Rentals' are properties, or rooms within properties, that have not been developed for Traditional Accommodation purposes. Short-Term Rentals have usually been built for residential purposes and are often located in areas zoned for residential use, but have subsequently been offered for short-term letting for the purposes of recreational, business or other travel. They are not always licensed and/or registered.

Evidence provided to the Committee demonstrates that the Short-Stay Accommodation sector is undergoing rapid change. Western Australia's first Short-Term Rental was listed in Como in August 2008. Two years later, 30 properties were listed online. Since that time, growth has been exponential. The twelve months to December 2018 saw a 24% increase in listings, with over 12,000 listings now available in Western Australia. The vast majority of these properties are 'unhosted', with guests having exclusive use of an entire house or apartment.

The increasing prevalence of Short-Term Rentals, often in competition with Traditional Accommodation, has prompted this Inquiry. There are a wide range of views on the topic, across the State and within local government areas. Although there were differences in the individual accounts provided to the Committee, there were four main stakeholder groups raising consistent issues: Traditional Accommodation providers, Short-Term Rental owners, neighbours and holiday makers.

Traditional Accommodation providers raised issues surrounding competition from Short-Term Rentals, noting that their rise coincided with a decline in Traditional Accommodation occupancy rates. They stated that Short-Term Rentals are not subject to the same approvals and compliance costs and burdens, resulting in an 'uneven playing field'. Traditional Accommodation providers observed that they were often subject to higher local government and utility rates and expressed concerns about consumer protections, customer experiences, insurances, safety and disability access. Some claimed that Short-Term Rentals do not add to local economic activity nor contribute to local destination marketing and tourism initiatives. They stated that competition from Short-Term Rentals was causing them to reduce staffing numbers. Traditional Accommodation providers urged a high degree of government intervention and regulation, often advocating that Short-Term Rentals be subject to the same compliance measures as traditional forms of Short-Stay Accommodation.

Short-Term Rental owners (and the platforms facilitating them) emphasised a range of benefits from their form of accommodation. They stated that Short-Term Rentals provide consumers with more choice in how they holiday and encourage tourism into areas that may not have many Traditional Accommodation options. They claim that they generate local economic activity, regularly referring their guests to local small businesses and tourism attractions. Hosted accommodation owners in particular claimed that they provide a more authentic experience, allowing their guests to 'live like a local'. They provided evidence that they employ local support services (such as cleaners, gardeners etc.) and themselves derive an income stream from letting their properties. The Committee also heard that entirely new business models are emerging, providing Short-Term Rental management services.

Holiday makers supported the view that Short-Term Rentals provide a different form of Short-Stay Accommodation product and facilitate consumer choice. Given their lower cost, Short-Term Rentals make access to holiday making more affordable and accessible. They allow people to travel with their pets, self-cater and provide a 'home away from home' experience that is particularly beneficial for larger family groups or those travelling with young children.

Neighbours of Short-Term Rentals emphasised the negative impacts that properties can have on amenity. The Committee was presented with evidence of 'party' houses and apartments and of homes being used as corporate venues. In residential areas, people raised issues such as barking dogs, loud music and other antisocial behaviours, and said their neighbourhoods became 'ghost towns' during low season periods. In apartment and strata complexes, people expressed additional concerns about building access and security and the misuse of common areas. Local governments expressed similar concerns about these issues and discussed the difficulty in developing and implementing policy or regulatory controls.

The community services sector raised issues surrounding disabled access to Short-Term Rental properties and a potential 'crowding out' effect over the longer term, as has been experienced in tourism destinations like Venice and Barcelona. In some locations with a high proportion of Short-Term Rentals, there have been implications for the long-term rental

market and local resident's access to affordable housing. Whilst this is not currently a significant state-wide problem, hotspots may be emerging—particularly in the South West.

Local Government Authorities (LGAs) have responded to the rise of Short-Term Rentals in a wide variety of ways. Most LGAs noted the challenges associated with identifying the size of their local Short-Term Rental industry, complaints management processes, and enforcing compliance with licensing or registration schemes through planning mechanisms and local laws. Evidence to the Committee showed that LGAs have developed a complex and often confusing patchwork of regulatory requirements, with widely varying degrees of success.

Jurisdictions around the world have grappled with how best to address the issues arising from the changes underway in the Short-Stay Accommodation sector. It is important to recognise that the different levels of government also have different interests and objectives.

At the State level, the Western Australian Government is concerned to manage 'macro level' issues associated with planning and land use, access to affordable housing, consumer protection and economic development. Whilst LGAs also have an interest in these aspects, they are primarily focused on managing local amenity impacts, the provision of community services and facilities, and very particular local planning and land use issues. Both levels of government also have a different range of tools available to manage the sector.

The findings and recommendations in this report seek to balance the different perspectives and interests in Short-Stay Accommodation, and support the objectives of both State and local governments. The Committee recognises that Short-Term Rentals are a legitimate form of Short-Stay Accommodation, but we consider that they should be appropriately regulated, according to local conditions.

The Committee finds that existing state-level planning instruments and guidance materials addressing Short-Stay Accommodation are dated and inconsistent. We have also observed that the fine thresholds available to LGAs may not be sufficient to deter non-compliance with any planning controls. Prosecution processes are also problematic. We have made a series of findings and recommendations highlighting how the State Government could provide better guidance through planning and strata frameworks.

The evidence to this Inquiry has shown that a consistent, baseline set of information about the Short-Stay Accommodation sector would considerably support State and local policy-making and regulatory functions, enabling regulators to also determine the sector's size and scope, and assess the impact of short-term letting on the Western Australian economy, regions and communities. This report's central recommendation is that the State Government establish a state-wide registration scheme for Short-Term Rentals. We consider that registration should apply to both hosted and unhosted properties, to ensure complete information and manage avoidance behaviours.

As further outlined in this report, registration received widespread support from Traditional Accommodation providers, neighbours of Short-Term Rentals, self-appointed industry data-providers, local governments, Tourism WA and other State Government agencies, advocacy

groups and industry organisations, Short-Term Rental Managers, Short-Term Rental owners and online booking platforms.

Recognising that heavy compliance burdens and high overheads should be avoided, we have found that any property registration system for Short-Term Rentals needs to be simple, low cost and user-friendly. The Committee did not consider it appropriate to make more detailed recommendations about the specific data sets that should be collected through the registration process, beyond observing that the State should consult with local government about the information that would be of use to both levels of government.

There was a clear preference amongst many Inquiry participants for the State Government to manage a central register, in part because it would provide the information and regulatory consistency that Western Australia currently lacks. In the Committee's view, State management of a single, central register would also increase efficiency and simplicity for participants.

It was less clear which State agency should lead the development and implementation of a registration scheme. Indeed, the evidence suggested that there are a range of State entities with considerable interests in the Short-Stay Accommodation sector, but inter-agency collaboration seems limited. The successful implementation of a registration scheme will depend on clear lines of accountability for the scheme administration, and identification of the levers available to enforce mechanisms for non-compliance.

To date, much of the policy work on this issue has been undertaken through the planning portfolio. However, the recommendations listed in this report do not refer to a specific Minister unless direct, compelling evidence has been presented to the Committee clearly identifying or recommending assignment to a particular portfolio. Given the number of agencies and ministerial portfolios with an interest in the regulation of Short-Stay Accommodation, it is vital that the State Government clearly identify the lead agency and portfolio with primary accountability for industry regulation. We have recommended that the Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

We have also recommended that the interdepartmental working group develop the requirements for the state-wide registration scheme, including the nature of the information to be gathered; the registration cycle; registration costs; the appropriate agency to hold the register; and the data collection and sharing mechanisms.

Other jurisdictions have imposed information disclosure obligations on the online platforms and have required that they display valid registration numbers for Short-Term Rentals. The evidence to this Inquiry suggests that these measures would also be of benefit in Western Australia and we have therefore recommended that the relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia.

Witnesses and submissions to this Inquiry repeatedly stated that any new regime for Short-Stay Accommodation must allow communities to manage the sector in accordance with local conditions. The Committee agrees with this proposition.

Beyond imposing a light-handed state-level obligation to register Short-Term Rentals, the Committee has found that any additional conditions, licences or operational constraints or controls should only be imposed at the discretion of the relevant LGA, until such time as there is compelling evidence for more significant state-level intervention. The state-wide register should be a powerful tool for LGAs to understand and manage the impact of Short-Term Rentals in their individual communities.

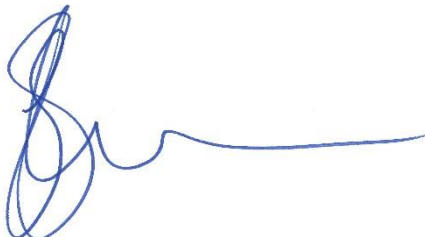
The findings and recommendations in this report intend to balance complex and often diametrically opposed interests. The challenge for the Committee has been to suggest policy responses that are fair, sensible, practical and most importantly, workable. We hope that the adoption of our recommendations may go some way towards levelling the playing field, for all sector participants.

On behalf of the Committee I would like to sincerely thank the many stakeholders and community members who participated so enthusiastically in this Inquiry.

Given the overwhelming level of community interest in this issue, the Committee elected to trial a new 'deposition' style of evidence-gathering, providing people with an opportunity to participate directly in the parliamentary process and provide three- to five-minute presentations to the Committee. We appreciate how forthcoming people were with their views and benefitted greatly from hearing directly from our constituents about how these changing industry dynamics are affecting local communities.

I would like to thank my Committee colleagues for their collaboration and support throughout the course of this Inquiry, Member for Churchlands, Member for Forrestfield, Member for Jandakot and Member for Warren-Blackwood.

I would also like to thank the Committee secretariat, Dr David Worth and Lachlan Gregory for their assistance in the early stages of this Inquiry, and Franchesca Walker and Suzanne Veletta for their assistance in completing this Inquiry. This was the last parliamentary inquiry that Dr Worth supported prior to his retirement, and I would finally like to acknowledge his long and distinguished career in the public service.

A handwritten signature in blue ink, consisting of a large, stylized initial 'S' followed by a long horizontal line.

MS J.J. SHAW, MLA
CHAIR

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Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Ministers for Commerce, Emergency Services, Housing, Lands, Local Government, Planning and Tourism report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Finding 1

Page 7

As at early 2019, there were at least 20,000 Short-Term Rental listings in Western Australia, a large majority of them unhosted accommodation. Data indicates that while Airbnb listings in Western Australia are still growing, the rate of growth is slowing.

Finding 2

Page 18

People who let their premises via online platforms benefit from additional income, especially retirees and under or unemployed people.

Finding 3

Page 19

Like holiday homes before them, unhosted Short-Term Rentals available through online platforms are popular with families, particularly those from overseas, as they facilitate consumer choice, offer more flexible forms of accommodation, often have facilities that are not provided by Traditional Accommodation sources and can be more cost-effective, particularly for large groups.

Finding 4

Page 23

Although Western Australia experienced a rapid growth in the supply of Short-Term Rental listings between 2014 and 2019 and a large increase in tourist visitation in 2018, the Committee has found no direct evidence linking these two trends.

Finding 5

Page 25

The increase in Short-Term Rental offerings in Western Australia has assisted in the development of a new business sector to manage and support many of these new premises, especially those that are unhosted.

Finding 6

Page 35

Traditional Accommodation providers generally have greater overhead costs than individuals offering Short-Term Rentals as a direct result of existing State and local government regulations and policy settings.

Finding 7

Page 38

There has been a considerable increase in the supply of hotel beds added to Perth's Central Business District market since 2011. This has coincided with a deterioration in the State's general economic conditions. It would therefore appear that declining revenues and increased vacancy rates in hotels cannot be primarily ascribed to the expansion in Short-Term Rentals.

Finding 8

Page 39

There was no evidence presented to the Committee of 'Airbnb hotels' being developed in Western Australia. There is evidence that some developments in metropolitan Western Australia were approved with an allowance of part of the building to be used for Short-Stay Accommodation.

Finding 9 **Page 46**

There is significant variation across the Western Australian Short-Stay Accommodation market with respect to fire safety standards. The New South Wales Government has chosen to address fire risk for Short-Term Rentals by introducing a *Short-Term Rental Accommodation Fire Safety Standard* pursuant to its *Environmental Planning and Assessment Regulation 2000* (NSW).

Finding 10 **Page 50**

The Committee received evidence from Traditional Accommodation providers in the South West of Western Australia indicating a significant drop in their revenue and occupancy rates. Whilst a number of factors could have contributed to this decline, it has coincided with a considerable increase in Short-Term Rentals in this market.

Finding 11 **Page 55**

Evidence from other jurisdictions, and increasingly from the South West of Western Australia, demonstrates that the growth in Short-Term Rentals affects the availability of long-term rentals and affordable housing. The Department of Communities (Housing) did not provide a submission to this Inquiry; however, it should continue to monitor the effects of Short-Term Rentals on housing sector dynamics and consider appropriate policy approaches.

Finding 12 **Page 56**

Some real estate agents are marketing properties as potential Short-Term Rentals—knowingly or unknowingly—in areas where this land use is prohibited or restricted under the local planning framework.

Finding 13 **Page 56**

Some owners are purchasing properties to use as Short-Term Rentals without first establishing that this land use is permitted under the local planning framework.

Finding 14 **Page 56**

There is currently no way for prospective property owners to easily ascertain whether the property in which they are interested is located near to a Short-Term Rental, increasing the risk that they will find themselves as the unwitting neighbours of Short-Term Rental party houses.

Recommendation 1 **Page 57**

The Minister for Commerce request the Department of Mines, Industry Regulation and Safety develop a public education campaign in association with REIWA to make owners, real estate agents, property managers and purchasers of real estate in Western Australia aware of their obligations in regard to:

- the truthful marketing and presentation of properties as Short-Term Rental prospects;
- the importance of considering Short-Term Rental as part of the pre-purchase due diligence process; and
- other legal obligations surrounding the use of properties as Short-Term Rentals.

Finding 15 **Page 59**

Short-Term Rentals can cause a range of amenity impacts in residential areas, such as parking, the creation and collection of rubbish, the noise and anti-social behaviour of guests, and the behaviour of their pets.

Finding 16 **Page 68**

Local planning schemes, local planning policies and local laws provide the flexibility necessary for local governments to set effective planning controls for Short-Term Rentals appropriate to their local context. While some local governments have designed effective frameworks, there is considerable variation across Western Australia.

Finding 17 **Page 70**

In respect to Short-Term Rentals, many local governments are not adequately enforcing compliance with their local planning schemes, local planning policies and local laws.

Finding 18 **Page 71**

While a number of local governments reported they had received very few complaints relating to the operation of Short-Term Rentals, evidence provided to the Committee showed many local governments place a substantial evidence gathering burden on complainants. This has discouraged the lodgement of formal complaints.

Finding 19 **Page 74**

The land use definitions in *Planning Bulletin 99—Holiday Homes Guidelines* and the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* that relate to Short-Term Rentals are dated and inconsistent, and do not accurately reflect how residential properties are currently being used for short-term letting in Western Australia.

Finding 20 **Page 77**

There are concerns that ‘deeming’ land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* would reduce the ability of local governments to adjust their policy responses to local contexts.

Finding 21 **Page 77**

The inclusion of land use definitions in the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* encourages the consistent treatment of Short-Term Rentals throughout Western Australia while retaining the ability of local governments to adjust their policy responses to local contexts.

Finding 22 **Page 77**

There is a much higher compliance burden on traditional bed and breakfasts, relative to Short-Term Rentals. Any actions taken to harmonise land use definitions must be cognisant of the implications on traditional bed and breakfast businesses.

Recommendation 2**Page 78**

That by June 2020 the Minister for Planning update the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend:

- land use definitions to differentiate between hosted and unhosted Short-Term Rentals;
- land use definitions to include the size and capacity of Short-Term Rentals; and
- the definition of bed and breakfast accommodation.

Finding 23**Page 79**

There is no consensus amongst local governments in Western Australia about the best regulatory mechanism for Short-Term Rentals.

Recommendation 3**Page 80**

That by June 2020 the Minister for Planning direct the Western Australian Planning Commission to update planning guidance so that it aligns with the amended land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* and provides greater guidance to local governments about ways to appropriately regulate Short-Term Rentals.

Finding 24**Page 81**

The maximum fines that local governments can issue to Short-Term Rentals that fail to comply with local planning schemes, local policies or local laws are not substantial enough to deter non-compliance.

Finding 25**Page 83**

Local governments must gather significant evidence to secure a successful prosecution against non-compliant Short-Term Rentals. Currently, evidence that an unapproved premises is being advertised as a Short-Term Rental is insufficient because it shows intent to rent, rather than establish the actual fact of a rental. Local governments must also gather witness statements from neighbours and guests to prove that the premises has, in fact, been let as a Short-Term Rental.

Finding 26**Page 86**

Landgate's strata title Policy and Procedure Guides do not appear to specifically address the short-term letting of lots nor how by-laws can be used by strata companies to better manage Short-Term Rentals in their strata schemes.

Finding 27**Page 87**

The State Government intends to publish online model by-laws for strata companies.

Recommendation 4 **Page 89**

The Minister for Planning direct the relevant government agency to work with stakeholders to develop model by-laws that assist strata companies to better manage Short-Term Rentals in their strata scheme. These model by-laws should include:

- by-laws that, if adopted by a strata company, would prevent owners from letting their lots as Short-Term Rentals; and
- by-laws that, if adopted by a strata company, would enable owners to let their lots as Short-Term Rentals.

Recommendation 5 **Page 89**

The Minister for Planning direct Landgate to update their strata titles guidance to include discussion of the powers and processes open to strata companies to manage Short-Term Rentals in strata schemes.

Finding 28 **Page 94**

There is widespread agreement that Short-Term Rentals in Western Australia should be registered.

Finding 29 **Page 99**

All properties providing Short-Term Rentals—both hosted and unhosted—in Western Australia should be registered. This would enable State and local government policy makers to confirm and monitor the size and scope of the sector, and will better inform any resulting regulatory response, and facilitate consistent and effective enforcement.

Finding 30 **Page 99**

Any property registration system for Short-Term Rentals needs to be simple, low cost and user-friendly.

Finding 31 **Page 99**

Whilst there is no immediate case for extending registration to all forms of Short-Stay Accommodation, State and local governments should consider how to better utilise the information currently gathered under existing registration and licensing schemes for Traditional Accommodation.

Finding 32 **Page 100**

A register, with consistent baseline disclosure requirements, will improve the availability of information about the Short-Stay Accommodation sector, improve policy development, and should improve Short-Term Rental regulation across local government authorities.

Finding 33 **Page 101**

Many stakeholders agreed the State Government should manage a central register but there was little consensus on which authority should have primary responsibility for it.

Finding 34**Page 101**

A number of agencies and ministerial portfolios have an interest in the regulation of Short-Stay Accommodation. It is vital that the Government clearly identify the lead agency and portfolio with primary accountability for industry regulation.

Recommendation 6**Page 101**

The Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

Finding 35**Page 104**

Imposing a requirement that Short-Term Rentals listed by online booking companies include a valid registration number has quickly removed non-compliant Short-Term Rentals in other markets. If introduced in Western Australia, it could also assist local governments to more easily identify unapproved premises.

Finding 36**Page 104**

Online booking platforms are unlikely to voluntarily include registration numbers on their listings in Western Australia.

Finding 37**Page 108**

Short-Term Rental providers may not hold adequate public liability insurance, leaving them personally liable if a guest is injured due to the owner's fault or negligence. This may place consumers at considerable risk.

Recommendation 7**Page 108**

The interdepartmental working group should:

1. Establish the baseline requirements for a state-wide registration scheme, including:
 - a. the minimum information required for both hosted and unhosted premises;
 - b. the cycle of registration;
 - c. registration costs for the State register (separate from any additional local government fees, charges or costs);
 - d. the most appropriate agency to hold the register; and
 - e. the treatment of Traditional Accommodation providers.
2. Determine the legal mechanisms through which the State Government can introduce and enforce a registration scheme, including consequences for non-compliance.
3. Determine the most appropriate mechanism to collect and manage the registration data.

4. Determine the information disclosure requirements for online platforms and appropriate enforcement mechanisms.
5. Determine information sharing mechanisms between State and local government authorities, including information gathered under existing registration and licensing regimes for Traditional Accommodation.
6. Determine what information, if any, should be made publicly available.
7. Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.

The interdepartmental working group's activities should incorporate appropriate consultation mechanisms with local government authorities and relevant stakeholders.

Finding 38

Page 110

Although online booking platforms have the capacity to validate registration numbers before listing Short-Term Rentals, they have resisted this role in other jurisdictions.

Finding 39

Page 110

Online booking platforms should be required to display a valid registration number issued under the registration scheme.

Recommendation 8

Page 110

The relevant Minister should ensure, through appropriate legislative or regulatory mechanisms, that online platforms are required to display a valid registration number for Short-Term Rentals, issued under the registration scheme.

The interdepartmental working group should consider and provide advice to the Minister on the appropriate requirements for Traditional Accommodation.

Finding 40

Page 113

Major online platforms are complying with requirements to share their Short-Term Rental data with governments in many jurisdictions, including in Tasmania. Where they do not, there are alternate sources for this data but online platforms claim this data is not accurate.

Recommendation 9

Page 114

The relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia to the government agency with primary responsibility for the state-wide registration system, on a disclosure cycle to be recommended by the interdepartmental working group.

Finding 41**Page 115**

A publicly available register of Short-Term Rentals would enable guests to confirm the compliance of their Short-Term Rentals; local governments to uncover unregistered Short-Term Rentals; prospective property owners to identify Short-Term Rentals in their desired neighbourhood; and aggrieved existing neighbours to lodge complaints and have their amenity impacts addressed.

Finding 42**Page 119**

Local governments should have the ability to determine any additional conditions or licensing requirements for the registration of a Short-Term Rental. This would allow them to retain the flexibility to respond to local conditions.

Recommendation 10**Page 119**

The relevant Minister introduce a state-wide registration scheme for Short-Term Rentals based on the parameters developed by the interdepartmental working group, coupled with data provision requirements for online platforms.

Local government authorities should be responsible for:

- approving additional registration requirements for properties within their boundaries;
- developing additional registration criteria, suited to their particular circumstance;
- enforcing compliance with their local controls;
- managing complaints about Short-Term Rentals; and
- setting and imposing penalties for non-compliance with local requirements.

The process for information collection and disclosure should be developed by the interdepartmental working group, in consultation with local government.

Finding 43**Page 121**

A number of jurisdictions place caps on the number of nights that unhosted Short-Term Rentals can be let.

Finding 44**Page 122**

Caps on Short-Term Rental availability are currently primarily intended to address local conditions. It is appropriate that they be determined at the local government level until such time that the State Government determines that a different approach is warranted.

Finding 45**Page 126**

The imposition of additional registration fees, or compliance costs for local requirements, should be at the discretion of the local government authority, with appropriate accountability mechanisms.

Chapter 1

Overwhelming Response to the Committee's Inquiry

...they disrupt the rules that are in place, they disrupt the processes that are in place and they try to use the weight of almost mass disobedience—and when I say that, I mean in a gentle way—to try to get around rules.

Michael Leake, Manager, Habitat Resort Broome.¹

1.1 The recent growth of online accommodation booking services

The use of Short-Term Rentals (or holiday homes) is a long-standing tradition for Western Australian families, especially over the summer and school holiday periods. Many of these homes are located in the State's South West and previously were managed by owners themselves, or their local agents, and publicised in printed material.²

Local councils have historically used planning schemes to manage the flood of tourists using these premises at regular times of the year. The holiday home industry was widespread over Western Australia, but there was considerable regional variation in offerings. While there were a wide range of premises offered in the South West, very few were offered in northern tourist regions, such as Broome, outside of their small, distinct, resort facilities.³

Commencement of new online booking platforms

Western Australia has also had a long history of families having overseas students stay with them in their homes, often using basic websites to match students and families. For example, Homestay Australia has operated for nearly 30 years and offers accommodation in Perth for periods of four to 10 weeks.⁴

Just over a decade ago a new startup company, Airbed and Breakfast, launched an online platform that allowed people to rent out a room or couch in their own homes to frugal travellers. The success of the new site was based on the insight that people have 'slack' resources they were willing to share with strangers.⁵ The first small Airbnb website launched in late 2007, offering airbeds on the living room floor of founders Joe Gebbia and Brian Chesky's San Francisco home.⁶ In 2019, Airbnb is now the largest of dozens of companies facilitating access to online accommodation in this fashion. It now provides access to over five million unique accommodation options in more than 81,000 cities and 191 countries. In

1 Michael Leake, Manager, Habitat Resort Broome, *Transcript of Evidence*, 24 May 2019, p1.

2 Submission 164, Stayz, p1.

3 Kirsten Wood, Manager Planning and Building Services, Shire of Broome, *Transcript of Evidence*, 24 May 2019, p3.

4 Homestay Australia, [Homestay Australia](#), nd, accessed 20 June 2019.

5 Wharton School of the University of Pennsylvania, [Want to Rent out That Spare Room? The Growing Popularity of 'Collaborative Consumption'](#), 25 August 2011, accessed 7 June 2019.

6 Jessica Salter, ['Airbnb: The story behind the \\$1.3bn room-letting website'](#), *The Telegraph*, 7 September 2012, accessed 14 June 2019.

a new development, Airbnb has recently commenced a new site offering the ability to book ‘experiences’ at accommodation locations.⁷

1.2 Defining the different forms of accommodation

It is important to outline the terminology we have adopted in this report when discussing the changing dynamics in the Short-Stay Accommodation sector. We use three main defined terms:

- “Short-Stay Accommodation”: refers to all properties or parts of properties offered as temporary accommodation to the market for purposes such as leisure and business travel, and includes both **Traditional Accommodation and Short-Term Rental properties**;
- “Traditional Accommodation”: refers to appropriately licensed and registered forms of Short-Stay Accommodation that have long existed to support business and recreational travel, such as hotels, motels and licensed Bed and Breakfasts (B&Bs); and
- “Short-Term Rentals”: refers to all premises (or rooms within premises) that are made available to the market as temporary accommodation but are not Traditional Accommodation properties. The majority of Short-Term Rentals have been built for residential purposes in areas zoned for residential use, but have subsequently been offered for short-term letting, usually for the purposes of recreational, business or other travel. Short-Term Rentals are not always licensed and/or registered.

Variants of Short-Term Rentals are not new to WA—we have a long history of holiday homes, particularly in coastal towns. Western Australia’s planning laws have identified and referred to holiday homes for many years.⁸ However, Short-Term Rentals are no longer confined to beach houses in coastal holiday destinations. According to research conducted by Curtin University, in March 2017 only 50% of Airbnb listings in WA were standalone houses or rooms within standalone houses. Around 25% were apartments or rooms within apartments.⁹ Western Australian owners let granny flats and strata properties as well as their holiday homes, investment properties, or their own residences through online booking platforms.¹⁰

Short-Term Rentals are not used solely for holidays or tourism purposes. People also use them for business trips, to attend seminars or study courses, or while visiting family or

7 Submission 160, Airbnb, p2.

8 Western Australian Planning Commission, *Planning Bulletin 99—Holiday Homes Guidelines*, Western Australia, September 2009, p1.

9 Dr Michael Volgger, Researcher/Lecturer, Curtin University, *Transcript of Evidence*, 10 April 2019, p4.

10 Submission 230, Natalie Warner, p1; Submission 232, Kathryn Blomley, p1; Submission 56, Quattro Apartments, p1; Submission 79, Seashells, pp1–2; Submission 183, Amela Catak, p1; Submission 210, Diana Paolucci, p1; Submission 206, Damian Kutrzyk, p1; Submission 242, Sally Kelso, p1; Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast, *Transcript of Evidence*, 30 April 2019, p7.

friends.¹¹ Regional Western Australians also rent Short-Term Rentals in metropolitan Perth while family members are in hospital for medical treatment.¹²

Whilst offering Short-Term Rentals via online platforms began as a way for people to share rooms in their own residences, the success of platforms like Airbnb has resulted in commercial accommodation businesses such as hotels and resorts,¹³ caravan parks,¹⁴ and backpackers¹⁵ increasingly using these platforms as part of their marketing strategies for Traditional Accommodation.

Short-Term Rentals can be further broken down into two categories: “Hosted” and “Unhosted”. Tourism WA, the State Government agency responsible for promoting and developing WA as a desirable travel destination, submitted that the differences between hosted and unhosted Short-Term Rentals relate to whether guests have either exclusive or non-exclusive use of a premise:

- *Hosted (Non-exclusive use)—Guest(s) are hosted by the home owner who is present throughout the period of stay for the purpose of short stay accommodation.*
- *Unhosted (Exclusive Use)—Guest(s) have exclusive access to the house or apartment throughout the period of stay for the purpose of short stay accommodation.*¹⁶

Inside Airbnb founder Murray Cox, whose website provides tools and data to quantify the impact of short-term letting, said 70% of WA’s Airbnb listings in December 2018 offered guests exclusive use of a premises. The remaining 30% offered hosted accommodation either in the form of a private room (29%) or a shared room (1%).¹⁷ In some regions, the proportion of unhosted premises can be a lot higher. The Committee heard claims that over 90% of the sites listed on Airbnb for the Margaret River region are unhosted whole premises.¹⁸

1.3 Growth of Short-Term Rentals in Western Australia

Current number of Short-Term Rentals

It is difficult to determine at any one time the total number of Short-Term Rentals in either WA as a whole or a particular location. The Committee sought data from Airbnb (the online booking platform providing the greatest number of premises in WA)¹⁹ of their WA listings by local government area, but this request was declined. Premises are often listed on multiple online booking platforms, which can artificially inflate the number. Locating a premises is

11 Submission 44, Ian MacRae, p2.

12 Aravindhan Rajaratnam, Owner, Cozy Stay, *Transcript of Evidence*, 12 June 2019, pp3–4.

13 Richard Jones, Manager, Geographe Cove Resort, *Transcript of Evidence*, 30 April 2019, p10.

14 Rhys Johnson, Manager/Director, Mandalay Holiday Resort and Tourist Park, *Transcript of Evidence*, 30 April 2019, p10.

15 Submission 257, Kangaroo Inn, p1.

16 Submission 126, Tourism WA, p3.

17 Submission 187, Inside Airbnb, p3.

18 Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p3.

19 Submission 126, Tourism WA, p8.

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also difficult as addresses are typically not listed on the platforms nor provided to a guest until a booking has been made. Hosts can also list and de-list their premises at any time.

Data provided to the Committee by Inside Airbnb shows the first WA offering on the Airbnb website was a bed and breakfast in Como, which was listed in August 2008. Within two years there were another 30 offerings on the website, from Broome in the north to Albany in the south of the State. Smaller towns offering listings for the first time in 2018 included Warmun in the Kimberley, Lake Grace in the Great Southern and Quairading in the Wheatbelt. As shown in Table 1.1, there are now over 12,000 Airbnb listings in WA—a mere 10 years after the first WA listing.²⁰

Table 1.1: Airbnb listing growth by room type in Western Australia, 2016–18²¹

Room type	December 2016	December 2017	December 2018
Entire home or apartment	4,609	6,803	8,448
Private room	2,982	3,551	3,542
Shared room	94	97	129
Total	7,685	10,451	12,119

Airbnb claims that in 2018 about 594,000 guests stayed in WA. It also claims that in one year alone, Airbnb guests in WA “spent \$155 million, which supported 780 jobs and contributed \$99.7 million to Gross State Product.”²² In the last decade as the Short-Term Rental industry has grown, Airbnb and its competitors such as Stayz and Booking.com have used their online platforms to ‘disrupt’ the State’s Short-Stay Accommodation sector. The Australian Hotels Association (WA) (AHA WA) claims that:

Whilst hotels, motels, bed and breakfasts, serviced apartments and hostels all comply with a myriad of regulations, many properties that are listed on peer-to-peer platforms, such as Airbnb, do not. This inequity is impacting the viability of hotels, putting employment and training opportunities at risk, undermining investment decisions and jeopardising the safety of guests.²³

In early 2019 Stayz, an Australian online booking platform owned by Expedia Group, said it had 4,000 “unique accommodation listings” in WA with the vast majority comprising whole homes.²⁴ Booking.com does not differentiate its listings by whether they are Short-Term Rentals or other forms of Short-Stay Accommodation, such as bed and breakfasts, farm stays and holiday parks. In late May 2019, it estimated that it had around 3,500 properties listed in WA, about 2,500 of which were Short-Stay Accommodation.²⁵

20 Murray Cox, Founder, Inside Airbnb, Email, 16 April 2019.

21 Submission 187, Inside Airbnb, p4.

22 Submission 160, Airbnb, p1.

23 Submission 182, Australian Hotels Association (WA), p6.

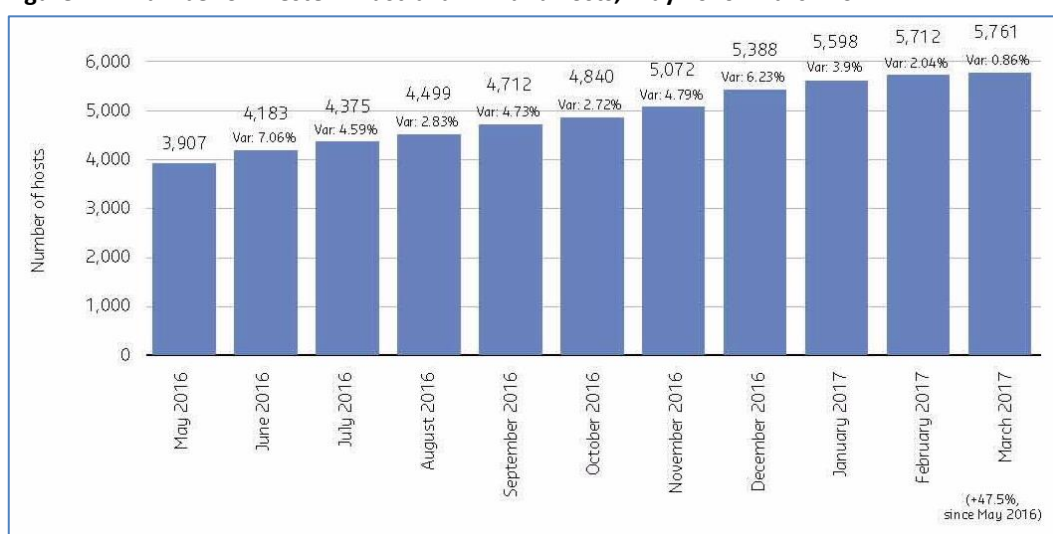
24 Submission 164, Stayz, p2; Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway), *Transcript of Evidence*, 20 February 2019, pp8, 11.

25 Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Answers to Questions on Notice*, 24 May 2019, p3.

Airbnb had over 12,000 active listings as at December 2018.²⁶ This represents a significant increase over the past few years. Statistics from Inside Airbnb indicate a 24% growth across the State in the 12 months immediately preceding December 2018, with almost all of the growth provided by unhosted offerings (see Table 1.1).²⁷

This rapid growth was confirmed by Booking.com, which said its traditional and Short-Term Rental listings in Australia had increased from 10,000 to 35,000 in the past three years, and it was adding about 1,500 new premises every three months.²⁸ Data compiled by Curtin University showed the number of Airbnb listings in WA increased by nearly 50% between May 2016 and March 2017 (see Figure 1.1). This data indicates that while the total number of properties is still growing, the rate of growth appears to be slowing.²⁹

Figure 1.1: Number of Western Australian Airbnb hosts, May 2016–March 2017³⁰



Short-Term Rentals are not spread evenly throughout the State. The Curtin University research identified two 'hot spots' with a high number of Airbnb listings:

1. *The areas on both sides of the Swan and Canning Rivers, as well as some parts of the metropolitan coast in Perth.*
2. *The South West corner of WA in the wider Margaret River Region.*³¹

Inside Airbnb confirmed similarly high concentrations of Short-Term Rentals of entire properties in some suburbs of Perth and the South West (see Figure 1.2).

26 Submission 160, Airbnb, p3.

27 Submission 187, Inside Airbnb, p3.

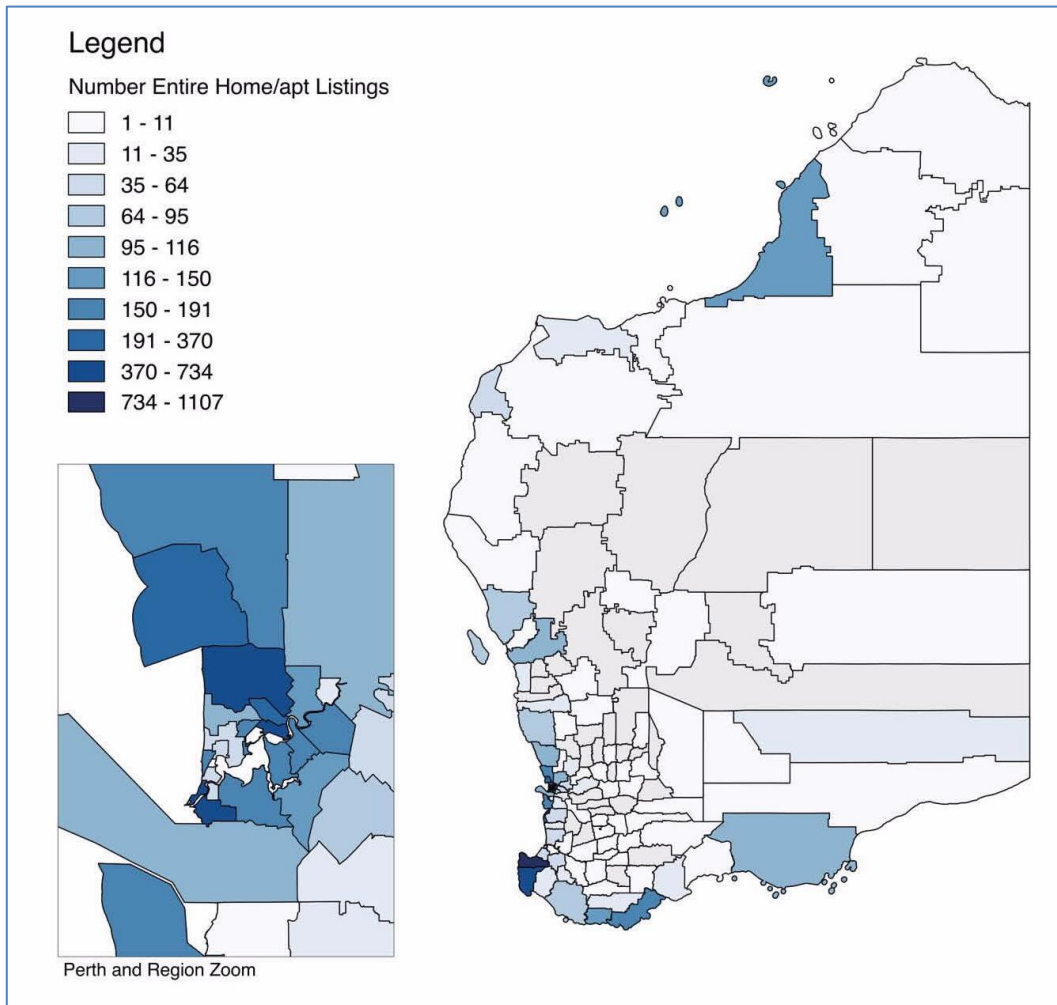
28 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p14.

29 C. Pforr, M. Volgger and K. Coulson, *The Impact of Airbnb on WA's Tourism Industry*, Bankwest Curtin Economics Centre, October 2017, p20, accessed 14 June 2019.

30 *ibid.*, p20.

31 *ibid.*, p23.

Figure 1.2: Number of Airbnb entire home listings by local government area³²



Between December 2017 and December 2018, it appears the South West experienced a higher rate of growth in terms of unhosted Airbnb listings than the State average. The number of entire premises offered in the City of Busselton increased by 33%, the Shire of Augusta-Margaret River by 31%, the City of Albany by 63% and the City of Bunbury by 74%.³³

Again, it is difficult to determine the exact number of Short-Term Rentals in these areas given that the large platforms refused to share their data with the Committee. For example, the City of Busselton estimated that, as at January 2019, there were around 900 Airbnb listings comprised of “whole houses in residential areas” whereas Inside Airbnb submitted the number of entire home listings was more than 1,100.³⁴ Different Inquiry participants put the number of entire home listings in Margaret River at different levels, one at 734 and another at 927.³⁵

³² Submission 187, Inside Airbnb, p10.

³³ *ibid.*, p4.

³⁴ Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p2; Submission 187, Inside Airbnb, p9.

³⁵ Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p2; Submission 187, Inside Airbnb, p9.

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As at early 2019, there were at least 20,000 Short-Term Rental listings in Western Australia, a large majority of them unhosted accommodation. Data indicates that while Airbnb listings in Western Australia are still growing, the rate of growth is slowing.

1.4 Technical disruption to existing legislation

The rapid rise in Short-Term Rentals in WA has placed great stress on local government authorities to manage their existing local planning rules, which often outlaw unregistered Short-Term Rental properties in residential premises. For instance, the Shire of Broome, which has established zoning for tourist developments, admitted it was struggling to manage compliance with its local planning laws due to the amount of “illegitimate activity happening out there.”³⁶ This has led to different local governments establishing different approaches to this challenge. Chapter 5 further outlines these differences.

The success of this new Short-Stay Accommodation business model was first mentioned in the WA Parliament in March 2015 by Hon Sue Ellery MLC, who described Airbnb’s operations as “corporate civil disobedience, and it is certainly non-violent ... but they are clearly operating outside the regulatory framework.”³⁷

A similar disruption caused by Uber’s smart phone application and affecting the highly-regulated taxi industry was first mentioned in the Parliament less than a year before.³⁸ It took until late 2018 before the State Government legislated the *Transport (Road Passenger Services) Act 2018* to incorporate Uber into the State’s transport system.

In the decade since the foundation of Airbnb there has been a large increase in online platforms offering accommodation in WA. The company BnbGuard provides monitoring services for local governments in Australia and supplies the addresses of Short-Term Rentals offered in their areas. It told the Committee that it was currently monitoring more than 50 online sites for the City of Busselton.³⁹

Governments’ response to Short-Term Rentals

State governments across Australia have been slow to respond to the challenges posed to existing regulation and legislation by the rapid rise of Short-Term Rentals. This makes it difficult for the Committee and the WA Government to observe and learn from the implementation of other jurisdiction’s solutions.

Victoria

The Victorian Government moved quicker than other Australian jurisdictions in investigating the impact of Short-Term Rentals. In February 2015 it established an Independent Panel on Short-Stay Accommodation in Central Business District (CBD) Apartments. The findings of the panel were used to develop the *Owners Corporations Amendment (Short-Stay*

36 Kirsten Wood, Manager Planning and Building Services, Shire of Broome, *Transcript of Evidence*, 24 May 2019, p2.

37 Hon Sue Ellery MLC, Legislative Council, *Hansard*, 17 March 2015, p1297.

38 Hon Alanna Clohesy MLC, Legislative Council, *Hansard*, Questions Without Notice, 14 May 2014, p3304.

39 Submission 30A, BnbGuard, p1.

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Accommodation) Bill (Vic), which was introduced into Parliament on 24 May 2016.⁴⁰ Owners corporations are the equivalent of WA's strata companies. The Bill's purpose was to "regulate the provision of short-stay accommodation arrangements in lots or parts of lots affected by an owners corporation."⁴¹

The Victorian Legislative Council's Environment and Planning Committee examined the new Bill and the impact of short-term letting on residents' amenity in apartment buildings in Melbourne's CBD. It also considered the adequacy of owners corporation rules in managing impacts of high intensity, short-term lets. Its June 2017 report made nine recommendations, including that the Government consider giving owners corporations the power to regulate Short-Stay Accommodation in their buildings.⁴²

The Victorian Government supported, in full or part, six of the recommendations. The Act came into force on 1 February 2019.⁴³

New South Wales

From September 2015 to October 2016 the New South Wales Parliament's Legislative Assembly Committee on Environment and Planning conducted an inquiry into the adequacy of regulation of short-term holiday letting in NSW.⁴⁴ It tabled its report with 12 recommendations on 19 October 2016.⁴⁵

The NSW Government responded with an Options Paper exploring approaches to a whole-of-government regulatory framework in July 2017.⁴⁶ In 2018, the Government publicised its proposed amendments to planning laws in a discussion paper and called for submissions. It indicated that the framework would include new planning laws limiting letting in unhosted premises to 180 days per year in Greater Sydney, an industry mandatory Code of Conduct and new provisions for strata scheme by-laws.⁴⁷ The Code of Conduct and a draft *Fair Trading Amendment (Code of Conduct for Short-Term Rental Accommodation Industry) Regulation 2019* were released for public consultation in mid-August 2019.⁴⁸

40 Government of Victoria, [Response to the Environment and Planning Committee's Inquiry into the Owners Corporations Amendment \(Short-Stay Accommodation\) Bill 2016](#), 29 November 2017, accessed 20 June 2019.

41 *Owners Corporations Amendment (Short-Stay Accommodation) Act 2018* (Vic), s. 1.

42 Sue Williamson, ['Melbourne Airbnb 'party flats': State government's response decried'](#), *Domain*, 4 December 2017, accessed 20 June 2019.

43 *Owners Corporations Amendment (Short-Stay Accommodation) Act 2018* (Vic), s. 1.

44 Parliament of New South Wales (NSW), [Adequacy of the regulation of short-term holiday letting in New South Wales](#), nd, accessed 18 June 2019.

45 Legislative Assembly Committee on Environment and Planning (NSW), [Adequacy of the Regulation of Short-Term Holiday Letting in New South Wales](#), October 2016, accessed 18 June 2019.

46 Hon Anthony Roberts, Minister for Planning and Housing, and Hon Matt Kean, Minister for Innovation (NSW), [Industry and Community to help make short-term holiday letting work](#), media release, 19 April 2017, accessed 10 July 2019.

47 NSW Fair Trading, [New short-term holiday letting regulations](#), 15 August 2018, accessed 18 June 2019.

48 Department of Planning, Industry and Environment (NSW), [Public Consultation Draft: Fair Trading Amendment \(Code of Conduct for Short-Term Rental Accommodation Industry\) Regulation 2019](#), 14 August 2019, accessed 21 August 2019; Department of Planning, Industry and Environment (NSW), [Have your say on short-term-rental accommodation reforms](#), 14 August 2019, accessed 21 August 2019.

Tasmania

Tourism is a key sector in Tasmania, with over 50% of tourists coming from Melbourne. The Tourism Industry Council Tasmania linked the increase in Short-Term Rentals, particularly in Hobart, to the opening of the Museum of Old and New Art (MONA) in 2011. Visitor numbers have grown about 40% in the past five years, but the supply in accommodation has not kept pace with this growth.⁴⁹

The Tasmanian Government responded in 2017 with a registration requirement under planning laws. People wanting to advertise their home of under 200 square metres (sqm) for short-term letting had to complete a simple registration form with their local council:

So anyone with a shack, investment property or indeed a standalone dwelling in urban Hobart or regional remote Tasmania could essentially go down to their council, and if it is a 200sqm residential zone property, you can essentially become a registered visitor accommodation product.⁵⁰

A property larger than 200sqm required a change of use application through the ordinary local council planning approval process. The rapid growth in Short-Term Rentals led to a severe housing affordability crisis, particularly in Hobart, but also in regional communities. Hobart is now the least affordable housing market in the country.⁵¹

In response, the Government held a ‘housing summit’ in March 2018.⁵² In May 2018 the Legislative Council established a Select Committee into Short Stay Accommodation in Tasmania.⁵³ This Committee has yet to report back to Parliament with its findings and recommendations. However, the Tasmanian Government has subsequently passed the *Short Stay Accommodation Act 2019* (Tas) in late May 2019, and it came into effect on 4 June.

The Act introduces measures to encourage compliance with Short-Stay Accommodation planning permit requirements. For the first time in Australia, the Act requires online booking platforms such as Airbnb to list relevant planning permit information on their websites, and report listing data to the Government quarterly.⁵⁴

Online platforms may be penalised when they fail to publish permit or other specified compliance information, and such penalties may be applied daily. The Act also introduces penalties for online platforms that fail to share relevant information with the Government within the required timeframe, regarding the relevant planning permit numbers and other specified compliance information.⁵⁵

49 Luke Martin, Chief Executive Officer, Tourism Industry Council Tasmania, *Transcript of Evidence*, 13 February 2019, pp10–11.

50 *ibid.*, p11.

51 *ibid.*, p12.

52 Lucy Shannon, ‘[One year on, advocates say Hobart is still in the grips of a housing crisis](#)’, *ABC News*, 10 March 2019, accessed 20 June 2019.

53 Legislative Council (Tas), [Select Committee into Short Stay Accommodation in Tasmania](#), 2010, accessed 20 June 2019.

54 Department of Justice (Tas), [Draft Short Stay Accommodation Bill 2018: An Overview](#), 26 September 2018, accessed 20 June 2019.

55 *ibid.*

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The new Act only applies to residential areas in Tasmania under the current planning schemes, which are as defined in Planning Directive No.6. This Planning Directive also exempts hosted Short-Term Rentals, and defines them as:

- (i) *the dwelling is used by the owner or occupier as their main place of residence, and only let while the owner or occupier is on vacation or temporarily absent; or*
- (ii) *the dwelling is used by the owner occupier as their main place of residence, and visitors are accommodated in not more than 4 bedrooms.*⁵⁶

Premises that have been constructed or renovated for use as a hotel, motel or caravan park are excluded from the operation of the Act. The Act includes a six-month transition period after its commencement for existing Short-Term Rental providers and online booking platforms to comply with its requirements. The State's Director of Building Control will be responsible for enforcement. Local planning authorities will retain their role in enforcing the planning requirements under the *Land Use Planning and Approvals Act 1993* (Tas). The Act allows data regularly provided by the online platforms to be shared with external parties, such as universities.⁵⁷

Soon after the Act passed through the Tasmanian Parliament, Stayz wrote to the Committee supporting it:

*This initiative will for the first time establish the size and scope of the short-term rental sector across Tasmania enabling better informed policy on housing, tourism and municipal services. We believe a similar policy approach would also work in WA.*⁵⁸

Western Australia

While some WA local governments have responded to the rise of Short-Term Rentals (e.g. the City of Fremantle has introduced a new local law),⁵⁹ the State Government is yet to introduce new regulations or legislation to address the substantial changes in the Short-Stay Accommodation sector.

In 2017, the Minister for Tourism, Hon Paul Papalia MLA, was quoted as saying that he was concerned about the possible "organised gaming of the system by bigger players" but was not worried about "mums and dads using a spare room to add to the accommodation options for tourists".⁶⁰

The Minister's comments recognised the wide differences of opinion between those who had decided to offer the whole or part of their premises for Short-Term Rentals, and those

56 Tasmanian Planning Commission, [Planning Directive No. 6](#), 1 July 2018, accessed 20 June 2019.

57 Hon Leonie Hiscutt, Leader of the Government, Legislative Council (Tas), *Hansard*, 22 May 2019.

58 Submission 164A, Stayz, p1.

59 City of Fremantle, [Short stay accommodation](#), 2019, accessed 20 June 2019.

60 Joe Spagnolo, ['Airbnb 'hotels': Concerns over Perth apartments leads to rule review'](#), *Perth Now*, 26 March 2017, accessed 7 June 2019.

who believed that this new form of accommodation was undermining their existing Short-Stay Accommodation businesses. These differences are explored further in Chapters 3 and 4.

1.5 Recent changes in the global Short-Term Rental industry

The Traditional Accommodation industry and its supporters provided substantial information that the Short-Term Rental industry does not operate on a level playing field with it (see Chapter 3). One of the ways the Traditional Accommodation industry has responded in the past two years is to adapt its business model by establishing its own Short-Term Rental platforms. This sees a convergence in the business models of Airbnb (Short-Term Rentals) and Accor (Traditional Accommodation).⁶¹

Accor, a French multinational company and Australia's biggest hotel operator, launched an online luxury private rental business, onefinestay, in mid-2018 in Australia and New Zealand. This new platform will offer more than 10,000 high-end homes, penthouse apartments and beachside villas around the world. It initially launched in Sydney, Melbourne and Queensland and has plans to rapidly expand nationally.⁶² Accor's Chief Executive Officer, Sebastian Bazin, reportedly described Airbnb as a "formidable concept" and said:

*I am trying to adapt. I am saying what they do is nice and it's growing, so why not tap into their territory. They are tapping into mine, so I might as well do it to them.*⁶³

In a similar fashion, Marriott International, the world's largest hotel operator, has launched a new platform, Homes & Villas. This platform offers homes in 100 destinations across Europe, the United States of America and the Caribbean. Stephanie Linnartz, Marriott's Chief Commercial Officer, said the platform will give customers the chance to use the "space and amenities of a home backed by a trusted travel company."⁶⁴

These moves by the large hotel companies are in response to Airbnb making a succession of acquisitions in the hotel industry. In March 2019, Airbnb acquired boutique hotel booking site HotelTonight, and in April 2019 it took a stake in Indian hotel franchise, Oyo Hotels & Homes, to extend its reach in Asia.⁶⁵

The latest development in this sector is the creation in 2019 of accommodation booking sites that collect data and present information from other platforms, similar to sites such as Skyscanner for flight information or Trivago for hotel searches.⁶⁶ These new 'metasearch' sites for Short-Term Rentals include Expedia's VacationRentals.com (or Vrbo),

61 Christina Jelski, '[Hospitality models blur further as Marriott, Airbnb expand turf](#)', *Travel Weekly*, 7 May 2019, accessed 27 June 2019.

62 Larry Schlesinger, '[Accor takes on rampant Airbnb in Australia with onefinestay](#)', *Financial Review*, 2 May 2018, accessed 27 June 2019.

63 *ibid.*

64 Alice Hancock, '[Marriott takes aim at Airbnb with home rental service](#)', *Financial Times*, 30 April 2019, accessed 27 June 2019.

65 *ibid.*

66 Kevin May, '[Metasearch for vacation rentals gains momentum](#)', *PhocusWire*, 26 November 2015, accessed 24 June 2019.

RENTbyOWNER, HomeToGo and Tripping.com, which promises access to 12 million properties in 190 countries.⁶⁷

1.6 The development of this Inquiry

In September 2018, Hon Terry Redman MLA, a member of the Economics and Industry Standing Committee (the Committee), gave notice that he would move a motion in the Legislative Assembly referring an inquiry to the Committee “into the risks to consumers and operators of non-registered and noncompliant accommodation utilising online booking platforms such as Airbnb.”⁶⁸

Mr Redman’s electorate includes the wine and tourist region around Margaret River. The Registered Accommodation Providers of the Margaret River Region claims that between late 2016 and 2019 the number of Airbnb listings in Margaret River grew from 295 to over 800, with nearly 90% of them entire homes in residential areas without a resident host.⁶⁹

In October 2018, Mr Redman’s motion was listed for debate and the Minister for Planning, Hon Rita Saffioti MLA, wrote to the Committee Chair saying that she would be happy if the Committee was able to inquire into Short-Stay Accommodation as she was “keen to create more certainty for the [accommodation] industry”. The Minister suggested the inquiry could focus on how the State:

*...best regulate short stay accommodation to ensure the ongoing sustainability of traditional tourism accommodation providers while supporting the original intent of home sharing, which was to provide for hosted accommodation options.*⁷⁰

The Minister’s support for the Committee to inquire into Short-Stay Accommodation was announced in a media release on the day after her letter to the Committee.⁷¹ Airbnb immediately wrote to the Committee stating:

*Airbnb and our community in Western Australia welcomes the Inquiry and looks forward to making a contribution. In stark contrast to trickle-down tourism where only the big end of town benefits, Airbnb spreads the benefits to the people and places that have traditionally missed out.*⁷²

On 31 October 2018, the Department of Planning, Lands and Heritage (DPLH) briefed the Committee on the range of issues arising from the rapid increase of Short-Term Rentals. The

67 Tripping.com, [Find the Perfect Place to Stay](#), nd, accessed 24 June 2019.

68 Hon Terry Redman MLA, Legislative Assembly, *Hansard*, 11 September 2018, p5578.

69 Submission 130, Registered Accommodation Providers of the Margaret River Region, p1.

70 Hon Rita Saffioti MLA, Minister for Planning, Letter, 16 October 2018, p2.

71 Hon Rita Saffioti MLA, Minister for Planning, *Minister supports Parliamentary inquiry into Short-Stay Accommodation*, media release, 17 October 2018.

72 Brent Thomas, Head of Public Policy, Australia and New Zealand, Airbnb, Letter, 19 October 2019, p1.

DPLH had already received nearly 230 emails sent to the Minister for Planning opposed to any regulation of the industry, mainly from Airbnb hosts.⁷³

Just prior to its hearing, the DPLH provided the Committee with a draft paper on this matter, which neither the Minister nor the Western Australian Planning Commission had yet considered. The Committee resolved to immediately publish *Options Paper: Options for regulating sharing economy short-term accommodation in WA* to assist further public consultation on how the State Government could respond to this policy issue.⁷⁴ The details of the five options proposed by the DPLH are in Appendix Six.

1.7 Establishment of the Inquiry

At the conclusion of the DPLH briefing, the Committee resolved to hold an inquiry into the regulation of Short-Stay Accommodation in WA. The Inquiry's terms of reference are contained in Appendix One. Given the widespread impact of Short-Term Rentals, the Speaker approved advertisements to call for submissions to be placed in late November in a number of newspapers:

- *The West Australian;*
- *The Augusta-Margaret River Times;*
- *The Albany Advertiser;*
- *The Busselton Dunsborough Times;*
- *The Broome Advertiser;* and
- *The Pilbara News.*

The Western Australian Local Government Association (WALGA) provided free publicity for the Inquiry and the Committee's call for submissions in its publications to local government authorities.

1.8 Committee consultation

This Inquiry generated a record number of submissions for any Inquiry completed by the Committee since 2000. The submissions were made by people and organisations throughout the State, from Broome to Albany. The Committee received a total of 278 submissions and 14 supplementary submissions (see Appendix Two), including from:

- 19 local government associations, as well as WALGA;
- the major online accommodation platforms Airbnb, Booking.com and the Expedia Group;
- important industry associations such as the AHA WA, Tourism Council WA, Caravan Industry Association and the Chamber of Commerce and Industry WA;

⁷³ Amelia Davies, Executive Officer (DG), Office of the Director General, Department of Planning, Lands and Heritage, Email, 14 November 2018.

⁷⁴ Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018.

Chapter 1

- key social organisations such as Unions WA, People With Disabilities (WA) Inc., Shelter WA and Strata Community Association (WA);
- 146 individual hosts using a template email provided by Airbnb;
- over 40 small to medium hotels and caravan parks; and
- over 50 smaller guest houses and bed and breakfasts.

Airbnb encouraged its hosts in WA to provide submissions based on a template that it had drafted. The Committee received 307 of these template submissions and undertook a process to confirm that their authors owned a property in WA. Where a local address was provided, their emails were accepted as a submission. In total, 146 of these emails were accepted as a submission. Nine of these submitters then provided a five-minute public deposition to the Committee. Airbnb arranged a pre-hearing meeting with these witnesses and provided them with two pages of briefing notes for their hearing.

Twenty-two submitters requested their name be withheld when their submission was published. In consultation with these submitters, the Committee resolved to publish as much evidence as possible, but did agree to five requests to for confidentiality.

Another four submissions related to conflict in a local government area and raised allegations about the conduct of individuals. The Committee agreed to keep all submissions about this conflict confidential.

The Committee did not receive any submissions from large national and international hotel companies operating in Perth, although they were invited to participate. The move of hotel chains into the Short-Term Rentals industry described in section 1.5 may be a reason for this lack of engagement.

Given the widespread interest in this Inquiry across the State, and the wide divergence in opinions between those who support or oppose this form of accommodation, the Committee endeavoured to give a voice to as many submitters as possible. In total, 31 hearings were held with 62 witnesses (see Appendices Three and Four). Eight of these hearings were held in Margaret River. The Committee also held hearings via Skype with witnesses from Broome, Albany and Denmark. All of the Committee hearings were broadcast via the internet and are available from the Inquiry's website.

The Committee also undertook four unique public deposition sessions, enabling 28 witnesses to provide their views directly to the Committee via a three to five minute presentation (see Appendix Five). This format differs from the formal hearing processes typically undertaken by Committees and is an effective mechanism for gathering a wide range of community views and engaging the public in a key parliamentary process. These sessions were transcribed and are also available from the Inquiry's website.

Chapter 2

The Popularity of the Short-Term Rental Market

...we were within two weeks of losing our home in April 2019. As a last ditched attempt we looked at finding someone to move into a spare room but could not find any one so we tried Airbnb.

Richard Morton, Airbnb host.⁷⁵

2.1 A range of differing opinions

The Committee received a range of differing—and vociferously expressed—opinions regarding short-term letting, from a broad range of stakeholder groups. Those in support were either holiday-makers who appreciated the increased choice delivered by this new form of accommodation or people deriving an income stream from it. Those opposed to it were either local residents who experienced reduced amenity in their homes or Traditional Accommodation providers whose business models were under threat.

This chapter provides an overview of the evidence in support of the changes underway in the Short-Stay Accommodation sector. Later chapters provide an overview of the arguments presented against.

2.2 Supply-side factors

A wide range of people list their homes or investment properties on online booking platforms. Airbnb claimed that the activities of their hosts in Western Australia during 2018 generated earnings of about “\$7,600 from sharing their spare space for less than 50 nights per year.”⁷⁶

Short-Term Rental owners offering hosted accommodation cited a range of reasons for letting their premises. They regarded this form of accommodation as:

- creating an important income stream, especially for retired and unemployed people;
- encouraging the growth of tourism;
- developing employment, especially casual jobs in regional centres; and
- creating investment opportunities.

⁷⁵ Submission 263, Richard Morton, p1.

⁷⁶ Submission 160, Airbnb, p3. This compares to UK hosts in 2018 who average [\\$3,600 per annum](#); US hosts who averaged nearly [\\$9,000 per annum](#); and Dutch hosts who average [\\$6,500 per annum](#).

We have four properties in Murdoch. We live in one and all the other three investment properties were typically long-term tenancies. We have converted them gradually—as the tenants left we converted them into short-stay.

...we are right at the hub of Murdoch within the knowledge and health precinct in Murdoch. A lot of our guests are families visiting for medical reasons. Patients, carers, some come for elective surgery and some unfortunately come for chemotherapy or are burns victims.

*Aravindhan Rajaratnam, Owner,
Cozy Stay*

Other reasons were given as well. At least one host said she welcomed guests into her home to reduce her isolation or loneliness.⁷⁷ Others used it to supplement their income and invest in their children’s school fees or hobbies.⁷⁸

For some, short-term letting increased the use of under-utilised properties while ensuring they were available for their personal use when required. A Hong Kong based owner, for example, said letting generated “money for upkeep and repayments like a traditional rental would but gives me the flexibility to use the house when I require it, which a rental wouldn’t.”⁷⁹

Another said he purchased a second property so their extended family had “somewhere reliable” to stay when they visited from overseas. Because the property was purchased using an interest-only mortgage, short-term letting was the “only flexible solution for people like us to be able to afford to make an investment such as we have and still be able to use the property for its intended purpose.”⁸⁰

A significant proportion of Short-Term Rental owners in WA are retired—around 22%, according to Airbnb.⁸¹ Some owners told the Committee short-term letting contributed to their self-funded retirement,⁸² while one said he was supplementing his age pension payments through short-term letting.⁸³ One owner said the apartment he let as a Short-Term Rental was his “retirement project ... something to keep me busy.”⁸⁴ Another said she let her property to help her be self-sufficient in retirement.⁸⁵

Women make up the majority of owners—Airbnb put the number of female hosts at 67%.⁸⁶ Airbnb host Margaret Gibson explained how helpful short-term letting has been to meet her mortgage payments:

...when I was worrying about my significant mortgage, and knowing that the little account where I put the money for the mortgage was not full, to notice

77 Submission 201, Lorili Jacobs, p1.

78 Submission 251, Sam Rauf, p1; Submission 230, Natalie Warner, p1.

79 Submission 206, Damian Kutrzyk, p1.

80 Submission 202, Matthew Harper, p1.

81 Submission 160, Airbnb, p11.

82 Submission 95, John Quartermaine, p2; Submission 33, Julie Scott, p1; Submission 254, Laurie Maiolo, p1.

83 Submission 209, Geoffrey Bonds, p1.

84 Submission 204, George Jones, p1.

85 Submission 210, Diana Paolucci, p1.

86 Submission 160, Airbnb, p3.

*that there had been an Airbnb deposit, slipped the funds across, and the worry was off my mind; the mortgage is sorted for this month.*⁸⁷

The most cited reasons in support of short-term letting by submitters to this Inquiry concerned economic pressures tied to the end of the mining boom. Since 2014, WA has experienced a significant economic downturn. With average annual compound growth rates of 5% of Gross State Product (GSP) between 2004 and 2014, the State had a growth rate of just 0.7% GSP per capita in 2015–16.⁸⁸

This downturn left some property owners struggling to make their mortgage repayments or cover their property costs. This is particularly true for owners who purchased investment properties at the height of the boom, when property prices were significantly higher (and rental vacancy rates significantly lower).⁸⁹ Some owners found themselves unemployed, or underemployed, and turned to hosted or unhosted Short-Term Rentals to contribute to their living expenses.⁹⁰

The downturn's impact on the Short-Term Rental market was amplified because of the importance of property in many people's investment portfolios and retirement plans. As Shelter WA, a peak body advocating for social and affordable housing, highlighted:

*The growth of short-stay accommodation can be seen as both a symptom and a driver of Western Australia's deeply embedded culture of intense financialisation of housing, in which houses are often viewed as wealth creating asset [sic] ...*⁹¹

This has contributed to the expectation, articulated in much of the evidence provided by those who support short-term renting, that owners have the right to let their properties to whomever and in whatever manner they choose:

I question the regular propensity to "regulate" entrepreneurship & self-reliance out of existence.

Individual's freedom of choice, a free market economy and the ability to be personally self-sufficient is becoming extinct in Australia. What is not caused by economic mismanagement, is legislated. ...

*Patrons decide where they prefer to stay. The FREE market is the dictator of supply and demand – not more bureaucratic regulations. Give us a break.*⁹²

87 Margaret Gibson, Airbnb host, *Transcript of Evidence*, 12 June 2019, p14.

88 Professor Richard Heaney, '[How Western Australia is handling the end of the mining boom](#)', *The Conversation*, 23 November 2016, accessed 14 June 2019.

89 Submission 98, Michael Andrews, p1; Submission 112, Pass Your Keys, p3; Submission 119, Andy LeMessurier, p2; Submission 210, Diana Paolucci, p1.

90 Submission 37, Hannah Thomas, p1; Submission 51, Julie Clayton, p1; Submission 263, Richard Morton, p1.

91 Submission 186, Shelter WA, p7.

92 Submission 254, Laurie Maiolo, p1.

Finding 2

People who let their premises via online platforms benefit from additional income, especially retirees and under or unemployed people.

2.3 Demand-side pressures

Some of the many arguments offered to the Committee in favour of Short-Term Rentals include that they allow guests to:

- self-cater;⁹³
- travel with pets;⁹⁴
- stay in areas with limited or no other forms of accommodation;⁹⁵ and
- stay close to the reason for their travel (e.g. a medical appointment).⁹⁶

Hosted Short-Term Rentals also enable guests to access hosts' knowledge of the area, including recommendations about where to eat and what to do.⁹⁷

Witnesses also cited the more 'authentic' local experience provided by this form of accommodation, particularly when compared to staying in a traditional hotel, as "sort of living as the locals do".⁹⁸ As well as being an Airbnb host, Suzanne O'Neill said that when she travelled overseas she used Airbnb as she likes "to feel like a local. We like to shop local, buy local produce and have a much more home life experience."⁹⁹

Keith Gennoe agreed:

*The international guests who come and stay with us, I present a local feeling to them of the house that they have just rented, and the personal experience that I give to them. I go around to the local shops in the area and I have a folder that I put together of recommendations so they do not have to worry about where they will find their meals or whatever.*¹⁰⁰

Like holiday homes before them, the current unhosted Short-Term Rentals are popular with families, with several Short-Term Rental owners noting families make up a significant

93 Submission 149, Nish Patel, p1; Submission 42, WA HomeStay, p3; Submission 112, Pass Your Keys, p3.

94 Submission 42, WA HomeStay, p4; Submission 98, Michael Andrews, p2; Submission 196, Kim Ribbink, p1; Submission 258, Rod and Margaret Lewis, p1.

95 Submission 37, Hannah Thomas, p1; Submission 203, Nikki Carstairs, p1; Submission 205, Sue Bezuidenhout, p1.

96 Submission 88, Aravindhnan Rajaratnam, p1; Submission 112, Pass Your Keys, p4.

97 Submission 92, Name withheld, p1; Submission 247, Jenny Gleeson, p1; Submission 230, Natalie Warner, p1.

98 Stephen Yarwood, Property Manager, Let Go Pty Ltd, *Transcript of Evidence*, 12 June 2019, p10.

99 Suzanne O'Neill, Airbnb host, *Transcript of Evidence*, 12 June 2019, p2.

100 Keith Gennoe, Airbnb superhost, *Transcript of Evidence*, 12 June 2019, p5.

proportion of their guests.¹⁰¹ Sharna Kearney, Joint Chief Executive Officer of the Margaret River Busselton Tourism Association, said the:

...accommodation configuration of traditional accommodation does not always meet their [multi-generational] needs, so holiday homes can be very helpful in assisting with that because they can all stay under the same roof with multiple houses.¹⁰²

Many traditional forms of accommodation, such as hotels, only offer rooms for single or double occupancy, which means large families or multi-generational family groups are split across several rooms. This can prove costly and, according to some, effectively prevents families from travelling together.¹⁰³

The relative affordability of Short-Term Rentals was cited repeatedly as a reason for their popularity. As one Short-Term Rental owner said:

Having previously lived in the Pilbara and the East Coast before Airbnb was an option, I was never be able [sic] to afford to visit Perth or elsewhere in Western Australia due to high accommodation prices. My holidays were always interstate or overseas.¹⁰⁴

In evidence provided by Airbnb, Short-Term Rentals were regarded as contributing to the “democratization of tourism”—that is, reducing the cost of, and therefore barriers to, travel.¹⁰⁵ The factors contributing to the cost differential between Short-Term Rentals and Traditional Accommodation are discussed further in Chapter 3.

Finding 3

Like holiday homes before them, unhosted Short-Term Rentals available through online platforms are popular with families, particularly those from overseas, as they facilitate consumer choice, offer more flexible forms of accommodation, often have facilities that are not provided by Traditional Accommodation sources and can be more cost-effective, particularly for large groups.

2.4 Positive economic impacts of Short-Term Rentals

The Committee was presented with conflicting accounts of the economic impacts of Short-Term Rentals. This section lays out some of the key positive arguments raised during the Inquiry.

101 Submission 33, Julie Scott, p1; Alan Wilkes, Owner, Edge of the Forest Motel, *Transcript of Evidence*, 1 May 2019, p10; Submission 88, Aravindhan Rajaratnam, p1; Submission 95, John Quartermaine, p1; Submission 196, Kim Ribbink, p1; Submission 234, Sean Giddings, p1.

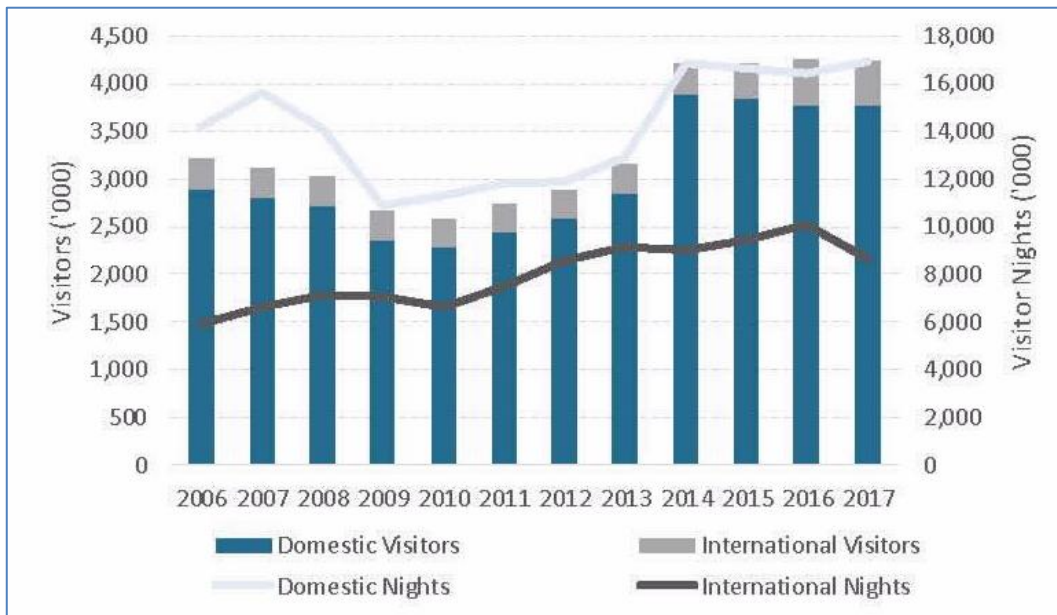
102 Sharna Kearney, Joint Chief Executive Officer, Group Marketing Manager, Margaret River Busselton Tourism Association, *Transcript of Evidence*, 1 May 2019, p4.

103 George Jones, Airbnb host, *Transcript of Evidence*, 12 June 2019, p7.

104 Submission 234, Sean Giddings, p1.

105 Airbnb, *Beyond Cities: How Airbnb supports rural revitalisation*, 2017, p16 in Submission 160, Airbnb.

Figure 2.1: Leisure overnight visitors in Western Australia, December 2006–December 2017¹⁰⁶



Visitor numbers and guest spending

Airbnb provided a template submission to its hosts in WA to assist them to make a submission to this Inquiry. This template said that “home sharing is helping to grow the visitor economy” and “Airbnb guests are now a significant driver of the tourism economy.” Airbnb further said guests using its platform spent \$155.1 million in WA in one year, and contributed to 780 jobs and \$99.7 million to the GSP.¹⁰⁷

Correlation does not, however, imply causation. Although visitor numbers have increased at the same time that Short-Term Rental listings have risen, the evidence to this inquiry does not support a finding that Short-Term Rentals have *caused* any growth in tourism.

In the year to December 2018, 487,100 international holiday visitors came to WA, the largest number the State has ever experienced.¹⁰⁸ Similarly, the number of interstate visitors increased by 18.2%.¹⁰⁹ Yet this bumper year had followed four years during which holiday visitation was largely stagnant (see Figure 2.1).

International and interstate holiday visitors are a good measure of the health of the tourism sector because they are drawn to WA by the experiences they might have here. In contrast, other travellers are more likely to be drawn by “specific destination drivers”,¹¹⁰ including business, or families or friends. Further, interstate and international visitation are good

¹⁰⁶ Lucid Economics, *Short-Stay Accommodation Economic Assessment*, Perth, February 2019, p7 in Submission 188, Tourism Council WA.

¹⁰⁷ Submission 252, Airbnb template submissions.

¹⁰⁸ Tourism WA, *International Visitation—Fast Facts*, Western Australia, March 2019, p1.

¹⁰⁹ Tourism WA, *Domestic Visitation—Fast Facts*, Western Australia, March 2019, p3.

¹¹⁰ Lucid Economics, *Short-Stay Accommodation Economic Assessment*, Perth, February 2019, p5 in Submission 188, Tourism Council WA.

indicators because, as the submission of peak tourism body Tourism Council WA noted, “these visitors bring money that would not have otherwise been spent in the State.”¹¹¹

Tourism WA, the State Government authority responsible for promoting WA as a holiday destination, said questions regarding the use of Short-Term Rentals were included for the first time in Australia in the International and National Visitor Survey in 2015. This data showed that between 2015 and 2018 the number of visitors using online booking platforms to book Short-Term Rentals had nearly doubled, from 270,000 to 520,000. However, this still represented “fewer than 1% of visitor nights in Western Australia”.¹¹²

Tourism WA provided data that 60% of visitors using online booking platforms in WA were intrastate visitors having local holidays, while 38% were from other states and just 2% were international visitors. Of the international visitors, 25% were from Singapore, 21% from Malaysia, and 11% from the United Kingdom.¹¹³

There is no evidence, however, that can directly link the 2018 increase in visitation to WA to the growth of Short-Term Rentals. Several stakeholders emphasised that the form of accommodation does not drive destination demand.¹¹⁴ Debbie Noonan from the Registered Accommodation Providers of the Margaret River Region said:

*When people come travelling, they normally decide where they are going before they look for accommodation; they do not look for accommodation and then decide they are going there. If we look outside of little towns that may not have traditional accommodation providers, or a large range of traditional accommodation, you are not going to have the influx of tourists just because you have those properties there.*¹¹⁵

The four years up to 2018 in which visitor numbers to WA stagnated also experienced some of the largest growth of Short-Term Rentals (see section 1.3). This suggests the presence of Short-Term Rentals is not a key destination driver for WA.

The Committee received conflicting evidence about whether people using Short-Term Rentals actually spend more or less than visitors using traditional forms of accommodation (see Box 2.1), and whether visitor expenditure has increased or fallen due to the increase in Short-Term Rentals.

111 Lucid Economics, *Short-Stay Accommodation Economic Assessment*, Perth, February 2019, p8 in Submission 188, Tourism Council WA.

112 Submission 126, Tourism WA, p8. This data was sourced from Tourism Research Australia (TRA) which warned “TRA has revised International Visitor Survey (IVS) estimates from 2005 to 2018 with the release of year ending December 2018 data. The revisions focus on purpose-of-visit estimates, with minimal change to visitor, nights and spend estimates. As results have been revised back to 2005, please do not use/compare previously published data.” (See TRA, [International Visitor Survey Methodology](#), nd, accessed 10 July 2019).

113 Submission 126, Tourism WA, p8.

114 Submission 188, Tourism Council WA, p2; Dr Christof Pforr, Professor of Tourism, Curtin University, *Transcript of Evidence*, 10 April 2019, p12.

115 Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p4.

Box 2.1: Do guests spend more when they stay in Short-Term Rentals or Traditional Accommodation?

Short-Term Rentals

... we know, and Tourism Research Australia has released data on this, that the average interstate guest that visits Western Australia spends \$143 a day, that the average Western Australian that travels intrastate spends \$120 a day. The average Airbnb guest that stays in Western Australia spends \$213 a day. The reason for that is that Airbnb guests tend to stay longer and spend more than the average hotel guest. That is what Tourism Research Australia says.

Sam McDonagh, Director, Country Manager Australia and New Zealand, Airbnb

I recommend cafes, restaurants and bars that I go to as my favourites, as well as places of interest to visit. I also give a brief history about Fremantle and point out historical buildings. If they are international guests I try to source local flowers and foliage from my garden or from the flower markets to give them a feel of Western Australia when they arrive.

Suzanne O'Neill, Airbnb host

We encourage our guests to make the most of local businesses because we do not provide any meals. There are many excellent local restaurants, bakeries and coffee shops to choose from. We also encourage them to visit our national parks and other tourist amenities.

David Darn, Airbnb host

Traditional Accommodation

The other thing that I have noticed very much with my holiday home is, obviously, we check people in—we actually show them onto the property and let them in. The first thing they do is unload their vehicle and it is usually full of cartons of food and drinks which they have brought with them from wherever they have come from. When they leave, obviously we tidy up. There is very little in terms of rubbish that has been generated from local suppliers.

With my motel, we are very heavily into recycling. Every day, there are bottles of wine purchased from local wineries. There is beer bought from local breweries. There are cheese wrappers from the cheese factory. There are chocolate wrappers from the chocolate places. These people are spending big in the local community, but I find that the people who rent the holiday home are self-sufficient. They do not tend to spend in the area.

Alan Wilkes, Edge of the Forest Motel and Short-Term Rental owner

Are they spending more? They are actually spending less, because those who stay in residential dwellings on short-stay spend less than those who are staying in commercial short-stay. We did the economic modelling on that, but the top-line figure was that, if everyone who had been in residential was in commercial, visitor expenditure would have amounted, in 2018, to \$300 million in gross state product, 2,800 jobs and \$12 million in tax revenue.

Evan Hall, Chief Executive Officer, Tourism Council WA

An independent study of the expenditure of Airbnb guests in Australia found their median total expenditure in 2015 was \$189 less than that of people who stayed in other forms of accommodation. The same study, however, noted the opposite trend in 2016 with the

median expenditure of Airbnb users \$98 higher than the median total expenditure for non-Airbnb users.¹¹⁶

Associate Professor Hadrian Djajadikerta outlined the difficulties in comparing guest spending:

If people go to Margaret River, for example, the way they actually spend depends on what is available in the area in terms of how they spend their money. If they go to Perth or Melbourne, for example, obviously there are differences in terms of how they can actually spend. It also depends on who actually comes as visitors. Is it family? Is it a single person? Is it young people?¹¹⁷

Associate Professor Djajadikerta said that while “rough estimates” of the economic impact of Short-Term Rental guests compared to guests of Traditional Accommodation can be made, “it also needs to be carefully looked at because it will be difficult to generalise the findings.”¹¹⁸

Assertions based on the term ‘total spend’ can also be misleading. If the form of accommodation accessed by a traveller is more expensive, obviously their total spend will be greater.

Finding 4

Although Western Australia experienced a rapid growth in the supply of Short-Term Rental listings between 2014 and 2019 and a large increase in tourist visitation in 2018, the Committee has found no direct evidence linking these two trends.

Development of the tourism sector

Robert Taylor, the Chief Executive Officer of the Western Australian Indigenous Tourism Operators Council, told the Committee that Short-Term Rentals and online platforms encouraged tourism in the more remote areas of WA where his members had their businesses, and complemented their offerings (i.e. ‘glamping’ tent accommodation). He said most of his members operated small businesses that were yet to list on platforms such as Airbnb:

There are some, as I have said, like Fitzroy River Lodge, which has obviously been around for a long time. It has two resort-style accommodation that can

116 Note: These figures do not refer to WA-based spending but spending in all of Australia. However, the researchers conducted an “an exploratory analysis limited to international visitors who did not travel to other Australian states as part of their travel itinerary” and found broadly the same result for 2015. See C. Pforr, M. Volgger and K. Coulson, [The Impact of Airbnb on WA’s Tourism Industry](#), Bankwest Curtin Economics Centre, October 2017, p52, accessed 14 June 2019.

117 Associate Professor Hadrian Djajadikerta, Associate Dean for Research, School of Business and Law, Edith Cowan University, *Transcript of Evidence*, 10 April 2019, p9.

118 *ibid.*, p11.

*be booked online—Kooljaman—those sorts of things. But you are right, most of them have not experienced it yet.*¹¹⁹

2.5 Development of new business models

Some individuals have developed significant businesses through listing multiple properties on online platforms. New business models have emerged, providing property management and other support services.

Inside Airbnb, whose website provides tools and data to quantify the impact of short-term letting, provided initial data showing that 46% of entire homes listed by Airbnb in WA were managed by a host with more than one entire home listing, with 24% of the total listings managed by a host with five or more properties.¹²⁰

Subsequent data provided by Inside Airbnb showed there were 68 hosts in WA with 10 or more entire home listings, making up a total of 1,423 listings.¹²¹ The largest of these was Exclusive Escapes Holidays, a Dunsborough-based Short-Stay Accommodation company with 99 luxury holiday rental property listings in the South West.¹²² The largest number of properties listed by an individual on Airbnb seems to be 'Davinia', a "local to the Busselton area" with 71 listings.¹²³

The evidence to this inquiry suggested that hosts with more than five properties are likely to be professional property managers. Steve Yarwood told the Committee that he operates a Short-Term Rental management company managing a portfolio of about 20 properties. He manages the properties for a varied mixture of clients "who would otherwise struggle with time or proximity or knowledge constraints." He abides by a strict code of conduct adopted by the Australian Short Term Rental Accommodation Association (formerly known as the Holiday Rental Industry Association).¹²⁴

The rapid rise in the number of Short-Term Rentals in WA has created a new business sector servicing the premises that are offered online. Lyda Hayward told the Committee she established her company specifically to support owners around Nedlands who wanted to list their properties on online platforms but did not want to manage the bookings (such as vetting guests) and associated tasks such as cleaning. She manages 15 properties that are all within a 20-minute drive from her house, enabling her to assist guests who have difficulties like losing their keys and respond to amenity issues with neighbours.¹²⁵ Other companies are advertising their services to specifically clean Short-Term Rentals.¹²⁶

Amanda Walker established her own online booking platform for WA holiday homes in 2018. The Short-Term Rentals listed on her new site are mainly in the Shire of Augusta-Margaret

119 Robert Taylor, Chief Executive Officer, Western Australian Indigenous Tourism Operators Council, *Transcript of Evidence*, 12 June 2019, p2.

120 Submission 187, Inside Airbnb, p2.

121 Murray Cox, Founder, Inside Airbnb, Email, 16 April 2019, p1.

122 Exclusive Escapes, [Exclusive Holiday Homes](#), 2017, accessed 17 June 2019.

123 Airbnb, [Davinia's listings](#), 2019, accessed 17 June 2019.

124 Stephen Yarwood, Property Manager, Let Go Pty Ltd, *Transcript of Evidence*, 12 June 2019, p10.

125 Lyda Hayward, Property Manager, Pass Your Keys Pty Ltd, *Transcript of Evidence*, 8 May 2019, p6.

126 See for example: Pristine Cleaning, [Perth Airbnb Cleaning Experts](#), 2017, accessed 17 June 2019.

River and the City of Busselton and she has worked with these local governments to ensure the listed properties are properly registered.¹²⁷ Mrs Walker said property managers with 20 to 30 properties provide the majority of her current listings, but that “some have as many as 90”.¹²⁸

Short-Term Rentals encourage the development of hotels

Airbnb argued the growth in Short-Term Rentals in regional locations demonstrated a need for more traditional forms of accommodation, such as hotels, and acted as a facilitator of economic development in that location.¹²⁹ This proposal was supported by Expedia who saw Short-Term Rentals listed on their sites as acting as a:

*...transitional bridge to being able to develop a tourism industry which then creates further investment or traditional investment with a traditional accommodation sector and traditional tourism offerings.*¹³⁰

The Committee subsequently raised this proposition with a number of witnesses from major tourism centres like Mandurah and Margaret River, but was unable to confirm that any location in WA had followed this development path. Even the City of Albany, in which a new hotel is about to be constructed, said:

*...we are not aware of it being a particularly big factor. There is a hotel that is about to be constructed in Albany, but there are also hotel sites that are available that have not been taken up to be constructed upon.*¹³¹

Finding 5

The increase in Short-Term Rental offerings in Western Australia has assisted in the development of a new business sector to manage and support many of these new premises, especially those that are unhosted.

127 Submission 42, WA HomeStay Pty Ltd, pp1–2.

128 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p11.

129 Submission 160, Airbnb, p3.

130 Dr Vanessa Findlay, Policy and Strategy Adviser, Expedia Group, *Transcript of Evidence*, 20 February 2019, p13.

131 Paul Camins, Executive Director Development Services, City of Albany, *Transcript of Evidence*, 24 May 2019, p2.

Chapter 3

Is the Market Uneven and Unfair?

People have suggested selling. Selling—how and who to? Westpac Bank has stated they currently will not lend against accommodation businesses and who would in their right mind buy one now? Our backs are against the wall and why? Because we play by the rules—we play by all of the rules—but we play in the same market with people who play by none of the rules.

Karen Derbyshire, Manager, Marri Lodge.¹³²

3.1 Traditional Accommodation provider perspectives

Traditional Accommodation providers repeatedly used the phrases ‘uneven playing field’ and ‘unfair playing field’ to describe the current regulatory framework for Short-Stay Accommodation. They consider that Short-Term Rentals (especially unhosted premises) are operating as businesses and yet under Federal, State, and local laws are regarded as residential properties. Traditional Accommodation providers observe that Short-Term Rentals do not carry the regulatory burdens and costs faced by commercial businesses and are benefitting from policies originally intended to encourage affordable housing and protect residential ownership.

This chapter discusses a range of policy settings and regulations that Traditional Accommodation providers claim are key contributors to the ‘unfair playing field’. The measures often expose Traditional Accommodation providers to higher costs for providing comparable services to Short-Term Rentals.

The lower nightly rates that many Inquiry participants said attracted guests to Short-Term Rentals (see Chapter 2) can be at least partially attributed to these lower costs. If Short-Term Rentals have lower overhead costs, they can offer prices below Traditional Accommodation providers, such as a bed and breakfast (B&B). The Committee heard examples where Short-Term Rentals are located directly adjacent to the Traditional Accommodation offering properties of a remarkably similar configuration, providing Short-Stay Accommodation, and yet subject to very different cost structures and regulatory regimes depending on whether they are registered and appropriately licensed.¹³³

Traditional Accommodation providers can (and have) lowered their prices to compete with Short-Term Rentals, but argue that this is unsustainable. Because their overheads have remained largely unchanged as revenues decline, they have had to make cuts to other areas of their businesses. Traditional Accommodation providers in the South West said they were unable to upgrade their facilities, and in many cases were forced to let their employees go.¹³⁴

132 Karen Derbyshire, Manager, Marri Lodge, *Transcript of Evidence*, 1 May 2019, p2.

133 Gavin Farrell, Owner, Big4 Beachlands Holiday Park, *Transcript of Evidence*, 30 April 2019, p4.

134 Donna Seaton, Owner/Operator, Grange on Farrelly, *Transcript of Evidence*, 1 May 2019, p5.

Our revenue alone has dropped roughly 35% in this three-year period. This has meant a couple of things. Firstly, we have not really been able to upgrade or invest in our property as we had hoped and budgeted for. We had planned to spend \$200,000 per year over five years or so to upgrade the facility. To date, we have spent probably about \$50,000. That is roughly \$550,000 that we have not spent with local hardware stores and tradespeople because we simply cannot afford to.

The second dramatic change that we have had is on a staffing level. When we took over, we employed one manager, two receptionists/waitresses, one chef, one yardie/gardener and seven housekeepers. That is 12 staff all up, four of which were full time and the other 8 were casual—10 to 20 hours per week. As of today, we employ two receptionists, and three housekeepers—5 staff in total, only one of which is full time. The other four are casual and are working 10 to 20 hours per week.

*Donna Seaton, Owner/Operator,
Grange on Farrelly*

As holiday park owner Gavin Farrell said, “you can only cut so far and then everything starts to drop off.”¹³⁵

Easter 2019 illustrated the difficult situation facing some Traditional Accommodation providers. Due to the seasonality of Short-Stay Accommodation in the South West, Traditional Accommodation providers tend to use the income generated over holiday periods to carry them through the winter months. In the past, the increased demand for accommodation enabled them to raise their nightly rates, which covered their costs in periods when occupancy was lower. However, they reported their rooms filled much slower leading up to Easter 2019 or that they had vacancies over the long weekend. They consequently have less revenue to support their businesses over the coming year.¹³⁶

3.2 Rates and utility costs

Local government rates

Higher local government rates are levied against Traditional Accommodation businesses than Short-Term Rentals. Each year, councils set a revenue target as part of their budgeting process. To meet their target, they determine a ‘rate in the dollar’ by dividing the rates collection by the total amount of valuations on their roll. An individual’s council rates are calculated by multiplying the Gross Rental Value (GRV) of their property by the rate in the dollar.¹³⁷

Under the *Local Government Act 1995*, Councils can apply different rates according to land zoning, land use, whether the land is vacant or a mix of these factors. For 2019–20, for example, the City of Fremantle will apply the differential rates shown in Table 3.1.

135 Gavin Farrell, Owner, Big4 Beachlands Holiday Park, *Transcript of Evidence*, 30 April 2019, p4.

136 Rodney Hughes, Director/General Manager, Abbey Beach Resort, *Transcript of Evidence*, Closed Session, 30 April 2019, p4; Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast, *Transcript of Evidence*, 30 April 2019, p10.

137 Department of Local Government, Sport and Cultural Industries, [Rates setting](#), 17 April 2018, accessed on 14 May 2019; Landgate, [Property valuations and your rates: Frequently asked questions](#), Western Australia, June 2017, p2, accessed 11 July 2019.

Table 3.1: City of Fremantle’s differential rates for 2019–20¹³⁸

Differential rate category	Proposed rate in the dollar	Proposed minimum payment
Residential improved	0.073327	\$1,344
Residential vacant	0.117364	\$1,302
Commercial and industrial general	0.081596	\$1,344
Commercial and industrial vacant	0.146651	\$1,344
City centre commercial	0.086286	\$1,344
Nightclubs	0.146652	\$1,344
Residential short-term accommodation	0.081586	\$1,344

Local government rating has disadvantaged Traditional Accommodation providers in two ways. First, properties rated on a GRV basis are only revalued every three to five years by Landgate. Some Traditional Accommodation providers in the South West said that, due to the growth of Short-Term Rentals, the value of their land had decreased significantly in comparison to residential properties but they were still paying higher rates. It is difficult for Traditional Accommodation owners to have their land revalued to reduce their rates. Registered Accommodation Providers of the Margaret River Region Spokesperson Debbie Noonan explained:

One thing is that we have had a devaluation in all our land and properties here and members have gone back to LandCorp [sic] to get revalued. LandCorp [sic] has sent us back to the shire. The shire has sent us back to LandCorp [sic]. We are doing this ping-ponging just to get our land revalued so we are not paying these high rates, which went up ages ago.¹³⁹

Secondly, local governments with differential rates tend to rate Short-Term Rentals as ‘residential improved’ which generally have the lowest rate applied by a local government. Traditional Accommodation providers, such as hotels or motels and serviced apartments, are rated as ‘commercial’ or ‘city centre’.¹⁴⁰

The impact of this rating approach was illustrated by B&B owner Henrietta Hughes. She told the Committee her property is classified as a tourist land use. Her next door neighbour operates his property as a Short-Term Rental but, because it is classified as residential, he allegedly pays 36% less in council rates even though his property is the same size as Mrs Hughes’.¹⁴¹

Some local governments have increased the rates for Short-Term Rentals. As shown in Table 3.1, the City of Fremantle has introduced a rating category for Short-Term Rentals with a higher ‘rate in the dollar’. Since 2014, the Shire of Augusta-Margaret River has charged a

¹³⁸ City of Fremantle, *Budget and Rates 2019–20*, Fremantle, 2019, p10.

¹³⁹ Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p8.

¹⁴⁰ Submission 150, Western Australian Local Government Association, p17.

¹⁴¹ Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast, *Transcript of Evidence*, 30 April 2016, p6.

commercial rate (the same as tourism providers pay) on properties being used as Short-Term Rentals.¹⁴²

In the 2018–19 financial year, the City of Busselton also introduced a higher ‘rate in the dollar’ for Short-Term Rentals. Owners are now required to pay 5% more than the residential rate, with a further 5% increase scheduled for 2019–20. Once this second increase is applied, Short-Term Rentals will be paying the same rates as properties in the City’s tourism and commercial zones. In monetary terms, this means Short-Term Rentals will be paying around \$250 more each year.¹⁴³

Utility costs

Electricity, water, drainage and wastewater charges also tend to be higher for Traditional Accommodation providers than owners of Short-Term Rentals. This is because hotels and other forms of Short-Stay Accommodation are charged commercial rates, while Short-Term Rentals are charged the residential rate.

A Perth metropolitan water bill provides a good example of the different costs charged to each group (see Table 3.2). A water bill consists of two charges: a service charge and a water use charge. For commercial operators, service charges are based on the size and number of meters servicing a property. Even the smallest meter will cost Traditional Accommodation providers almost \$8 more per year than the standard service charge levied on Short-Term Rentals.

Table 3.2: Water rate pricing variations in metropolitan Perth (as at September 2019)¹⁴⁴

Stakeholder group	Service charges		Water use charges	
	Size of metre	Cost/year		
Traditional Accommodation providers	Up to 20mm	\$272.05	\$2.518 per kilolitre (kL)	
	25mm	\$425.11		
	30mm	\$612.11		
	Up to 40mm	\$1,088.27		
	50mm	\$1,700.40		
	70, 75, 80mm	\$4,353.02		
	100mm	\$6,801.60		
	Up to 150mm	\$15,303.60		
	200mm	\$27,206.39		
	250mm	\$42,509.98		
	300mm	\$61,214.39		
	350mm	\$83,319.62		
Short-Term Rentals	\$264.35		Water use	Cost per kL
			0 – 150kL	\$1.827
			151 – 500 kL	\$2.434
			500+ kL	\$4.553

142 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

143 Submission 75, City of Busselton, p3.

144 Water Corporation, [Residential: Your bill and charges](#), nd, accessed 4 September 2019; Water Corporation, [Business: Your bill and charges](#), nd, accessed 4 September 2019.

Wastewater or sewerage rates also have different pricing schedules for Traditional Accommodation and Short-Term Rentals. Metropolitan residential properties are charged according to their rateable value:

- \$0.04410 per dollar for the first \$20,500 of the property's rateable value; and
- each dollar over \$20,500 is charged at \$0.03256.¹⁴⁵

In contrast, businesses have two sewerage charges: a service charge and a volume charge. Service charges are based on the number of toilets or urinals in a business:

- 1st fixture — \$1,021.18;
- 2nd fixture — \$437.12;
- 3rd fixture — \$583.77; and
- 4th + fixture + subsequent — \$634.81.¹⁴⁶

Volume charges are applied for businesses that discharge more than 200 kilolitres (kL) of wastewater during the financial year. For each kL discharged above 200kL, businesses are charged \$3.752.¹⁴⁷

3.3 Insurances and taxes

Public liability insurance

Traditional Accommodation providers questioned whether the operators of Short-Term Rentals had public liability insurance, or were even aware of the need for such coverage.¹⁴⁸ One pointed out it is actually quite difficult to find an insurance company willing to insure Short-Stay Accommodation; in his experience, there are only three to five companies willing to insure a property for this use.¹⁴⁹

If Traditional Accommodation owners are correct, and the majority of Short-Term Rental operators do not have public liability insurance, this contributes to the 'unfair playing field'. Traditional Accommodation owners told us their public liability insurance costs them between \$3,000 and \$6,000 per year.¹⁵⁰ At least one Traditional Accommodation owner is paying as much as \$11,000 each year for contents, infrastructure and public liability insurance.¹⁵¹

It is not compulsory for businesses to have public liability insurance in Western Australia, although it is standard practice in the tourism sector.¹⁵² To become accredited through the Tourism Council WA's Quality Tourism Accredited Business Program, for example, businesses

145 Water Corporation, [Residential: Your bill and charges](#), nd, accessed 4 September 2019.

146 Water Corporation, [Business: Your bill and charges](#), nd, accessed 4 September 2019.

147 *ibid.*

148 Submission 12, Glenn and Sara Willmott, p1; Submission 58, Lanterns Retreat, p3; Alan Wilkes, Owner, Edge of the Forest Motel, *Transcript of Evidence*, 1 May 2019, p5.

149 Rodney Hughes, Director/General Manager, Abbey Beach Resort, *Transcript of Evidence*, Closed Session, 30 April 2019, pp10–11.

150 Submission 58, Lanterns Retreat, p3; Submission 12, Glenn and Sara Willmott, p1.

151 Submission 173, Name withheld, p3.

152 Small Business Development Corporation, [Insurance](#), accessed 27 May 2019; Submission 55, Heritage Trail Lodge, p1.

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have to prove they have public liability insurance to the value of \$10 million.¹⁵³ A similar amount is needed to belong to some local tourist associations.¹⁵⁴ Hotels are typically required to hold insurance that provides protection for up to \$20 million.¹⁵⁵ The Australian Hotels Association (WA) (AHA WA) said this level of coverage:

*...recognises the high risk associated with operating a business that serves the public. Insurance provides both parties with confidence that all associated costs can be recovered, and is complimented by risk or house management plans, security, and workplace health and safety protocols.*¹⁵⁶

Online platforms Airbnb and Expedia offer people who list on their sites public liability insurance, although the coverage is significantly less than the \$10 million usually held by tourism operators. Both only provide protection of up to \$1 million.¹⁵⁷ Airbnb automatically extends this type of insurance (known as Host Protection Insurance) to all hosts listing on its site and it told the Committee it does not “necessarily recommend that a host needs to take out additional protection.”¹⁵⁸

Booking.com does not currently offer insurance to accommodation providers outside of Europe, but—in contrast to Airbnb—does recommend that hosts take out private insurance.¹⁵⁹

The risks hosts and guests face in relation to inadequately insured Short-Term Rentals are discussed in section 6.3, along with how the State Government might address these issues.

Goods and Services Tax

The different Goods and Services Tax (GST) obligations of Traditional Accommodation providers and Short-Term Rentals provide the latter with an advantage. Like many necessities, GST is not imposed on residential rent in Australia. This currently includes short-term letting. It is, however, imposed on commercial activities—including Short-Stay Accommodation like hotels, motels and B&Bs.¹⁶⁰

Alan Wilkes, who owns both a motel and a Short-Term Rental, explained the impact on his motel business. He said a property owner with three Short-Term Rentals each earning \$70,000 per year would be around \$20,000 better off than him because of his GST

153 Submission 188, Tourism Council WA, p18.

154 Alan Wilkes, Owner, Edge of the Forest Motel, *Transcript of Evidence*, 1 May 2019, p5.

155 Submission 103, Fini Group, p2; Submission 182, Australian Hotels Association (WA), p23.

156 Submission 182, Australian Hotels Association (WA), p23.

157 US\$1 million in the case of Airbnb. See Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway), *Transcript of Evidence*, 19 February 2019, p7; Submission 160, Airbnb, p11; Airbnb, [Host Protection Insurance Summary](#), 27 March 2019, accessed 23 May 2019.

158 Sam McDonagh, Director, Country Manager Australia and New Zealand, Airbnb, *Transcript of Evidence*, 20 February 2019, p13.

159 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, pp5–6.

160 Black Economy Taskforce, *Black Economy Taskforce: Final Report*, Commonwealth of Australia, Canberra, October 2017, p141; Helena Yuan, ‘The sharing economy and taxation’, *Taxation in Australia*, vol. 51, no. 6, December 2016/January 2017, pp293–294.

obligations. The property owner could either pocket that money or discount her rates “to undercut people who are collecting and paying GST.”¹⁶¹

The Australian Taxation Office (ATO) has also identified the under-reporting of income gained through the sharing economy as a significant challenge facing Australia’s tax and welfare systems. Although income earned as a result of short-term letting is assessable, a 2017 report estimated the ‘black economy’ equated up to 3% of Australia’s Gross Domestic Product.¹⁶²

Consequently, the ATO has increased its efforts to identify taxpayers under-reporting their income. Using data from some (publicly unnamed) online booking platforms, it intends to “identify entities who rent their property on a short term basis but may not be meeting their registration, reporting, lodgement and/or payment obligations.”¹⁶³

The concerns about GST fall most heavily on private individuals because companies operating Short-Terms Rentals (such as the management companies discussed in section 2.5) are required to meet these obligations. Their businesses are audited to ensure compliance with a range of taxation matters.¹⁶⁴ Airbnb assured the Committee that it met its tax obligations:

*The one thing that the Committee should be 100% clear on is that Airbnb is tax compliant in every market that we operate in around the world. We do pay income tax, corporate income tax, here in Australia. We have done every year since we have had a corporate presence and we will continue to do so.*¹⁶⁵

While confirming its tax position in Australia, Airbnb criticised a large hotel operator, saying “one of the members of the big hotel lobby, Hilton, paid zero dollars in tax in the last financial year so, again, claims about taxes from some of those big international hotel bodies, I would encourage you to take them with a grain of salt.”¹⁶⁶

The GST is a Federal tax and its obligations for private Short-Term Rental operators is a matter that the State Government cannot impact by further regulation or legislation.

161 Alan Wilkes, Owner, Edge of the Forest Motel, *Transcript of Evidence*, 1 May 2019, p5.

162 The ‘black economy’ refers to activities that take place outside tax and regulatory systems and includes the under-reporting of incomes earned from the sharing economy. See Black Economy Taskforce, *Black Economy Taskforce: Final Report*, Commonwealth of Australia, Canberra, October 2017, pp11, 12.

163 Treasury, *Tackling the black economy: A sharing economy reporting regime. A consultation paper in response to the Black Economy Taskforce Final Report*, Commonwealth of Australia, Canberra, January 2019, p5.

164 Stephen Yarwood, Property Manager, Let Go Pty Ltd, *Transcript of Evidence*, 12 June 2019, p10.

165 Sam McDonagh, Director, Country Manager Australia and New Zealand, Airbnb, *Transcript of Evidence*, 20 February 2019, p14.

166 Brent Thomas, Head of Public Policy, Australia and New Zealand, Airbnb *Transcript of Evidence*, 20 February 2019, p14.

3.4 Lower building costs

Building Code of Australia requirements

The Building Code also gives Short-Term Rentals a financial advantage. It is more expensive to build Traditional Accommodation such as hotels than residential dwellings. The Tourism Council WA claims it currently costs \$1,500 per square metre more to construct a hotel in Perth than a residential building of the same size.¹⁶⁷ The building standards required for a Class 3 building (hotel) compared to a Class 2 apartment building is responsible for much of this cost differential (see section 4.2 for a discussion on the different building class types). Tourism Council WA Chief Executive Officer Evan Hall suggested the lower standards of Class 2 buildings, such as fire safety requirements, reduce the cost of housing, which makes it more affordable for residents.¹⁶⁸

The apparent inability of local governments to identify unauthorised Short-Term Rentals—and therefore enforce the Building Code—has further compounded the ‘unfair playing field’. Local governments can only require residents to comply with the Building Code if they are aware they are offering Short-Term Rentals. In practice, this means operators who seek to comply with their local planning scheme by applying for planning approval are doubly disadvantaged: they not only pay an application fee for their planning approval but, in some instances, are forced to spend large amounts of money to ensure their property meets the higher building standards.

Box 3.1: Building Code compliance

One submitter said it cost her \$295 to apply for planning approval to use her home as a two bedroom bed and breakfast. Using her home in this way changed it from a Class 1A building to a Class 1B. In accordance with the *Building Regulations 2012*, she was required to lodge written notice with the relevant permit authority about the proposed change of classification at a cost of \$2,100. A statement from two building surveyors that her property complied with the Building Code was to accompany the notice. In order to receive this statement, she had to prove her home complied with the Class 1B building standards, which would have involved—amongst other things—adding smoke alarms and emergency lighting, registering her kitchen in accordance with the *Food Act 2008* and paying an annual kitchen inspection fee.

Source: Closed submission 53, pp5–7.

Even those residents who do seek planning approval rarely face the same costs as Traditional Accommodation providers. Based on the evidence of Short-Term Rental owners, the total costs incurred to receive local government authorisation (either through registration or planning approval) is between approximately \$150 and \$2,000.¹⁶⁹ In the City of Mandurah, using residential properties for short-term letting does not result in a change

167 Evan Hall, Chief Executive Officer, Tourism Council WA, *Transcript of Evidence*, 13 February 2019, p3.

168 *ibid*.

169 George Jones, Airbnb host, *Transcript of Evidence*, 12 June 2019, p7; Submission 64, Westerly Accommodation, p1. See also Submission 95, John Quartermaine, p1; Submission 204, George Jones, p1; Paul Garbett, Director Planning and Strategic Projects, City of Fremantle, *Transcript of Evidence*, 13 March 2019, p5; Louise Stokes, Proprietor, Holberry House, *Transcript of Evidence*, 1 May 2019, p5.

of land use or trigger a change of classification because the City regards Short-Term Rentals as residential premises under its planning laws.¹⁷⁰

Finding 6

Traditional Accommodation providers generally have greater overhead costs than individuals offering Short-Term Rentals as a direct result of existing State and local government regulations and policy settings.

3.5 Can these costs be reduced?

The Committee asked Traditional Accommodation providers whether they would support relaxing the standards they are required to meet in order to reduce their costs and compete with Short-Term Rentals. Most said yes, but not if it came at the expense of guest safety.¹⁷¹

David Bornmann, Director of Operations at the Marina Mindarie, said the compliance and regulations “are there for good reason. They protect not only the public, but also the staff and obviously investors and directors of the company that own the property.” He therefore found it difficult to identify specific compliance items in which standards could be lowered.¹⁷²

The AHA WA expressed doubt that Commonwealth, State, or local governments would be open to a reduction in standards:

*I think there is too much at stake in terms of short-stay—whether it is fire, safety, emergency services or taxation—that anyone realistically at a state or commonwealth level is likely to relinquish those requirements ... they have existed and have been developed over decades, if not a hundred-plus years, for very safe and sound reasons.*¹⁷³

For local government rating and utilities, the pricing schedules reflect that commercial and industrial activities place the most pressure on infrastructure. Unlike residents, businesses also use the infrastructure for commercial gain and are therefore expected to contribute to their upkeep through higher charges and rating.

The problem is many Short-Term Rentals are inconsistent with the logic underpinning these pricing models, with some obviously functioning as commercial operations. In some WA regions, Short-Term Rentals listed on Airbnb have almost achieved occupancy rates comparable to Traditional Accommodation. For the calendar year ending December 2018, Airbnb listings in Margaret River had an occupancy rate of 50%, compared to hotels which

170 Ann Harrop, Senior Planner, Planning Services, City of Mandurah, *Transcript of Evidence*, 15 May 2019, p7.

171 Sharna Kearney, Joint Chief Executive Officer, Margaret River Busselton Tourism Association, *Transcript of Evidence*, 1 May 2019, p3; Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p11.

172 David Bornmann, Director of Operations, The Marina Mindarie, *Transcript of Evidence*, 19 June 2019, p8.

173 Bradley Woods, Chief Executive Officer, Australian Hotels Association (WA), *Transcript of Evidence*, 13 March 2019, p13.

had an occupancy rate of 60%. In Broome occupancy rates for both accommodation forms were equal—both hotels and Airbnb listings had occupancy rates of 59%.¹⁷⁴

Even if Short-Term Rentals achieve equal occupancy rates to Traditional Accommodation, it could be argued they are not placing the same strain on infrastructure because they accommodate fewer people than multi-roomed hotels or B&Bs. However, there are reports of Short-Term Rentals being used as venues (i.e. for wedding parties) that would place significant strain on facilities.¹⁷⁵

To address the advantage that the Building Code provides Short-Term Rentals, the Tourism Council WA suggested the State's building standards could be amended to "allow the development of small, unique tourism accommodation as a Class 1A building." It noted that if short-term letting of residential dwellings at Class 1A standards is considered acceptable, then the tourism sector should be allowed to build to a Class 1A standard as well.¹⁷⁶ The Shire of Augusta-Margaret River similarly recommended the State address the need for "equity in construction requirements."¹⁷⁷

As part of its Inquiry into the Adequacy of the Regulation of Short-Term Holiday Letting, the New South Wales Committee on Environment and Planning considered whether there were opportunities to reduce the regulatory requirements for Traditional Accommodation operators. While it recognised the dilemma facing Traditional Accommodation operators, it concluded the Short-Stay Accommodation sector was being 'shaken up' and regulations should not "preserve traditional operators and exclude new ones without good policy reasons." It therefore found that "subject to appropriate definitions and conditions, short-term letting should be regarded as a residential use and as such, should not trigger any Building Code of Australia requirements."¹⁷⁸

3.6 Short-Term Rental perspectives of 'unfair' costs

Some online booking platforms and Short-Term Rental owners countered claims of unfairness by stating that the Traditional Accommodation industry had also received preferential treatment. Airbnb submitted that "[f]rom concessional taxation and planning incentives right through to direct handouts, the hotel sector enjoys a myriad of taxpayer-funded government protection."¹⁷⁹

The national body for the Short-Term Rental industry, Australian Short Term Rental Accommodation, submitted that in an increasingly competitive accommodation market:

...it is unreasonable to impose limits, costs or uncompetitive constraints on one sector in order to afford protectionist advantage to 'traditional

174 Lucid Economics, *Short-Stay Accommodation Economic Assessment*, Perth, February 2019, pviii in Submission 188, Tourism Council WA.

175 Robert McDonald, Owner/Operator, Bushy Lake Chalets, *Transcript of Evidence*, 1 May 2019, p13; Lyda Hayward, Property Manager, Pass Your Keys Pty Ltd, *Transcript of Evidence*, 8 May 2019, p11.

176 Submission 188, Tourism Council WA, p19.

177 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

178 Legislative Assembly Committee on Environment and Planning (NSW), [Adequacy of the Regulation of Short-Term Holiday Letting in New South Wales](#), October 2016, pp18, 17, accessed 18 June 2019.

179 Submission 160, Airbnb, p14.

accommodation operators' – or for regulation to be used to limit competition and confer commercial benefits to international hotel groups.¹⁸⁰

Particular attention was paid to the suite of incentives the then-State Government launched in 2011 to encourage investment in Perth's hotel industry and reduce the high cost of hotel accommodation.¹⁸¹ The incentives included releasing Crown land for hotel development, discounted Crown land values, leasing Crown land at a peppercorn rate, and allocating funds for infrastructure upgrades at existing hotel developments.¹⁸² It occurred at a time when, according to State Government authority Tourism WA, there was a "severe lack of accommodation in Perth."¹⁸³

These Government interventions had the intended result. Since 2012, 19 new hotels have opened in Perth and an additional 2,473 hotel rooms have become available. A further five hotels are being constructed and will contribute a further 1,423 rooms. Building permits and development approvals have been granted to projects which will add more than 1,800 additional rooms.¹⁸⁴

Some stakeholders suggested the low occupancy rates experienced by Perth's Traditional Accommodation providers were because these additional hotel rooms had been completed at around the same time as the State's mining boom had unwound and the number of Short-Term Rentals had increased significantly.¹⁸⁵

As a result, Stayz/HomeAway Government and Corporate Affairs Director Eacham Curry said declining occupancy rates could not be blamed on Short-Term Rentals alone:

...we saw the number of hotels and the number of new hotel rooms that were coming online because investment decisions were made that that was actually a good thing to do. Yes, the market fell away, and that placed pressure on hotels, but it does not then follow that the reason for that was because of the rise of short-term rentals. It just does not work. It does not fit.¹⁸⁶

Tourism WA Chairman Nathan Harding accepted occupancy rates had decreased because the supply of Short-Stay Accommodation had outstripped demand in Perth. He nevertheless argued Perth's burgeoning hotel industry represented significant investment in the State,

180 Submission 259, Australian Short Term Accommodation Industry Association, p16.

181 Submission 160, Airbnb, pp14–15; Submission 182, Australian Hotels Association (WA), p8; Submission 164, Stayz, p3; Nathan Harding, Chairman, Tourism WA, *Transcript of Evidence*, 10 April 2019, pp6–7.

182 Hon Kim Hames MLA, then Minister for Tourism, *Hotel development incentives released*, Media Release, 26 October 2011.

183 Nathan Harding, Chairman, Tourism WA, *Transcript of Evidence*, 10 April 2019, p7.

184 'Hotels' includes all forms of Traditional Accommodation including hotels, motels and serviced apartments. See Tourism Council WA, *Perth Hotel Development Report 2019*, Perth, April 2019, pp1–2.

185 Submission 128, Assured Hospitality, p1.

186 Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway), *Transcript of Evidence*, 20 February 2019, p12.

and it was “incumbent on us to have a balance in the regulatory framework to ensure that there is that level playing field to protect that investment.”¹⁸⁷

Finding 7

There has been a considerable increase in the supply of hotel beds added to Perth’s Central Business District market since 2011. This has coincided with a deterioration in the State’s general economic conditions. It would therefore appear that declining revenues and increased vacancy rates in hotels cannot be primarily ascribed to the expansion in Short-Term Rentals.

3.7 “Airbnb hotels”?

The Tourism Council WA expressed that its greatest long-term concern was developers who will build cheaper apartment buildings (with lower standards for fire safety and disability access) rather than hotels, and then rent the lots out for Short-Term Rentals—so called ‘Airbnb hotels’:

*The unintended consequence of having high standards for Class 3 buildings [hotels] as opposed to Class 2 buildings is that it turns into a policy incentive not to build to higher standards, because you can make the same money by renting it out on the short-term market anyway.*¹⁸⁸

Expedia told the Committee that it held strong views on this matter:

*...this is a large sector entertaining small businesses, mum-and-dad investors, that kind of thing. The spirit of our sector does not entertain the idea that you go and buy 10 apartments in a block of 100. That is a commercial activity and it is not what we are about.*¹⁸⁹

Airbnb advised it currently had more than 500,000 hotel rooms listed on its platform globally, but was not aware of any ‘quasi-hotels’ listed on its platform “anywhere” in the world.¹⁹⁰ However, in May 2019 Airbnb partnered with a New York property developer to create apartments on 10 floors of a commercial building at 75 Rockefeller Plaza in midtown Manhattan. These suites are claimed by Airbnb to combine “the features of a luxury hotel with all the comforts of a home.”¹⁹¹

This type of development is also underway in Florida in the United States of America, where Brookfield Property Partners (one of the world’s largest property owners) is entering into a joint venture with Niido (the multifamily development partner of Airbnb) to develop six

187 Nathan Harding, Chairman, Tourism WA, *Transcript of Evidence*, 10 April 2019, p7.

188 Evan Hall, Chief Executive Officer, Tourism Council WA, *Transcript of Evidence*, 13 February 2019, p4.

189 Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway), *Transcript of Evidence*, 20 February 2019, p2.

190 Brent Thomas, Head of Public Policy, Australia and New Zealand, *Airbnb Transcript of Evidence*, 20 February 2019, p5.

191 Christina Jelski, ‘[Hospitality models blur further as Marriott, Airbnb expand turf](#)’, *Travel Weekly*, 7 May 2019, accessed 27 June 2019.

apartment communities where tenants can rent out their apartments through Airbnb for half the year.¹⁹²

In 2017, the WA Minister for Planning confirmed she was not aware of “any individual, developer or business in Western Australia operating an ‘Airbnb hotel’, that is, using the Airbnb model in a larger-scale building or development.”¹⁹³

One of Perth’s largest property developers, Adrian Fini, told the Committee that he was not aware of such developments in Perth, but knew of “products in the Melbourne market that have been delivered that way.”¹⁹⁴

The Chairman of the Western Australian Planning Commission, David Caddy, said he was not aware of ‘Airbnb hotels’ being built specifically for this purpose in Perth, but was aware of a multi-storey apartment building in Crawley that had just been completed in 2014 when the market collapsed. He said the owner “could afford to keep all the apartments and rented them out during the last boom. ... But it was not built specifically for that purpose.”¹⁹⁵

Mr Caddy provided an example whereby whole developments were not approved in Perth for Short-Term Rentals, but the City of Perth had approved a development, in accordance with its planning policy, where the developer was allowed to sell floors which were for Short-Stay Accommodation. However, the developer was prohibited from scattering units for this usage throughout the building.¹⁹⁶

Mr Caddy gave another example of a development in South Perth which included serviced apartments to meet their commercial plot ratio requirement, but the DPLH and the Development Approval Panel knew “that a portion of this building is in fact going to be short-stay accommodation, but everyone accepts that because there are no neighbours and other units within that particular development.”¹⁹⁷

Finding 8

There was no evidence presented to the Committee of ‘Airbnb hotels’ being developed in Western Australia. There is evidence that some developments in metropolitan Western Australia were approved with an allowance of part of the building to be used for Short-Stay Accommodation.

192 David Parker, [‘Home-Sharing, Airbnb and the Role of the Law in a New Market Paradigm’](#), *UNISA Student Law Review*, 2018, p76, accessed 20 June 2019.

193 Hon Rita Saffioti MLA, Minister for Planning, Legislative Assembly, *Hansard*, 8 August 2017, p2448.

194 Adrian Fini, Director, FJM Property/Fini Group, *Transcript of Evidence*, 19 June 2019, p10.

195 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p11.

196 *ibid.*, p7.

197 *ibid.*

Chapter 4

Further Negative Impacts of the Growth of Short-Term Rentals

...the fire occurred because guests staying in un-hosted holiday accommodation had no clear instructions that any type of fire was prohibited at that time.

Mark Fisher, Senior Fire Control Officer, Yallingup.¹⁹⁸

4.1 Introduction

The increased availability of Short-Term Rentals throughout Western Australia has had several flow-on effects that can broadly be grouped into:

- fire safety and accessibility issues;
- local economic impacts;
- housing displacement and affordability;
- community viability; and
- amenity issues.

The cost of enforcing their local planning rules is an additional burden on local governments with significant numbers of unauthorised Short-Term Rentals. As was shown in Chapter 1, different regions of the State have different levels of short-term letting, so the negative effects described below are not experienced uniformly across WA.

Two of the major stakeholders—from both the ‘for’ and ‘against’ perspectives—asked their members to provide submissions to this Committee and prepared materials with suggestions regarding the tenor and content of their evidence to this Inquiry. Chapter 1 outlined the campaign that Airbnb ran to encourage its hosts in WA to make submissions to this Inquiry, and to brief those invited to make a public deposition to the Committee.

Similarly, the Australian Hotels Association (WA) (AHA WA) made its own submission and encouraged its members and supporters to make submissions that listed five ways that negative impacts of Short-Term Rentals could be addressed:

1. ***A mandatory registration scheme***—...is a requirement to ensure transparency, accountability and enforcement of short stay accommodation properties across the State. ...

¹⁹⁸ Submission 116A, Mark Fisher, p1.

2. **One Host, One Home Policy**—Limiting hosts to only sharing their primary residence will facilitate genuine home sharing whilst ensuring multiple properties are not purchased as investments with the explicit purpose of competing directly with regulated, legitimate accommodation businesses without complying with the same regulatory, compliance and taxation requirements.
3. **Appropriate fire and safety standards**—...it is critical that currently unregulated short stay accommodation properties have [been] appropriately equipped with minimum health, fire and safety provisions...
4. **Data sharing requirements**—A requirement for short stay accommodation platforms to share data with government will underpin the success of any attempts to regulate such platforms and their listings...
5. **Protecting community amenity**—An issue of obvious concern... is the impact that these properties are having on affected neighbours and the community amenity. ... Requiring potential short stay hosts to engage with neighbours a consultation provision when seeking planning approval from local government authorities will empower communities.¹⁹⁹

4.2 Fire safety issues

As explained in Chapter 3, residential properties in WA are built to a different standard than traditional forms of accommodation. Under the *Building Regulations 2012*, in general all buildings in WA must meet the standards set out in the Building Code of Australia. This national code classifies different building types by their use and sets the construction standards required for each type.²⁰⁰

Table 4.1 sets out the different building classes (as per the Building Code) that are relevant to this Inquiry. Typically, Class 1A buildings are residential houses. Class 1B buildings are similar to Class 1A but instead of being used as private dwellings are generally used as accommodation (i.e. bed and breakfasts (B&Bs)). Class 2 buildings are residential apartment blocks. Class 3 buildings are multi-level hotels or serviced apartments.²⁰¹

Most Short-Term Rentals are in premises built to Class 1A or Class 2 standards. The Committee was told that guests staying in unhosted Short-Term Rentals are at greater risk than those in Traditional Accommodation, such as hotels.²⁰² Fire safety features are a key difference between building classes. Tourist accommodation in Class 1B and Class 3 buildings is subject to increased requirements such as maps to exits, fire doors, fire extinguishers, sprinklers and smoke detectors.

199 Submission 182, Australian Hotels Association (WA), pp6–7.

200 Department of Mines, Industry Regulation and Safety, [Compliance with building standards](#), 22 January 2019, accessed 15 May 2019.

201 Submission 146, Australian Institute of Building Surveyors, p3; Evan Hall, Chief Executive Officer, Tourism Council WA, *Transcript of Evidence*, 13 February 2019, p3.

202 Submission 188, Tourism Council WA, p12.

Table 4.1: Building classes relevant to the Inquiry²⁰³

Class	Definition
Class 1	<p>One or more buildings which in association constitute:</p> <p>Class 1A - a single dwelling being</p> <ul style="list-style-type: none"> i) a detached house; or ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; or <p>Class 1B - a boarding house, guest house, hostel or the like</p> <ul style="list-style-type: none"> i) with a total area of all floors not exceeding 300 m² measured over the enclosing walls of the Class 1B; and ii) in which not more than 12 persons would ordinarily be resident; iii) which is not located above or below another dwelling or another Class of building other than a private garage.
Class 2	A building containing 2 or more sole-occupancy units each being a separate dwelling
Class 3	<p>A residential building, other than a building of class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including:</p> <ul style="list-style-type: none"> a) a boarding-house, guest house, hostel, lodging-house or backpackers accommodation; or b) a residential part of a hotel or motel; or c) a residential part of a school; or d) accommodation for the aged, children or people with disabilities; or e) a residential part of a health-care building which accommodates members of staff; or f) a residential part of a detention centre.

Residential properties are not subject to these same requirements—partly because the costs associated with meeting Class 3 building standards would reduce housing affordability and partly because “residential owners are intimately familiar with their premises and the risk of injury is lower”.²⁰⁴

However, some stakeholders in the Short-Term Rental industry challenged suggestions that buildings constructed to residential standards posed a greater risk. Executive Escapes Director Graham Nicol submitted, “[a]re Class 3 buildings inherently more safe than Class 2? Do Class 2 burn down and kill temporary residents because they can’t find their way out of them? Probably no to both questions.”²⁰⁵

One issue associated with guest safety is whether using residential properties for short-term letting should trigger Building Code compliance requirements for that premises. This matter is discussed further in Chapter 5 in regard to the City of Vincent’s policies.

The Strata Community Association (WA) reported a concern about fire safety that was raised frequently with it:

²⁰³ Submission 188, Tourism Council WA, Appendix 2, p21.

²⁰⁴ Evan Hall, Chief Executive Officer, Tourism Council WA, *Transcript of Evidence*, 13 February 2019, p3; Submission 188, Tourism Council WA, p12.

²⁰⁵ Submission 34A, Executive Escapes, p1.

...the risk around fire management and ensuring that occupants are aware of escape and fire safety methods that the scheme might have implemented. The concern is [strata managers] losing control over all of those sorts of risk managements.²⁰⁶

The risk to guests is potentially amplified when Short-Term Rentals are located in fire prone areas. Since December 2015, new buildings in designated bushfire-prone areas in WA have been required to meet the appropriate level of bushfire resistant construction. A building's level is dependent on their Bushfire Attack Level (BAL) (see Box 4.1).

Although these new standards are not retrospective for dwellings constructed before 2015, buildings undergoing a change of classification (such as from Class 1A to Class 1B for a B&B) are required to demonstrate compliance with the Building Code for the new classification.²⁰⁷

Inquiry participants from the South West were concerned many Short-Term Rentals were located in areas of high fire risk (BAL >29):²⁰⁸

In 2011 when the last fires went through the Prevelly area, crosses were marked on the road where the property was unsafe for firefighters to enter. These areas are now dotted with short-stay holiday homes. Whilst we are constantly reminded in TV commercials to take five minutes now to set our evacuation plans because we will not have five minutes later, international and interstate guests with no knowledge of the area are encouraged to stay in these high-risk fire areas.²⁰⁹

Box 4.1: What is a Bushfire Attack Level (BAL)?

The determination of a property's Bushfire Attack Level (BAL) is a site specific assessment that takes into consideration a number of factors including the slope of the land, the types of surrounding vegetation and the distance of the building to that vegetation. At the end of the assessment the location of the building will be assigned one of six BALs. The assigned BAL determines the level of bushfire resistant construction required for the building. The BALs are as follows:

- BAL-LOW – very low risk (bushfire resistant construction is not required)
- BAL-12.5 – low risk
- BAL-19 – moderate risk
- BAL-29 – high risk
- BAL-40 – very high risk
- BAL-FZ – extreme risk (Flame Zone)

Source: Direct quote from Department of Mines, Industry Regulation and Safety, [Building in bush fire prone areas](#), 24 October 2016, accessed 17 May 2019.

206 Rachel Cosentino, Board Member, Strata Community Association WA, *Transcript of Evidence*, 12 June 2019, p4.

207 Department of Mines, Industry Regulation and Safety, [Building in bush fire prone areas](#), Western Australia, 24 October 2016, accessed 16 May 2019.

208 Submission 123, Bushy Lake Chalets, p2; Submission 130, Registered Accommodation Providers of the Margaret River Region, p5; Submission 131, Stormflower Vineyard, pp1–2.

209 Robert McDonald, Owner/Operator, Bushy Lake Chalets, *Transcript of Evidence*, 1 May 2019, p2.

Particular attention was paid to Short-Term Rentals operating in high-risk areas without local government approval. These may not comply with the appropriate bushfire construction requirements, therefore increasing the risk to guests. Additionally, the Committee was told guests were also in danger as:

*Many of these properties do not have bush fire management plans, or emergency response plans, and renters will generally be unfamiliar with the area and what to do in the event of a fire. This is a dangerous situation that could easily lead to loss of life in an emergency.*²¹⁰

Even if an owner has approached a local government for a change of classification, local government assessments only consider the building and not the wider landscape and risk factors, such as the design of streets (and ease of escape) or fuel loads of surrounding areas.²¹¹ One submitter warned, “there is little advantage being a tourist in a BAL [less than] 29 rated house if your escape route is a Flame Zone and you burn to death trying to get out.”²¹²

The New South Wales Government has produced a *Short-Term Rental Accommodation Fire Safety Standard* pursuant to its *Environmental Planning and Assessment Regulation 2000*. Once introduced, the new Standard will apply to all dwellings in NSW providing Short-Term Rental accommodation. Its object is to “provide for the safety of users of short-term rental accommodation, who may be less familiar with the dwelling.”²¹³

Tourists starting bushfires

The Committee received evidence from the volunteer Fire Control Officer of the Yallingup Rural Bush Fire Brigade about a bushfire started on 27 December 2017 by tourists staying at an Airbnb property. Mark Fisher said the “fire occurred because guests staying in un-hosted holiday accommodation had no clear instructions that any type of fire was prohibited at that time.” The incident required the attendance of five bushfire brigades and eight fire trucks.

Mr Fisher added that:

*Over the past few years both myself and other members of the Brigade have been called out on numerous occasions to advise guests staying in un-hosted holiday houses in the rural residential areas of Yallingup that they cannot have a bonfire/firepit during the prohibited burning season. In some cases, this has resulted in arguments with the guests about why they can't have a fire!! They are totally unaware of the fire danger and there are no controls in place to avert these situations.*²¹⁴

210 Submission 131, Stormflower Vineyard, p1.

211 Submission 70, Stay Margaret River, p5.

212 Submission 111, Burnside Organic Farm, p6.

213 Department of Planning, Industry and Environment (NSW), [Short-Term Rental Accommodation Fire Safety Standard](#), 14 August 2019, p1, accessed 21 August 2019.

214 Submission 116A, Mark Fisher, p1.

Finding 9

There is significant variation across the Western Australian Short-Stay Accommodation market with respect to fire safety standards. The New South Wales Government has chosen to address fire risk for Short-Term Rentals by introducing a *Short-Term Rental Accommodation Fire Safety Standard* pursuant to its *Environmental Planning and Assessment Regulation 2000* (NSW).

4.3 Tourism marketing

Whilst there are a couple of minor exceptions, Short-Term Rental hosts typically do not directly contribute funding to marketing campaigns promoting WA or their local communities as tourism destinations. The Tourism Council WA submitted that, in contrast to Traditional Accommodation providers, online booking platforms and their hosts are receiving the benefits of destination marketing without contributing to the costs.²¹⁵

Until the advent of online booking platforms, Short-Term Rental bookings were largely managed through local visitor centres. The visitor centres received commissions from bookings and/or membership fees from accommodation providers, which were then invested in destination marketing and providing visitor services. This system is now experiencing rapid decline.

Over the past three years, the Rockingham Visitor Centre has seen a decrease of about 40% in this revenue, with approximately \$100,000 of this reduction due to a substantial drop in bookings and associated commissions relating “directly to on-line bookings of unregulated short stay accommodation”.²¹⁶ This, in turn, reduces the amount available to advertise the region.²¹⁷

Short-Term Rental owners are not typically regarded as being part of the traditional tourism sector and are unlikely to participate in, or contribute to, destination marketing. For example, although there was an estimated 240 Short-Term Rentals in Rockingham in early 2019, only eight to 10 were members of the local tourism association.²¹⁸ Tourism WA Chairman Nathan Harding said he believed this was repeated throughout WA in most regional tourism organisations.²¹⁹

The Tourism Council WA’s submission noted that in 2016 Airbnb introduced the ‘superhost’ program “in response to the lack of consistent experiences on the platform.” However, no Short-Term Rental hosts in WA participate in the Council’s Quality Tourism Accredited Business Program to ensure minimum safety, insurance, consumer protection, environmental and quality standards.²²⁰

Similar trends are evident at the State level. The national and international cooperative marketing campaigns supported by State Government authority Tourism WA rely on the

215 Submission 188, Tourism Council WA, p16.

216 Scott Hewitt, Manager, Rockingham Visitor Centre, Email, 4 July 2019, p1.

217 Stacey Graham, President, Tourism Rockingham Inc., *Transcript of Evidence*, 15 May 2019, p3.

218 *ibid.*, p4.

219 Nathan Harding, Chairman, Tourism WA, *Transcript of Evidence*, 10 April 2019, p10.

220 Submission 188, Tourism Council WA, p15.

cooperation of retail travel brands and airlines to promote WA through targeted travel offers. In 2017–18, travel distributors contributed \$8.6 million to the international marketing campaigns.²²¹ However, Airbnb does not contribute to destination marketing through this framework probably because, as Mr Harding said, “it has not been a commercial imperative of Airbnb or the like to work with organisations like us.”²²²

Rate parity in marketing campaigns

The Western Australian Indigenous Tourism Operators Council raised with the Committee the power of online platforms to enforce lower pricing on small businesses that wanted to advertise on their platforms. These small businesses were not able to advertise different nightly rates on their own websites, or in other marketing channels, than the price advertised on the online platform:

*To me it was almost like they were price-fixing, because if we did not have rate parity on their site with our site, then they would be ringing us up saying, “Well you’re not going to be on our site.”*²²³

‘Drip-pricing’ by platforms

In its hearing with the Committee, the Registered Accommodation Providers of the Margaret River Region accused Airbnb of ‘drip pricing’:

*...you will see a house with \$100 per night, but when you click and go behind to book, they then add their 13% or 15% commission, then they add their cleaning fee and a service fee. So that \$100 is not the price you pay. In actual fact, they probably pay as much as I am advertising, but my price shows \$170...*²²⁴

The Australian Competition and Consumer Commission (ACCC) investigated these claims in 2015 and found Airbnb (and another company, eDreams) had deceived Australians by engaging in ‘drip pricing’. The ACCC found the compulsory cleaning and service fees associated with bookings on these sites were not clearly disclosed. They said Airbnb appeared to have operated illegally in this way since November 2012, and eDreams for all of 2014.²²⁵

ACCC Chairman Rod Sims said both companies had “engaged in misleading and deceptive conduct and made misleading representations by failing to adequately disclose to consumers in Australia particular mandatory fees on key pages of one or more of their online booking platforms.” He said the ACCC had accepted court-enforceable undertakings

221 Submission 126, Tourism WA, p12.

222 Nathan Harding, Chairman, Tourism WA, *Transcript of Evidence*, 10 April 2019, p10.

223 Robert Taylor, Chief Executive Officer, Western Australian Indigenous Tourism Operators Council, *Transcript of Evidence*, 12 June 2019, p8.

224 Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p10.

225 Australian Competition and Consumer Commission, [Airbnb and eDreams give undertakings to ACCC for improved pricing practices](#), 13 October 2015, accessed 24 June 2019.

that Airbnb would establish and maintain a consumer law compliance program and eDreams would ensure its staff receive compliance training.²²⁶

There is no evidence that these two companies have continued this practice since they provided these undertakings in 2015, and the ACCC has taken no further action. Booking.com said it strongly advises the owners of the properties it hosts to include all fees. It said that generally the only fee not included in the total price is a damage deposit:

*in the short-term rental accommodation space, it is very common to have a damage deposit. That sits outside of that, and there is information about what that cost is separately to that.*²²⁷

4.4 Are Short-Term Rentals harming the viability of Traditional Accommodation providers?

Other than hosts using template submissions originally prepared by Airbnb, Traditional Accommodation providers were the largest stakeholder group to make submissions to this Inquiry. They, led by the AHA WA, argued that the proliferation of unauthorised Short-Term Rentals presented the greatest threat to the viability of WA's accommodation sector.²²⁸

The Committee received considerable evidence about the challenges currently facing some smaller Traditional Accommodation providers, particularly in the South West. It is unclear to the Committee how much of the recent decline in income experienced by these Traditional Accommodation providers can be attributed to Short-Term Rentals. A range of economic forces act on businesses. Several providers in the Shire of Augusta-Margaret River reported

Box 4.2: Declining occupancy rates

The owner of a 3.5-star rated motel in Margaret River invested about \$300,000 after purchasing his property in 2012. Occupancy rates rose from 75% to over 90% in the next two years. However, the owner has now had a decline in occupancy of 17% and a decline in turnover of 20% in the past five years, which he blames on the "huge growth of short-term holiday homes in the region."

The Heritage Trail Lodge is a 4-star rated property in Margaret River that has been operated by the current owners for the past seven years. They enjoyed good occupancy levels but "have noticed a drop off in our occupancy over the last three years at an average of 5% per year and continuing."

Similarly in Dunsborough, when the owner of the Lanterns Retreat, Serge Le Goueff, purchased his lodge there were only three properties offered as Short-Term Rentals. Mr Le Goueff claims that there are now over 400 Short-Term Rental properties in Dunsborough and his lodge "has lost over 30% of its yearly income in the last 24 months."

Source: Submission 52, Name withheld, pp1–2; Submission 55, Heritage Trail Lodge, p1; Submission 58, The Lanterns Retreat, p1.

226 Australian Competition and Consumer Commission, [Airbnb and eDreams give undertakings to ACCC for improved pricing practices](#), 13 October 2015, accessed 24 June 2019.

227 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p5.

228 Bradley Woods, Chief Executive Officer, Australian Hotels Association (WA), *Transcript of Evidence*, 13 March 2019, p1.

recent declines in occupancy rates between 15% and 35%, which they attributed to the rapid increase in Short-Term Rentals.²²⁹

The Manager of the Mandalay Holiday Resort and Tourist Park in Busselton, Rhys Johnson, said such declines were “directly attributable” to the increased popularity of Short-Term Rentals. Although the resort side of his business had experienced declining occupancy, he has seen a 2% growth in the occupancy rate for caravan sites. He said “obviously someone who is staying in a caravan is not necessarily going to stay in an Airbnb” but suggested those who would have stayed at the resort in the past were now using Short-Term Rentals.²³⁰

Jane Purdie, Owner of the Rosewood Guesthouse, provided the Committee with her occupancy rates over the past 15 years which show a 20% decline for most of 2019 compared to the period 2016–17 (see Figure 4.1).

The situation outlined to the Committee by Traditional Accommodation providers may, however, also be attributable to visitors’ changing appetites, or declining visitation to the region due to the economic downturn in WA since 2014. As early as 2016, the Shire of Augusta-Margaret River Local Tourism Planning Strategy had warned of the “potential for tourism decline ... without an effort to re-invent and rejuvenate the tourism experience” that was unconnected to the rise of Short-Term Rentals.²³¹

Figure 4.1: Changes to Rosewood Guesthouse occupancy rates (%), 2005–19²³²



229 Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p1. See also Alan Wilkes, Owner, Edge of the Forest Motel, *Transcript of Evidence*, 1 May 2019, p4; Robert McDonald, Owner/Operator, Bushy Lake Chalets, *Transcript of Evidence*, 1 May 2019, p1.

230 Rhys Johnson, Manager/Director, Mandalay Holiday Resort and Tourist Park, *Transcript of Evidence*, 30 April 2019, p5.

231 Shire of Augusta-Margaret River, *Local Tourism Planning Strategy: Shire of Augusta Margaret River*, April 2015 (updated 2016), p32.

232 Jane Purdie, Owner, Rosewood Guesthouse, Email, 1 May 2019, p1. Figures for July–December 2019 are projections.

Chapter 4

This experience of declining bookings extends to other regions as well. Brian King said that, despite Jurien Bay growing as a tourist destination, his hotel-motel revenue had dropped about 30% as his regular guests were now staying at empty houses in the town dedicated to the cheaper Short-Term Rental market.²³³ Similarly, the Habitat Resort in Broome reported a 45% decline in the occupancy of their family units (two and three bedroom apartments) as listings for Broome on Airbnb rapidly increased to over 200 properties.²³⁴

One industry which has been badly affected by the increase of Short-Term Rental properties is the serviced apartment industry. Adrian Fini, Director of the Fini Group, said:

*I built almost all serviced apartments through the 1990s into 2000 in Perth—I think 11 projects. I have not done one since because I always said to myself as a developer that the first product that will get damaged by Airbnb is a serviced apartment.*²³⁵

Without more accurate data about the number of premises being used as Short-Term Rentals and their occupancy rates, it is almost impossible to definitively say that short-term letting (and not a general downturn in regional tourism) is wholly responsible for the declining economic health of Traditional Accommodation providers in the South West.

Currently, online platforms are not required to provide data to the State Government or local government agencies who could assess this matter further. This issue is discussed further in Chapter 6.

Finding 10

The Committee received evidence from Traditional Accommodation providers in the South West of Western Australia indicating a significant drop in their revenue and occupancy rates. Whilst a number of factors could have contributed to this decline, it has coincided with a considerable increase in Short-Term Rentals in this market.

4.5 Accessibility issues

Under the Building Code of Australia, disability and accessibility requirements for Traditional Accommodation are considerable, as shown in Table 4.2. Stakeholders were concerned Short-Term Rentals—which had not been built to these standards—may be in breach of the *Disability Discrimination Act 1992* (Cth).²³⁶ This legislation makes it unlawful for accommodation providers to provide “a person with a disability with accommodation on less favourable terms and conditions.”²³⁷

233 Submission 35, Jurien Bay Hotel Motel, p1.

234 Submission 177, Habitat Resort Broome, p1.

235 Adrian Fini, Director, FJM Property/Fini Group, *Transcript of Evidence*, 19 June 2019, p7.

236 Submission 188, Tourism Council WA, p12; Submission 36, City of Belmont, p3; Submission 195, People with Disabilities WA, p2.

237 Australian Human Rights Commission, [D.D.A. guide: A place to live](#), 14 December 2012, accessed 11 June 2019.

Table 4.2: Accessibility room requirements for Class 3 buildings (hotels)²³⁸

Room range	Accessible ratio
1 to 10	1 accessible unit
11 to 40	2 accessible units
41 to 60	3 accessible units
61 to 80	4 accessible units
81 to 100	5 accessible units
101 to 200	5 accessible units plus 1 additional accessible unit for every 25 units or part thereof in excess of 100
201 to 500	9 accessible units plus 1 additional accessible unit for every 30 units or part thereof in excess of 200
More than 500	19 accessible sole-occupancy units plus 1 additional accessible sole-occupancy unit for every 50 units or part thereof in excess of 500

Although the Airbnb site enables guests to search for properties with accessible features, Tourism Council WA submitted they had only been able to find nine homes in WA—or 0.07% of all listings—that met the standards required of Class 1B or Class 3 buildings.²³⁹ Samantha Jenkinson, Executive Director of People with Disabilities WA, warned that there was a likelihood of a legitimate complaint from a guest under the *Disability Discrimination Act 1992* that the online platforms were not making the premises they offered accessible to people with disabilities.²⁴⁰

Shelter WA and the Real Estate Institute Western Australia (REIWA) are collaborating on a new system to enable vacant accessible rental properties advertised on reiwa.com to be identified easily through an ‘accessibility button’.²⁴¹ People with Disabilities WA and Shelter WA have jointly developed a comprehensive list of accessibility criteria to assist in the development of the ‘accessibility button’.²⁴²

4.6 Community viability

Residents living next to Short-Term Rentals said they felt a ‘community spirit’ was unable to be developed or maintained when the “neighbours change every weekend.”²⁴³ They were also concerned with the degradation of the ‘ambiance’ of their neighbourhoods. As Short-Term Rentals were generally let on weekends, streets with a high proportion of Short-Term Rentals were effectively lifeless during the week.²⁴⁴

The Committee was told that the negative economic impact of Short-Term Rentals on Traditional Accommodation providers may undermine the wider viability of specific communities. Some of the ways Traditional Accommodation providers contribute to their local communities were outlined during the Committee’s hearings in Margaret River. These

238 Submission 182, Australian Hotels Association (WA), p18.

239 Submission 188, Tourism Council WA, pp12–13.

240 Samantha Jenkinson, Executive Director, People with Disabilities Western Australia, *Transcript of Evidence*, 19 June 2019, p9.

241 Submission 186A, Shelter WA, p3.

242 *ibid.*, Appendix 1, pp5–12.

243 Submission 102, Alec and Alison Leatherday, p1. See also Submission 32, Clive and Margaret Johnson, p1.

244 Submission 32, Clive and Margaret Johnson, p1.

included offering a refuge for women and families in times of crisis; free accommodation to bushfire victims; sponsoring sporting clubs or events; and donating sheets, blankets and furniture to community groups.²⁴⁵

Traditional Accommodation provider Lewis Hawkins said he was the Local Manager of the Augusta-Margaret River State Emergency Service and had attended many call-outs in the region. However, he has had to stand down as Manager and struggles to attend the weekly training as the workload at his business has increased due to the drop in occupancy rates. Mr Hawkins said he can no longer afford to employ a laundry service, maintenance staff, or bookkeeper, and is therefore taking on these roles himself.²⁴⁶

In contrast, a significant proportion of Short-Term Rental owners in the South West live outside the area and the Shire of Augusta-Margaret River has found it difficult to engage with them when consulting about possible planning changes.²⁴⁷ Absentee owners also account for more than 42% of ratepayers in the Shire of Denmark, and the Denmark Chamber of Commerce claims that these owners contribute little culturally to the local region.²⁴⁸ Similarly, ratepayers whose postal addresses for notices are outside the City of Busselton account for over 80% of Short-Term Rental owners in that community.²⁴⁹

4.7 Housing displacement and rental affordability

The Accommodation Association of Australia provided data from 2016 that showed Short-Term Rentals were displacing properties offered for long-term rentals in NSW. In the City of Sydney the number of entire homes available on Airbnb for 90 or more days per year was greater than the number of vacant rental homes—1,268 to 876. The situation was particularly dire in the seaside suburb of Bondi, where there were 821 entire homes available on Airbnb with only 232 vacant rental homes.²⁵⁰

Another Australian study on Airbnb's impact on the NSW housing market confirmed that short-term letting is removing properties from the long-term rental market, but has yet to result in increased rental unaffordability.²⁵¹ Studies about the growth of Short-Term Rentals generally note the impacts are not experienced equally across a city or region but are rather focused on areas with both significant tourism appeal and high demand for residential housing.²⁵²

245 Grahaem Donovan, Major Shareholder and Director, Andabrook Pty Ltd, trading as Bunbury Apartment Motel and Bunbury Motel, *Transcript of Evidence*, 30 April 2019, p2; Closed submission 83, p3.

246 Lewis Hawkins, Owner/Operator, Margaret River Chalets, *Transcript of Evidence*, 1 May 2019, pp3–4.

247 Nick Logan, Acting Director Sustainable Development, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, pp11–12.

248 Submission 94, Denmark Chamber of Commerce, p2.

249 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p3.

250 Submission 255, Accommodation Association of Australia, p14.

251 Tenant Unions' of New South Wales, *Airbnb and Renting in Sydney*, Sydney, March 2017, p16.

252 L. Crommelin, L. Troy, C. Martin and S. Parkinson, *Technological disruption in private housing markets: the case of Airbnb*, Australian Housing and Urban Research, Melbourne, October 2018, p2; Julia Verdouw and Richard Eccleston, *Regulating Short-Stay Accommodation in Tasmania: Issues to consider and options for reform*, University of Tasmania, Hobart, May 2019, pp3–6.

A 2018 report commissioned by Airbnb into its impact on the Sydney and Melbourne housing markets raised questions about these conclusions, noting they relied on ‘scraped’ data from the Airbnb website and “includes Airbnb listings that have never hosted guests and duplicate listings.”²⁵³ Using Airbnb host data, the report concluded the platform’s impact on housing markets “appears to be minimal.”²⁵⁴

No similar studies have been undertaken for the WA housing market but the impact of short-term letting on WA’s long-term rental market seems minimal. In February 2019, rental prices in metropolitan Perth were reportedly 22% lower than their peak in May 2013.²⁵⁵ As discussed in Chapter 1, Short-Term Rentals grew considerably over this period, suggesting the housing stock being diverted to the Short-Term Rental market is largely surplus to WA’s immediate housing needs.

According to the local government authority, the Airbnb ‘hotspot’ of Fremantle, for example, still has a “plentiful supply”²⁵⁶ of long-term rental properties. While the City of Fremantle acknowledged it had a housing affordability issue, it said this could not be attributed to the growth of Short-Term Rentals:

*...from the data available to us, the underlying structural issue is to do with probably the Perth metro housing market as a whole, and undoubtedly Fremantle has other particularly desirable parts of the metro area experience. That is exacerbated by the attractiveness of the area and prices are influenced by people’s ability to buy.*²⁵⁷

Some tourist regions in Australia such as northern NSW are showing signs of the ‘Venice effect’,²⁵⁸ where large numbers of tourists using Short-Term Rentals are driving down the housing stock available for locals to rent. Under a draft planning scheme called the New Noosa Plan, the Noosa Shire Council has responded to the lack of accommodation and will restrict Short-Term Rentals to zoned areas, effectively banning any holiday letting outside of those areas.²⁵⁹

The ‘Margaret River’ effect?

There is evidence that short-term letting is now impacting the availability and affordability of housing for low-income groups in some WA regions—our own ‘Venice effect’.²⁶⁰ In Augusta-Margaret River, for example, only 44% of households can affordably pay the median rent.

253 Airbnb, *What Impact Does Airbnb Have on the Sydney and Melbourne Housing Markets?*, report prepared by SGS Economics and Planning Pty Ltd, Canberra, 2018, p7.

254 *ibid.*, p5.

255 Emily Piesse, ‘[Perth’s rental market is surging, but a “dampening blanket” lies over a wider housing recovery](#)’, *ABC News*, accessed 10 June 2019.

256 Paul Garbett, Director of Planning and Strategic Projects, City of Fremantle, *Transcript of Evidence*, 13 March 2019, p10.

257 *ibid.*

258 Lucid Economics, *Short-Stay Accommodation Economic Assessment*, Perth, February 2019, pix in Submission 188, Tourism Council WA.

259 Ellen Lutton, ‘[Have you invested in Noosa? You may not be able to holiday-let your property out for much longer](#)’, *Domain*, 29 May 2019, accessed 28 June 2019.

260 Submission 186, Shelter WA, p5.

Chapter 4

The Shire has a median rent of \$370 per week (\$20 higher than the median rent for metropolitan Perth)²⁶¹ yet the median income is one of the lowest in the South West.²⁶²

Data site Inside Airbnb calculated that ‘commercial entire homes’ listed on Airbnb accounted for 40.6% of rental stock in the Shire of Augusta-Margaret River and 22.8% of rental stock in the City of Busselton.²⁶³ Inside Airbnb defines commercial entire homes as premises rented for more than 90 nights per year or belonging to hosts with more than one entire home listed as Short-Term Rentals.²⁶⁴ Other local government areas where a high proportion of rental stock has been diverted to the Short-Term Rental market include Dandaragan (20.8%), Denmark (19.1%), Northampton (17.5%) and Cottesloe (12.7%).²⁶⁵

Airbnb submitted to the Committee that the properties it advertised as Short-Term Rentals were not a factor in housing affordability in WA, as:

Airbnb represents less than 1% of housing stock in Western Australia. There are 10 times that amount of homes according to the ABS that are vacant homes. So there are 10 times as many ‘ghost’ homes as there are Airbnb homes. I think with respect to housing affordability, we will send those through, but, respectfully, we do not think we are having a significant impact there.²⁶⁶

Even if ‘commercial entire homes’ are placed on the long-term rental market at certain times, tenants are not provided with housing security. The availability of long-term rentals in the South West appears to be seasonal. Inquiry participants said property owners may only offer six-month leases over winter, when demand for Short-Term Rentals is low. In the lead up to the ‘peak season’ (i.e. before Christmas), properties will be removed from the long-term rental market and listed as Short-Term Rentals. Tenants will not be given the opportunity to renew their lease.²⁶⁷ This impacts the local businesses for which tenants work, and community viability, in addition to undermining tenant’s access to secure long-term housing.

A resort manager in the South West said he had lost three employees over the past year because their leases were not renewed and they could not find alternative accommodation. He would have lost a fourth employee had he not accommodated them at the resort.²⁶⁸ A B&B owner in Margaret River said her cleaner had to move to Bunbury—over an hour’s drive away—because her rental lease was not renewed over summer:

261 Emily Piesse, ‘[Perth’s rental market is surging, but a “dampening blanket” lies over a wider housing recovery](#)’, *ABC News*, accessed 10 June 2019.

262 Submission 261, Just Home Margaret River, p2.

263 Submission 187, Inside Airbnb, p9.

264 *ibid.*, p12.

265 *ibid.*, p9.

266 Brent Thomas, Head of Public Policy, Australia and New Zealand, Airbnb, *Transcript of Evidence*, 20 February 2019, p10.

267 Rhys Johnson, Mandalay Holiday Resort and Tourist Park, *Transcript of Evidence*, 30 April 2019, p1.

268 Closed submission 78, p3.

*She had to then move in with our mother-in-law to basically work—and she was born and bred in Margaret River, so to have to leave her hometown to find housing was pretty bad.*²⁶⁹

These impacts may increase if short-term letting becomes increasingly regarded as a viable property investment class. Based on data from December 2018, Inside Airbnb said 46% of entire homes were managed by a host with more than one entire home listing, although many are part of portfolios managed by property investors or managers.²⁷⁰ The Committee also received reports of real estate agents suggesting to prospective buyers that premises could be used as Short-Term Rentals, even when this use was prohibited by local government planning laws.²⁷¹

Finding 11

Evidence from other jurisdictions, and increasingly from the South West of Western Australia, demonstrates that the growth in Short-Term Rentals affects the availability of long-term rentals and affordable housing. The Department of Communities (Housing) did not provide a submission to this Inquiry; however, it should continue to monitor the effects of Short-Term Rentals on housing sector dynamics and consider appropriate policy approaches.

Are real estate agents marketing Short-Term Rentals truthfully?

Section 2.5 described the creation of a new business sector of real estate agents managing portfolios of unhosted Short-Term Rental properties for their owners. However, the Committee received a number of allegations that real estate agents were also actively advising prospective purchasers that a property could be used for both short-term and long-term letting.²⁷² These allegations were mainly raised about agents in the South West, with one claim that “as many as 40% of enquiries to purchase real estate in this region is with a view to renting the purchase on Airbnb as an investment.”²⁷³

Apparently this strategy is common in the South West where a property has remained unleased or unsold for a long time due to falling rents and market values.²⁷⁴ Evidence was provided that it also occurs in regional

[When owners want to sell their holiday home] [t]hey will hand it to a real estate agent. The real estate agent, possibly, will go—I am not saying this is all real estate agents, but a high number will also then say, “Let’s rent it out short-term. Inspections—we don’t need to worry about people being there. We don’t need to organise 24-hour notice inspections. We don’t need to worry about a lease because you don’t have anybody in the property. If it is sold, there is no need to worry about leases.”

Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast

269 Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p7.

270 Submission 187, Inside Airbnb, p2.

271 Paul Garbett, Director Planning and Strategic Projects, City of Fremantle, *Transcript of Evidence*, 24 May 2019, p5.

272 Submission 26, Holberry House, p1; Submission 32, Clive and Margaret Johnson, p1; Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast, *Transcript of Evidence*, 30 April 2019, p12.

273 Submission 157, Bay Village Resort and Spa, p1.

274 Lyda Hayward, Property Manager, Pass Your Keys Pty Ltd, *Transcript of Evidence*, 8 May 2019, p12.

Chapter 4

areas such as Jurien Bay,²⁷⁵ and Broome.²⁷⁶ The Committee was told it was very prevalent in other jurisdictions such as Sydney, where real estate agents advertise that they are listing Short-Term Rental properties on online platforms.²⁷⁷

Margaret Smith, the Manager of Development Approvals at the City of Perth, recounted her experience of contacting REIWA about real estate agents who were “repeatedly advising people that they could use their apartments for long or short-stay, although we knew that they knew that that was incorrect information.”²⁷⁸

Ms Smith acknowledged the need for an education campaign to ensure owners and prospective purchasers were aware of the legal obligations of Short-Term Rentals in apartment buildings.²⁷⁹ The Shire of Broome is one local government that undertakes awareness raising by regularly publishing information and stories on this matter in their local newspaper.²⁸⁰ If real estate agents are knowingly providing potential purchasers with incorrect information about the current and/or future ability of properties to be let as Short-Term Rentals, there is also a need to address potential misleading or deceptive marketing tactics.

Similarly, purchasers of properties may unwittingly buy houses in residential areas only to find that neighbouring homes are being used as Short-Term Rental party houses. Currently, there is no way for potential purchasers to easily ascertain whether this is a material risk to their purchase. Chapter 6 assesses the need for a state-wide registration system for Short-Term Rentals, and whether the registration data can be made public.

Finding 12

Some real estate agents are marketing properties as potential Short-Term Rentals—knowingly or unknowingly—in areas where this land use is prohibited or restricted under the local planning framework.

Finding 13

Some owners are purchasing properties to use as Short-Term Rentals without first establishing that this land use is permitted under the local planning framework.

Finding 14

There is currently no way for prospective property owners to easily ascertain whether the property in which they are interested is located near to a Short-Term Rental, increasing the risk that they will find themselves as the unwitting neighbours of Short-Term Rental party houses.

275 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p12.

276 Andre Stuyt, Director Development and Community, Shire of Broome, *Transcript of Evidence*, 24 May 2019, p5.

277 Submission 255, Accommodation Association of Australia, p14.

278 Margaret Smith, Manager Development Approvals, City of Perth, *Transcript of Evidence*, 15 May 2019, p4.

279 *ibid.*

280 Kirsten Wood, Manager Planning and Building Services, Shire of Broome, *Transcript of Evidence*, 24 May 2019, p4.

Recommendation 1

The Minister for Commerce request the Department of Mines, Industry Regulation and Safety develop a public education campaign in association with REIWA to make owners, real estate agents, property managers and purchasers of real estate in Western Australia aware of their obligations in regard to:

- the truthful marketing and presentation of properties as Short-Term Rental prospects;
- the importance of considering Short-Term Rental as part of the pre-purchase due diligence process; and
- other legal obligations surrounding the use of properties as Short-Term Rentals.

4.8 Amenity issues and the difficulty in addressing them

The amenity issues affecting residential areas as a result of the growth in Short-Term Rentals have been well publicised across the world.²⁸¹ For single residences, issues broadly relate to parking, the creation and collection of rubbish, the noise and anti-social behaviour of guests, and the behaviour of their pets.²⁸²

One submission outlined how their neighbouring five-acre property in rural Bullsbrook was purchased in 2016 and the four-bedroom and two-bathroom house is now advertised and used as a commercial function venue. They have raised amenity issues with the City of Swan, such as the loud noise from large groups of guests arriving on buses playing loud music well into the night. The worst issue was “the carelessness about fire risk. Our area is fairly heavily wooded and constitutes an extreme fire risk.”²⁸³ The guests pose “a huge fire risk both to themselves and to us and other neighbours.”²⁸⁴

Lots in strata schemes have additional issues, including the use and maintenance of common areas and the security of both neighbours’ property and the buildings more generally.²⁸⁵ In Melbourne, it was reported that owners in some high-rise apartment towers are selling properties at a loss amid a tarnished reputation due to wild parties and crime and the sheer volume of Short-Term Rentals in apartment buildings.²⁸⁶

However, several Short-Term Rental operators in WA (both owners and managers) told the Committee that based on the number of complaints they had received, Short-Term Rentals were creating relatively few problems.²⁸⁷

281 Freya Higgins-Desbiolles, ‘[Tourists behaving badly are a threat to global tourism, and the industry is partly to blame](#)’, *The Conversation*, 8 April 2019, accessed 17 June 2019.

282 Submission 185, Name withheld, p2; Christina Newton, Resident, *Transcript of Evidence*, 1 May 2019, p10; Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p8.

283 Submission 10, Name withheld, p1.

284 *ibid.*, p2.

285 Submission 56, Quattro Apartments, p3.

286 Jim Malo, ‘[Owners in some Melbourne CBD, Docklands apartment towers face resale, lease issues](#)’, *Domain*, 22 June 2019, accessed 24 June 2019.

287 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p7.

Chapter 4

Local governments made the same point to the Committee. In 2018, the City of Perth only received 42 complaints relating to Short-Term Rentals.²⁸⁸ Over the past three years, the Town of Cambridge could only find “six instances of compliance action” as a result of complaints.²⁸⁹ Since its local law was introduced in March 2009, the City of Fremantle has averaged less than 10 complaints per year, which it considers “a very, very low level of complaint.”²⁹⁰ City of Busselton planning staff told a short-stay platform that “the number of complaints they have from short-term accommodation is on par with long-term rentals.”²⁹¹

However, it is not easy to make a complaint to local governments. Potential complainants must figure out where to direct their grievance. Few local governments have an online complaints form.²⁹²

Depending on the nature of the complaint, local governments may or may not consider it as their area of responsibility. The City of Perth’s website, for example, explicitly states it is “not available to respond to noisy parties or manage behavioural problems associated with private parties” and directs complainants to the Western Australia Police Force.²⁹³

The AHA WA was very critical of the lack of action by the City of Perth toward what it termed ‘illegal’ Short-Term Rentals:

The City of Perth is really one of the worst examples of where there has been a non-adherence and a non-recognition of this illegal operation. We have brought examples to their attention on many, many, many occasions, and in fact it has got to the point now where I think there should be an inquiry into the City of Perth’s ignorance of this illegal operation, because they have deliberately turned a blind eye whenever we have asked them to investigate and to follow-up and we have said to them, “All you have to do is go to the website and look at these examples.” What they have said to us is, “We are not going to do that; you hire the investigators and you bring us the case and the evidence and then we will consider it”, and that is not [the AHA WA’s] role.²⁹⁴

The ability of local governments to respond to these amenity issues is developed further in the next chapter.

288 Robert Farley, Acting Director Planning and Development and Margaret Smith, Manager Development Approvals, City of Perth, *Transcript of Evidence*, 15 May 2019, pp1, 5.

289 Submission 19, Town of Cambridge, p6.

290 Submission 120, City of Fremantle, p3.

291 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p7.

292 See Margaret Smith, Manager Development Approvals, City of Perth, *Transcript of Evidence*, 15 May 2019, p12; Debbie Noonan, Spokesperson, Registered Accommodation Providers of the Margaret River Region, *Transcript of Evidence*, 1 May 2019, p8.

293 City of Perth, [Noise complaints](#), nd, accessed 10 June 2019.

294 Bradley Woods, Chief Executive Officer, Australian Hotels Association (WA), *Transcript of Evidence*, 13 March 2019, pp8–9.

Finding 15

Short-Term Rentals can cause a range of amenity impacts in residential areas, such as parking, the creation and collection of rubbish, the noise and anti-social behaviour of guests, and the behaviour of their pets.

Chapter 5

Adequacy of the Current Legislative Framework to Manage Short-Term Rentals

You know, the rules are there. You need someone to enforce them. If you have recalcitrant local governments, what are you going to do? ... The role of government is to preserve order and stability, especially in the business community, and you have seen it go out the window because no-one wants to enforce the [planning] law.

Emiliano Barzotto, Managing Partner, Anchorage Guest House.²⁹⁵

5.1 Introduction

In Western Australia, the responsibility for managing Short-Term Rentals currently rests largely with local governments. They use three main mechanisms to do this:

1. a local planning scheme (LPS) (and the associated land use permissibility);
2. a local planning policy (LPP); and
3. a local law relating to Short-Term Rentals.

These mechanisms are provided under two separate regimes. LPS and LPP fall under the planning regime, which primarily consists of the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Scheme) Regulations 2015*. Local laws are made under the *Local Government Act 1995*.

The management of Short-Term Rentals in strata schemes are currently left to strata companies. Evidence to the Inquiry suggests it is accepted that strata by-laws—and not local laws or planning approval—should ultimately determine whether Short-Term Rentals are permitted in strata schemes.²⁹⁶ Even where Short-Term Rentals are permitted within a local government area, strata agreements may prevent or seek to regulate them.

Inquiry participants raised a number of issues in relation to the mechanisms used to manage Short-Term Rentals. Particular focus was given to gaps in the respective legislative regimes and the apparent inability of local governments to enforce the regimes. These matters were said to reduce the capacity of local governments and strata companies to address the amenity issues arising from Short-Term Rentals, which were discussed in Chapter 4.

295 Emiliano Barzotto, Managing Partner, Anchorage Guest House, *Transcript of Evidence*, 19 June 2019, p3.

296 Submission 7, Town of Port Hedland, p2; Submission 191, City of Mandurah, p6. See also City of Mandurah, [Holiday Homes: Information Sheet](#), nd, accessed 21 June 2019.

Level of regulation varies across Western Australia

The regulatory approaches local governments use to deal with Short-Term Rentals range from permissive to restrictive, an issue which many in the short-term letting industry identified as a problem. Airbnb hosts, using the template submission provided by Airbnb, said there was a:

*...confusing patchwork of regulations across Western Australian local governments. Some Councils have clear, progressive laws that embrace home sharing, whilst others have complex and costly approvals processes and others have no policy framework at all.*²⁹⁷

Local governments are not compelled by the State Government to regulate Short-Term Rentals within their boundaries—it is left to local governments as to how they regulate them.²⁹⁸ This autonomy recognises each area has different social, economic and environmental contexts. What is appropriate for the Shire of Broome, for example, is not necessarily appropriate for the City of Perth.

5.2 The different mechanisms to regulate Short-Term Rentals

Local planning scheme

The majority of WA local governments that regulate Short-Term Rentals use the planning regime, particularly their local planning scheme (LPS). Every local government is required to create a LPS. LPS are legally binding documents setting out how land can be used and developed in the area they cover. To this end, they define specific land uses and identify the zones in which they can occur.²⁹⁹

As Table 5.1 indicates, many local governments have included ‘holiday house’, ‘holiday home’ or ‘short stay dwelling’ as a permitted land use in their LPS and incorporated the associated land use in the local zoning table. Local governments are able to restrict the spread of Short-Term Rentals by listing them as ‘X’ use (not permitted) in some areas, and ‘A’ or ‘D’ use in others (requiring planning approval from the local government). By requiring operators of proposed Short-Term Rentals to seek planning approval before they can let their property, local governments can prevent Short-Term Rentals from being established in unsuitable locations (i.e. high fire risk areas, residential areas).

In examining 13 local government approaches to Short-Term Rentals, the Western Australian Local Government Association (WALGA) found that 12 “considered short-term rental to be a different form of development compared with a residential land use.” In these local government areas, using residential properties as Short-Term Rentals required operators to apply for a ‘change of use’ from residential use.³⁰⁰

297 Submission 252, Airbnb template submissions.

298 Submission 150, Western Australian Local Government Association, pp13–14.

299 Department of Planning, Lands and Heritage, [Local planning strategies, schemes and structure plans](#), 21 January 2019, accessed 2 July 2019; Submission 150, Western Australian Local Government Association, p10.

300 Submission 150, Western Australian Local Government Association, p11.

Table 5.1: Example of zoning table for holiday houses or homes³⁰¹

Local government	Land use	Use permissibility					
		Residential	City Centre/ Regional Centre*	Local Centre/ Village Centre	Industrial	Tourist/Tourist Residential	Agricultural
Albany	Holiday house	D	D	X	X	P	A
Augusta-Margaret River	Holiday house	A	A	A	X	A	A
Boyup Brook	Holiday home	A	X		X		
Busselton	Holiday home (multiple/grouped dwelling)	D	A	A	X	X	X
	Holiday home (single house)	A	D	D	X	X	D
Cockburn	Holiday home (standard)	A	X	X	X		
	Holiday home (large)	X	X	X	X		
Fremantle	Short stay dwelling	A	A	A	X		
Key:							
P use is permitted by the LPS providing the use complies with the relevant development standards and the requirements of the LPS							
D use is not permitted unless the local government has exercised its discretion by granting planning approval							
A use is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 64 of the deemed provisions ³⁰²							
X use that is not permitted by the LPS							
Blank there is no appropriate zone within the local government scheme							
* the zone reflecting the highest order activity centre in the relevant local government							

In addition to land use permissibility, some local governments have also included specific provisions in their LPS to guide the management of Short-Term Rentals. This is not common—instead most local governments that use planning controls to manage Short-Term Rentals tend to favour non-binding local planning policies. However, WALGA said matters were included in the LPS “where less discretion is warranted” and where a local government wants a provision to be applied consistently.³⁰³

Local planning policy

Under the *Planning and Development (Local Planning Scheme) Regulations 2015*, local governments are able to prepare a local planning policy (LPP) to address any matter relating to the planning and development within any area covered by their LPS. LPPs are non-binding documents generally developed “to guide applicants in their submission of an application

301 Submission 150, Western Australian Local Government Association, pp9–10.

302 Note: For the City of Busselton, all ‘Holiday Home (Single House)’ which proposes to accommodate nine or more people will be considered under the ‘A’ symbol and will require public advertising. Also Holiday Home (Single House) is a discretionary (‘A’) use in the Viticulture and Tourism Zone.

303 Submission 150, Western Australian Local Government Association, p10.

Chapter 5

and to provide clarification on the Local Government's approach to dealing with certain planning matters."³⁰⁴

WALGA provided a summary of the restrictions or requirements for Short-Term Rentals contained in 13 LPPs, illustrating some similarities in how local governments control Short-Term Rentals. Commonly these restrictions relate to the use of car parking standards and the requirement for a management plan. WALGA noted more than half of the 13 LPPs it examined included design provisions that primarily sought to ensure the amenity of neighbouring properties was not impacted.³⁰⁵

Local law

Two local governments, the City of Busselton and the City of Fremantle, have enacted a local law to regulate Short-Term Rentals. The City of Wanneroo has drafted a law based on Fremantle's law, but not yet implemented it.³⁰⁶ A further three local governments indicated they may consider introducing a local law in the future.³⁰⁷ Others, such as the City of Perth, have not yet considered this option.³⁰⁸

The importance of planning approval in the two cities with local laws varies. The City of Busselton only allows properties to be used as Short-Term Rentals if they have first received planning approval under its LPS.³⁰⁹

In contrast, the City of Fremantle has exempted "short-stay accommodation in the form of occupation of single, grouped or multiple dwellings (where occupied by 6 or less people)" from requiring planning approval in all zones under its LPS. It therefore manages this form of land use through its local law alone.³¹⁰

Of the three cities with current (or draft) local laws, all require properties to be registered before they can be used as Short-Term Rentals. Table 5.2 lists the type of information which operators of Short-Term Rentals need to provide when lodging their registration applications with these cities.

Each local law imposes specific conditions of registration on Short-Term Rentals, the majority of which seek to prevent or address amenity issues. Both Busselton and Fremantle, for example, require property managers to be contactable and able to respond within defined periods (24 hours in Busselton, 12 hours in Fremantle). The City of Fremantle also

304 Submission 150, Western Australian Local Government Association, p11.

305 *ibid.*

306 Pasqualino Bracone, Manager Approval Services, City of Wanneroo, *Transcript of Evidence*, 13 March 2019, p2.

307 Submission 19, Town of Cambridge, p8; Submission 156, City of Subiaco, p2; Submission 191, City of Mandurah, pp2–3.

308 Robert Farley, Acting Director Planning and Development and Margaret Smith, Manager Development Approvals, City of Perth, *Transcript of Evidence*, 15 May 2019, p3.

309 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p14; City of Busselton, [Holiday Homes Local Law 2012](#), clause 2.1, accessed 27 May 2019.

310 Submission 120, City of Fremantle, p2.

requires a sign outside of Short-Term Rentals, providing a contact number of the owner or manager.³¹¹

Table 5.2: Information to accompany registration applications³¹²

Local government area	Information required
Busselton	<ul style="list-style-type: none"> • A site plan of the premises • A floor plan of the holiday home • Location and title details • Number of bedrooms proposed • Maximum number of occupants to be accommodated • Details of on-site parking • Details and contact details of the owner • For the manager and acting manager; proof that they have consented to these roles, as well as their contact details • Proof or an undertaking by the manager and acting manager that they will have day-to-day management of the premises, and commitment to respond to events within 24 hours.
Fremantle	<ul style="list-style-type: none"> • A floor plan of the short-stay dwelling • Location and number of bedrooms proposed • One proposed on-site parking bay – unless registration of for 4 occupants or less • Name and contact details of the manager, and commitment to respond to events within 12 hours.
Wanneroo	<ul style="list-style-type: none"> • A floor plan of the short-stay dwelling • Location and number of bedrooms proposed • One proposed on-site parking bay – unless registration of for 4 occupants or less • Name and contact details of the manager, and commitment to respond to events within 12 hours.

5.3 Varied requirements for the approval of Short-Term Rentals

As well as using different mechanisms to manage existing Short-Term Rentals, local governments also require owners to meet different standards before permitting a premises to be used for short-term letting.

Broadly speaking, local governments with local laws have a more permissive approach to Short-Term Rentals than local governments relying on their LPS and LPP. This is because they do not prohibit most types of residential properties from being used as Short-Term Rentals or, in most instances, ban short-term letting in particular areas. It appears that, as long as the Short-Term Rental meets the basic requirements set out in the local law (see Table 5.2), they will be authorised for short-term letting.³¹³

In contrast, the standards other local governments require Short-Term Rentals to meet to gain planning approval range from very restrictive to few. The restrictions reflect the

311 City of Busselton, *Holiday Homes Local Law 2012*, clause 2.3, accessed 27 May 2019; City of Fremantle, *Short Stay Accommodation Local Law 2008*, clause 2.4.

312 Submission 150, Western Australian Local Government Association, p16.

313 Paul Garbett, Director Planning and Strategic Projects, City of Fremantle, *Transcript of Evidence*, 13 March 2019, p5; Submission 75, City of Busselton, p3.

Chapter 5

relevant local context, particularly the amenity or land use issues local governments have agreed to address.

As an example, the City of Perth does not permit residential apartments to be used as Short-Term Rentals under its *Special Residential (Serviced and Short-Term Accommodation) Policy*. The only way an owner would be authorised to use their Perth apartment for short-term letting is if the entire floor on which their apartment is located was also used for short-term letting. Even then an owner would be required to prove compliance with the *Disability Discrimination Act 1992* (Cth) and national standards for fire detection, warning and control.³¹⁴ This is because the City's LPP seeks to protect the amenity of both long-term and short-term residents, and appropriately address security and privacy issues.³¹⁵

The Shire of Augusta-Margaret River does not approve short-term letting in areas where the fire risk is above BAL 29 (see Chapter 4) due to its comparatively high bushfire risk.³¹⁶ The Shire of Broome does not permit any unhosted short-term letting in residential zones, presumably because of the importance of tourism to its local economy. Kirsten Wood, Planning and Building Services Manager at the Shire of Broome, said the Council would have to “balance the consideration of the impact that could potentially have on those [Traditional Accommodation] operators” and “the tourism reputation of Broome” if it decided to change this position.³¹⁷

Depending on the land use permissibility assigned to Short-Term Rentals (or Short-Stay Accommodation generally) in a LPS, an owner of a Short-Term Rental may discover that gaining planning approval involves considerable work. In the City of Vincent, for example, an application to use a premise for short-term letting may trigger Building Code considerations. Premises may need to be upgraded to meet the fire safety, disability access, and health and amenity standards required of a Class 1B building. A licensed building surveyor then needs to certify the building is suitable for short-term letting.³¹⁸

In addition, local residents are notified of the proposed change of use before planning approval is granted. The City of Vincent contacts neighbours directly, while the owner is required to place notices in a local newspaper and erect a sign on their premises, advertising the proposed change of use. If their premises is located in a strata scheme, written permission from the strata company or council of owners is also required. Short-Term Rental owner George Jones told the Committee that, once the City of Vincent had notified him that he was operating in breach of its LPS, it took about nine months and about \$2,000 to have his Short-Term Rental authorised.³¹⁹

314 Margaret Smith, Manager Development Approvals, City of Perth, *Transcript of Evidence*, 15 May 2019, p10.

315 Robert Farley, Acting Director Planning and Approval, *Transcript of Evidence*, 15 May 2019, p2.

316 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

317 Kirsten Wood, Manager Planning and Building Services, Shire of Broome, *Transcript of Evidence*, 24 May 2019, p3.

318 George Jones, Airbnb host, *Transcript of Evidence*, 12 June 2019, pp6–7; City of Vincent, [Policy 7.4.5: Temporary Accommodation](#), February 2013, clause 2.1.5, accessed 11 July 2019.

319 George Jones, Airbnb host, *Transcript of Evidence*, 12 June 2019, pp6–7.

An owner in a neighbouring local government area, however, may not be required to do anything. The City of Subiaco's draft LPS, for example, includes 'short-stay dwelling' as a land use and has made it a permitted use within all zones of the City. This means no approval is required for a Short-Term Rental.³²⁰ The City of Mandurah has taken a similar approach (although it is based on a resolution of Council and not its LPS), resolving that holiday houses are a permitted land use and therefore exempt from the need to obtain planning approval.³²¹

Varied conditions are placed on approved Short-Term Rentals

Local governments can attach a series of specific conditions to certificates of registration or planning approval. These can vary greatly. For example, in the City of Busselton the following conditions may be applied to a registration:

- *The maximum number of occupants who may be on the premises at any time.*
- *The maximum number of attendees who may be on the premises during specified times.*
- *The number of on-site parking bays at the premises for the exclusive use of attendants.*
- *The maximum number of vehicles that may be parked on the premises at any time.*
- *The location and number of bedrooms to be used by the occupants.*
- *Measures to ensure effective communications to attendants of conditions of registration and emergency management procedures.*
- *Ensuring that the manager or acting managers is contactable and able to respond within 24 hrs to complaints and requests.*³²²

Failure to comply with these conditions can result in a fine (see section 5.6) and/or the cancellation of the registration. The City of Busselton can also cancel a registration if the ongoing operation of the Short-Term Rental is not considered "in the best interests of the City" based on complaints or evidence of "excessive noise, antisocial behaviour or other nuisances."³²³

In the Shire of Augusta-Margaret River, the following criteria apply to planning approvals issued under their LPP:

- the 24-hour contact details of a manager must be visible on the property from the nearest street;

³²⁰ Submission 156, City of Subiaco, p2.

³²¹ Submission 191, City of Mandurah, pp7, 9; City of Mandurah, [Town Planning Scheme No. 3](#), 14 July 2015, accessed 11 July 2019.

³²² Submission 150, Western Australian Local Government Association, p16; City of Busselton, [Holiday Homes Local Law 2012](#), clause 2.6, accessed 27 May 2019.

³²³ City of Busselton, [Holiday Homes Local Law 2012](#), clause 2.14, accessed 27 May 2019; Submission 75, City of Busselton, p12.

Chapter 5

- the manager cannot reside more than 35 minutes' drive away from the Short-Term Rental;
- guests may not play loud music between the hours of 10pm and 10am;
- each bedroom of the Short-Term Rental can only accommodate a maximum of two people at a time; and
- one parking bay per bedroom must be provided.³²⁴

Planning approvals in the Shire of Augusta-Margaret River are initially granted for time-limited periods, therefore acting as a form of “quasi-registration”. The first approval is only granted for one year. If, in this period, the Shire receives evidence the Short-Term Rental has negatively impacted on neighbours' amenity or other non-compliance has occurred, an application to renew the planning approval is unlikely to be granted. A renewed approval is granted for two years, followed by a further five year approval period.³²⁵

Finding 16

Local planning schemes, local planning policies and local laws provide the flexibility necessary for local governments to set effective planning controls for Short-Term Rentals appropriate to their local context. While some local governments have designed effective frameworks, there is considerable variation across Western Australia.

5.4 Compliance is enforced to different degrees

The enforcement of compliance with local planning controls was a significant issue in the Inquiry. Although some issues with the existing regulations were raised (for example, Michael Leake from the Habitat Resort Broome raised the compliance issues with the frequency of pool testing by the Shire of Broome),³²⁶ Traditional Accommodation providers said they generally provided a good framework through which to manage Short-Term Rentals. The problem, in their eyes, was not the framework. The problem was the lack of enforcement:

*You know, the rules are there. You need someone to enforce them. If you have recalcitrant local governments, what are you going to do? It is all too hard. ... The role of government is to preserve order and stability, especially in the business community, and you have seen it go out the window because no-one wants to enforce the law.*³²⁷

Many local governments acknowledged they were struggling to enforce compliance with their LPS or LPP. Part of the problem is listings of Short-Term Rentals are not required to display property addresses or any other identifier, which makes it difficult for local

324 Shire of Augusta-Margaret River, *Local Planning Policy 7: Short Stay Accommodation*, September 2018, clause 5.

325 *ibid.*, clause 6; Submission 143, Shire of Augusta-Margaret River, p4.

326 Michael Leake, Manager, Habitat Resort Broome, *Transcript of Evidence*, 24 May 2019, p4.

327 Emiliano Barzotto, Managing Partner, Anchorage Guest House, *Transcript of Evidence*, 19 June 2019, p3.

governments to determine whether they have been approved for that land use or, where applicable, registered under the local law. According to the City of Belmont, amenity impacts are also inherently difficult to police.³²⁸ This is despite local government environmental health officers being able to use the *Environmental Protection (Noise) Regulations 1997* to respond to noise complaints.³²⁹

Several local governments indicated they are only able to identify (and carry out any compliance activities) once they have received a public complaint about specific Short-Term Rentals, an approach at least partly driven by resourcing considerations.³³⁰

Even if local governments are able to identify Short-Term Rentals that are not complying with local regulations, difficulties associated with the gathering of evidence, timeframes, and costs and complexities of undertaking legal action, and the apparent inadequacy of penalties make it difficult for local governments to enforce their policies. As Paul Needham, the City of Busselton’s Director Planning and Development Services, said, “[i]n short, the stick is too small and too hard to use and it affects only the owners.”³³¹

The limitations of two of these “sticks”—namely fines issued by a local government and penalties imposed by a court—are discussed further in section 5.6, with a specific focus on how the State Government can better assist local governments to enforce compliance.

Some Traditional Accommodation providers challenged the assertion that local governments lack resources, pointing out that it came down to their priorities and level of importance they placed on enforcing compliance.³³² Suzanne Keynes, Owner and Manager of Inn The Tuarts Guest Lodge, said:

*They have no trouble policing and enforcing our business to meet compliance. We have to pay for every inspection and licence and so should anyone else who is selling accommodation.*³³³

At one stage, in Cottesloe you could go onto the Airbnb website and see that within that district, there were 800-odd listings for Airbnb, and in Cottesloe beach there were 80. The Council was in total denial, because there was absolutely no regulation. There were people who were applying to the Council for a B&B and going through that rigorous process, and there were other people who were just registering with Airbnb.

David Caddy, Chairman, Western Australian Planning Commission

328 Submission 36, City of Belmont, p2.

329 Submission 71, City of Cockburn, p1.

330 Submission 125, City of Rockingham, p1; Submission 126, Tourism WA, p4; Ben Dreckow, Manager, Planning and Land Services, City of Mandurah, *Transcript of Evidence*, 15 May 2019, p3; Submission 177, Habitat Resource Broome, p3.

331 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p4.

332 Michael Leake, Manager, Habitat Resort Broome, *Transcript of Evidence*, 24 May 2019, pp6–7.

333 Submission 87, Inn the Tuarts Guest Lodge, p3.

Finding 17

In respect to Short-Term Rentals, many local governments are not adequately enforcing compliance with their local planning schemes, local planning policies and local laws.

The evidence gathering burden

Rather than investigating compliance issues that are brought to their attention, many local governments are transferring the task of gathering evidence to complainants. The Council of Owners in a Perth apartment complex asked the City of Perth to take action against an owner who was operating a Short-Term Rental in breach of the City's planning laws, and was told it needed to supply:

- *Dates that different people arrive, a brief description of each guest, and the date that they leave.*
- *If possible complainants should engage the 'guests' in conversation and try to ascertain where they are from and how much they paid for the apartment. Also, if you can discover how they found out about the apartment (AirBNB, Gumtree etc.) that is useful along with the name and details of the person who let the apartment to them.*
- *What is really required is a statement or some other evidence such as a receipt from the 'guest' staying in the apartment.*
- *Finally, the complainants must be prepared to give evidence in court if any action were ever commenced.*³³⁴

The City of Perth acknowledged complaints regarding Short-Term Rentals had risen from two to three a year in 2006–08 to between 30 to 50 a year over the last three years.³³⁵ It noted a significant challenge facing all local governments is the burden of proof that an apartment is in breach of its approved long-term residential use under the LPS, given that it does not result in any physical change to the building the apartment is in. The City said that it had:

*...increased its Development Compliance resources over the past 12 months, however to proactively pursue the owners of long-term residential apartments that are advertising their properties for short-stay purposes would require considerable resources. This needs to be carefully weighed-up against all other compliance matters that local government is required to address and the cost to the ratepayer. The compliance officers respond to all complaints about unlawful short-term accommodation and, where sufficient evidence of a breach of development approval is available, manage to effectively resolve all complaints prior to having to prosecute the matter through the courts.*³³⁶

334 Submission 56, Quattro Apartments, Attachment B, p7.

335 Robert Farley, Acting Director Planning and Development, City of Perth, *Answers to Questions on Notice*, 24 June 2019, p2.

336 *ibid.*

Inquiry participants in Margaret River who raised noise issues in their neighbourhoods also face a high hurdle as they were told to keep a records of when the noise occurred and decibel readings from their property boundaries, or to lodge a police report.³³⁷ When required to provide such a significant amount of evidence, Jane Purdie told the Committee that “[I]ike most people we put it in the category of, ‘Oh, well; it’s not too bad. That’s too hard to do.’”³³⁸

However, as short-term letting increases it is likely the number of complaints will also grow. This trend is already occurring.³³⁹ The City of Vincent, for example, said it is dealing with a “growing number of compliance matters and investigations relating to unauthorised short term accommodation uses.”³⁴⁰

Finding 18

While a number of local governments reported they had received very few complaints relating to the operation of Short-Term Rentals, evidence provided to the Committee showed many local governments place a substantial evidence gathering burden on complainants. This has discouraged the lodgement of formal complaints.

5.5 The State Government can support greater consistency amongst local governments

Inconsistent land use definitions

A key issue raised by local government is the lack of consistent guidance from the State Government about the definition and treatment of Short-Term Rentals in their LPS.

There are a number of sources of guidance to which local governments refer when defining Short-Term Rentals in their LPS and, where applicable, considering applications for a change of use from residential to Short-Term Rental:

1. Model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations)

The model provisions are contained in Schedule 1 of the Regulations. When local governments prepare or adopt their LPS, they must include any model provisions that are in the Regulations at that time. The model provisions are, in essence, a template that local governments use when developing their LPS. Although local governments can choose to vary or exclude some of the model provisions from their LPS, this must be approved by the Minister for Planning.³⁴¹ The model provisions therefore seek to provide a degree of consistency across the State while also enabling local governments to develop a LPS that addresses their local context.

337 Robert McDonald, Owner/Operator, Bushy Lake Chalets, and Jane Purdie, Owner, Rosewood Guesthouse, *Transcript of Evidence*, 1 May 2019, p13.

338 Jane Purdie, Owner, Rosewood Guesthouse, *Transcript of Evidence*, 1 May 2019, p13.

339 See for example Robert Farley, Acting Director Planning and Development, City of Perth, *Transcript of Evidence*, 15 May 2019, p1.

340 Submission 151, City of Vincent, pp1–2.

341 *Planning and Development Act 2005*, s. 257A.

The model provisions contain definitions of specific land uses, including a number that are relevant to the regulation of Short-Term Rentals (see Table 5.3), and the objectives of residential zones.

2. Deemed provisions in the Regulations

The deemed provisions are in Schedule 2 of the Regulations. They must be included in every LPS in WA; unlike the model provisions, local governments are unable to seek approval from the Minister to exclude or vary any of the deemed provisions.³⁴²

The deemed provisions do not appear to contain provisions that are currently applied to the regulation of Short-Term Rentals; however, they were identified as a mechanism that the State Government could use to encourage greater consistency across local government areas (see below).

3. *Planning Bulletin 99—Holiday Homes Guidelines*

Planning Bulletin 99, released by the Western Australian Planning Commission (WAPC) in 2009, provides local governments with “guidance ... when dealing with issues associated with holiday homes in the local government planning framework”. Local governments are not required to follow the guidance in *Planning Bulletin 99*; in fact, *Planning Bulletin 99* states that LPS and LPPs should be “tailored to address the specific issues encountered by local governments.”³⁴³

Planning Bulletin 99 also offers definitions relevant to the regulation of Short-Term Rentals, although these are different than the definitions contained in the Regulations’ model provisions (see Table 5.4).

4. *State Planning Policy 3.1—Residential Codes (SPP 3.1)*

The aim of SPP 3.1 is to “provide a comprehensive basis for the control of residential development throughout Western Australia.”³⁴⁴ When considering the permissibility of Short-Term Rentals in residential zones, local governments have paid particular attention to the definition of “dwelling” in SPP 3.1:

*A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.*³⁴⁵

342 *Planning and Development Act 2005*, s. 257B.

343 Western Australian Planning Commission, *Planning Bulletin 99—Holiday Homes Guidelines*, Western Australia, September 2009, p1.

344 Department of Planning, Lands and Heritage and Western Australian Planning Commission, *State Planning Policy 3.1—Residential Codes*, Western Australia, March 2018, p4.

345 *ibid.*, p54.

5. Other sources of guidance

The WAPC has also produced *Holiday Homes—Short Stay Use of Residential Dwellings Guidelines* and *Tourism Planning Guidelines*, published in 2009 and 2014 respectively. In their evidence, local governments did not refer to these documents, suggesting they did not inform their approaches to Short-Term Rentals.

The WAPC also adopted the *Draft Position Statement: Tourism Planning* before the Inquiry's commencement, aimed at guiding land use planning outcomes for tourism, including Short-Stay Accommodation.³⁴⁶ This statement will supersede *Planning Bulletin 99* but needs to be read in conjunction with *Holiday Homes—Short Stay Use of Residential Dwellings Guidelines* and *Tourism Planning Guidelines*.³⁴⁷ The WAPC had intended to invite stakeholders' comments on the *Draft Position Statement* but deferred public consultation, pending the outcome of this Inquiry.³⁴⁸

The problem with all of the sources discussed above is that they contain different definitions of Short-Term Rentals which, according to some local governments, makes it difficult for decision makers to determine how to treat Short-Term Rentals consistently.

The definitions in the model provisions do not encompass all forms of Short-Stay Accommodation. For instance, a definition is not provided for hosted accommodation where breakfast is not included (which applies to most hosted Short-Term Rentals). Aside from 'bed and breakfast', none of the definitions address maximum occupancy. Evidence also shows the current definitions in the model provisions do not align with the dwelling types in SPP 3.1.³⁴⁹

Planning Bulletin 99, meanwhile, only addresses the use of entire, stand-alone homes as Short-Term Rentals. Hosted forms of short-term letting, or using apartments and other multiple dwellings as Short-Term Rentals, are not covered (see Table 5.4).

In addition, the *Draft Position Statement* does not simplify and consolidate the relevant definitions. Although it introduces a new definition for 'hosted tourist accommodation', it retains the existing definitions contained in the *Planning and Development (Local Planning Schemes) Regulations 2015*. But it risks confusing matters by amending the 'holiday accommodation' definition slightly. Whereas the Regulations define holiday accommodation as two or more dwellings on one lot (see Table 5.3), the *Draft Position Statement* says the

346 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p2.

347 Western Australian Planning Commission, *Draft Position Statement: Tourism Planning*, Western Australia, February 2018, p2.

348 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p2.

349 Submission 150, Western Australian Local Government Association, p5; Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, pp6–7.

definition also includes “the scenario where a single dwelling is used for short-term accommodation in grouped dwelling.”³⁵⁰

Table 5.3: Relevant Short-Stay Accommodation definitions in *Planning and Development (Local Planning Schemes) Regulations 2015*³⁵¹

Land use term	Definition
bed and breakfast	means a dwelling — (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and (b) containing not more than 2 guest bedrooms.
holiday accommodation	means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot.
holiday house	means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.

Table 5.4: Definitions in *Planning Bulletin 99—Holiday Homes Guidelines*³⁵²

Land use	Definition
Holiday home (standard)	means a single house (excluding ancillary accommodation), which may also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit).
Holiday home (large)	means premises conforming to the definition of holiday home (standard) with the exception that the premises provide short stay accommodation for more than six people but not more than 12 at any one time.

Finding 19

The land use definitions in *Planning Bulletin 99—Holiday Homes Guidelines* and the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* that relate to Short-Term Rentals are dated and inconsistent, and do not accurately reflect how residential properties are currently being used for short-term letting in Western Australia.

Harmonising land use definitions

Local governments called on the State to simplify and consolidate these definitions to provide more clarity about what constitutes short-term letting, what should be regulated, and what should not. This could be achieved by:

- Modifying existing definitions to reflect hosted and unhosted forms of short-term letting;³⁵³
- Reviewing the definition of B&B accommodation;³⁵⁴

350 Western Australian Planning Commission, *Draft Position Statement: Tourism Planning*, Western Australia, February 2018, p7.

351 *Planning and Development (Local Planning Schemes) Regulations 2015*, schedule 1.

352 Western Australian Planning Commission, *Planning Bulletin 99—Holiday Homes Guidelines*, Western Australia, September 2009, p1.

353 Submission 130, Registered Accommodation Providers of the Margaret River Region, p10; Submission 7, Town of Port Hedland, pp2, 3; Submission 143, Shire of Augusta-Margaret River, p5.

354 Submission 18, Shire of Toodyay, p2.

- Including definitions that differentiate between the size and capacity of Short-Term Rentals; and³⁵⁵
- Ensuring land use definitions align in both *Planning Bulletin 99* and the Regulations.

The Department of Planning, Lands and Heritage (DPLH) considered the matter of definitions in *Options Paper: Options for regulating sharing economy short-term accommodation in WA*. This is a draft paper that the DPLH developed at the request of the Minister for Planning, outlining options for regulating Short-Term Rentals (see Appendix Six). One proposed option included a range of amendments to land use definitions, including the introduction of a definition for a ‘holiday apartment’ and ‘hosted accommodation’. It also suggested the existing ‘holiday accommodation’ definition be amended to stipulate it was unhosted and applied to one or more grouped dwellings. The proposed definitions could be introduced under the Regulations’ model provisions.³⁵⁶

When they appeared before the Committee, DPLH Director General Gail McGowan and WAPC Chairman David Caddy agreed the definitions should be updated, particularly to differentiate between hosted and unhosted accommodation.³⁵⁷ However, developing definitions that adequately capture all forms of Short-Stay Accommodation forms is complex. As Mr Caddy said, “It is about where you draw the line. When does a B&B become a hotel or a serviced apartment? That is what we need to distinguish.”³⁵⁸

How a new ‘hosted accommodation’ definition might impact the regulation of local government-approved B&Bs was discussed throughout the Inquiry. As was outlined in Chapters 3 (see Box 3.1) and 4 (section 4.2), approved B&B owners in the South West seem to feel the effects of the ‘uneven’ or ‘unfair playing field’ most. Although they are seemingly comparable to many Short-Term Rentals (they are hosted and, in accordance with the Regulations’ land use definition, cannot accommodate more than four adults), they largely comply with the more stringent requirements of their local planning regimes. This includes meeting the relevant building standards for Class 1B buildings.

The Committee asked Mr Caddy whether introducing a definition for hosted accommodation would mean the standards that B&Bs have been required to meet no longer applied. He responded:

*I would not see any particular change; in fact, it would be more stringent on those people who simply register with Airbnb now and do not go through the local government hoops of getting registration.*³⁵⁹

355 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

356 Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, pp6–7.

357 Gail McGowan, Director General, Department of Planning, Lands and Heritage, and David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, pp3, 5.

358 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p10.

359 *ibid.*, p8.

In short, rather than relaxing the standards B&Bs are required to meet, Short-Term Rentals would be expected to meet the same standards. Mr Caddy emphasised that, provided the owner does not offer a hot breakfast (which triggers additional food preparation requirements), the existing standards are “not a very high bar to actually attain” in most local government areas.³⁶⁰

Mr Caddy’s answer is contrary to the *Draft Position Statement: Tourism Planning*, which introduces a new definition for ‘hosted tourist accommodation’ that explicitly excludes B&Bs. The *Draft Position Statement* goes on to state that the WAPC does not consider planning approval to be necessary for hosted tourist accommodation.³⁶¹ It does not suggest B&Bs should be similarly exempt. Instead, it recommends that tourist accommodation in residential areas (like B&Bs) should only be granted approval for one year, and thereafter renewed periodically.³⁶²

If we can actually establish a state-wide framework within the land use planning framework that applies to every local authority, there may be regional variations, but at least you have written into regulations a land use definition.

David Caddy, Chairman, Western Australian Planning Commission

Use deemed provisions to harmonise land use definitions and approaches?

The management of Short-Term Rentals could also be harmonised through the inclusion of land use definitions in the Regulations’ deemed provisions. These provisions must be included in all LPS, so incorporating specific requirements for, or definitions of, Short-Term Rentals would ensure consistency throughout the State.³⁶³

Some local governments supported the amendment of deemed provisions to provide more consistency in relation to the regulation of Short-Term Rentals.³⁶⁴ The DPLH draft *Options Paper* also said the definitions outlined above could be introduced via the deemed provisions.³⁶⁵ Ms McGowan suggested this should not be a first preference, as the model definitions:

*...could be provided as a means of ensuring consistency and on the basis that if that consistency was not forthcoming, the next step could be to put them into Regulations at a point in the future—deem them in. That is probably the lighter touch—a staged approach.*³⁶⁶

360 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p8.

361 Western Australian Planning Commission, *Draft Position Statement: Tourism Planning*, Western Australia, February 2018, p6.

362 *ibid.*, p7.

363 Kylie Woods, Senior Legal Officer, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 31 October 2018, p5.

364 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p5.

365 Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, pp8–9.

366 Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 26 June 2019, p9.

In addition, the DPLH draft *Options Paper* said deemed provisions could be used to:

- *make all or specific types of short-term accommodation a D use in local planning schemes and require planning approval to operate; and/or*
- *allocate specific types of short-term accommodation as an X use within the local planning scheme making it a prohibited use.*³⁶⁷

However, DPLH's Senior Legal Officer Kylie Woods said the Department still needed to investigate the implications of 'deeming' definitions, suggesting these provisions might not be the neat solution it first appears:

*...local governments at the moment have different names for zones, for example. If we look at permissibility across a residential zone, there could be different names for the residential zone. It might not have the same effect across all local governments.*³⁶⁸

Local governments shared Ms Woods' concern about the long-term implications of using deemed provisions to ensure consistency, with many (from Port Hedland to Margaret River) highlighting it may prevent them from tailoring their LPS to their local context.³⁶⁹

Finding 20

There are concerns that 'deeming' land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* would reduce the ability of local governments to adjust their policy responses to local contexts.

Finding 21

The inclusion of land use definitions in the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* encourages the consistent treatment of Short-Term Rentals throughout Western Australia while retaining the ability of local governments to adjust their policy responses to local contexts.

Finding 22

There is a much higher compliance burden on traditional bed and breakfasts, relative to Short-Term Rentals. Any actions taken to harmonise land use definitions must be cognisant of the implications on traditional bed and breakfast businesses.

367 Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, p8. See section 5.2 for an explanation of different uses.

368 Kylie Woods, Senior Legal Officer, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 31 October 2018, p5.

369 Submission 7, Town of Port Hedland, p1; Submission 19, Town of Cambridge, p8; Submission 143, Shire of Augusta Margaret River, p6.

Recommendation 2

That by June 2020 the Minister for Planning update the model provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* to amend:

- land use definitions to differentiate between hosted and unhosted Short-Term Rentals;
- land use definitions to include the size and capacity of Short-Term Rentals; and
- the definition of bed and breakfast accommodation.

Provide guidance as to the more appropriate mechanism to manage Short-Term Rentals

The claims of inconsistency levelled at local governments by supporters of Short-Term Rentals might decrease if all local governments used one or other of a local law or the planning regime to manage Short-Term Rentals. However, Inquiry participants could not agree which provided the best mechanism.³⁷⁰

Part of the problem is that each of the three mechanisms (LPS, LPP or local law) lends itself to different approaches. Local laws tend to address amenity issues arising from Short-Term Rentals whereas the planning regime enables local governments to address some of the associated housing and economic impacts. The local context therefore determines the mechanism favoured by a particular local government.

The Cities of Fremantle and Busselton both considered local laws provided superior mechanisms to manage Short-Term Rentals. They pointed out the planning approval process regulated the physical attributes of a property rather than the amenity issues commonly associated with Short-Term Rentals.³⁷¹ As the City of Fremantle submitted:

*Impacts from such use (in terms of potential nuisance to neighbours from noise disturbance, etc.) are more dependent on the manner in which the property is managed than on physical attributes of the use which are really no different to those involved with long term residential occupation of the same building.*³⁷²

However, a review in 2009–10 by the WA Parliament’s Joint Standing Committee on Delegated Legislation found that local laws should not be used to address matters that are already provided for under the State’s planning regime. When the Joint Committee considered the City of Fremantle’s local law, it “formed the view that parts of the [local law]

370 See Submission 19, Town of Cambridge, p7; Submission 130, Registered Accommodation Providers of the Margaret River Region, p10; Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p3; Submission 156, City of Subiaco, p3; Submission 143, Shire of Augusta-Margaret River, p5.

371 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, pp9–10; Submission 120, City of Fremantle, p2.

372 Submission 120, City of Fremantle, p2.

canvassed planning matters intended by the *Planning and Development Act 2005* to be dealt with in local planning schemes.”³⁷³

The Joint Committee was specifically concerned with some of the requirements imposed by Fremantle’s local law (such as car parking requirements), which it believed were more appropriately dealt with as part of a planning approval process. Although the Joint Committee chose not to recommend further action, it stated “this Local Law should not be used as a precedent.”³⁷⁴ It is not clear whether, given the rapid rise in Short-Term Rentals across WA since its report, the Joint Committee would hold the same view now.

Even if the increased adoption and use of local laws was supported, it might not address the issue of inconsistency.³⁷⁵ One of the key problems with local laws identified in the recent review of the *Local Government Act 1995* is they encourage inconsistency. The review identified three ways to encourage greater consistency:

1. the State Government could make regulations that act as local laws (i.e. *Local Government (Uniform Local Provisions) Regulations 1996*);
2. model laws could be provided, which local governments can choose to adopt and/or modify; and
3. all local governments could be required to adopt model local laws, but they could be able to tailor sections of the law to suit their local needs.³⁷⁶

In its discussion paper about model laws, the Department of Local Government, Sport and Cultural Industries appears to prefer either option two or three on the basis that option one (regulations) would “remove or limit the ability of a local government to tailor local laws to meet their community’s expectations.”³⁷⁷

The planning regime’s flexibility is why local governments, regard LPS and LPPs as the most effective tools for regulating Short-Term Rentals. The Shire of Augusta-Margaret River said an LPS allowed local governments to “tailor an approach” to “address locally significant implications arising from the use”. In addition, the planning regime offered stronger enforcement and compliance options.³⁷⁸ This is discussed further below.

Finding 23

There is no consensus amongst local governments in Western Australia about the best regulatory mechanism for Short-Term Rentals.

373 Joint Standing Committee on Delegated Legislation (WA), *Issues of concern raised by the Committee between 1 May 2009 and 31 December 2009 with respect to local laws*, April 2010, p14.

374 Joint Standing Committee on Delegated Legislation (WA), *Issues of concern raised by the Committee between 1 May 2009 and 31 December 2009 with respect to local laws*, April 2010, p15.

375 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p10.

376 Department of Local Government, Sport and Cultural Industries, *Administrative efficiencies—local laws*, Western Australia, 2018, p2.

377 *ibid.*

378 Submission 143, Shire of Augusta-Margaret River, p5.

Recommendation 3

That by June 2020 the Minister for Planning direct the Western Australian Planning Commission to update planning guidance so that it aligns with the amended land use definitions in the *Planning and Development (Local Planning Schemes) Regulations 2015* and provides greater guidance to local governments about ways to appropriately regulate Short-Term Rentals.

5.6 Assisting local governments to enforce compliance

Local governments suggested specific amendments to the legislative regimes that would assist them to enforce compliance with their planning rules or local laws. The recommendations mainly related to infringement amounts that local governments are able to issue and the level of evidence required to successfully prosecute non-compliant Short-Term Rental owners. Registration of Short-Term Rentals, a key recommendation of many Inquiry participants, is discussed in the next chapter.

Fines issued by local governments

Operators who breach the provisions of a local law or planning legislation may be issued with an infringement notice. Under the *Local Government Act 1995*, local governments can fine people who do not comply with their local law, but the amount cannot exceed 10% of the maximum penalty imposed by a court. A successful prosecution under the Act can result in a maximum penalty of \$5,000, so local governments with local laws are unable to issue fines of more than \$500.

Fines are similarly low under the State's planning legislation—a fine of only \$500 can be issued for a single offence. Given some Short-Term Rentals have a nightly rate of over \$500, such infringement amounts are seen as an ineffective enforcement tool.³⁷⁹

Nevertheless, some local governments are taking a more proactive approach to compliance than others. The Shire of Augusta-Margaret River has employed a part-time compliance officer to specifically target Short-Term Rentals and, in the three months to May 2019, issued more than 20 infringements.³⁸⁰ Shire President Pam Townshend said their compliance action was “having an effect” as the number of Short-Term Rental applications had “dropped markedly” since they began.³⁸¹

The City of Busselton similarly employed one full-time equivalent (FTE) for the summer months in 2018–19. Mr Needham, the City's Director of Planning and Development Services, anticipated it would spend around \$100,000 on compliance activities in 2019–20:

- \$20,000 to receive data on the availability, description, actual addresses, host names and expected venue of Short-Term Rentals;

379 Nick Logan, Acting Director Sustainable Development, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p9.

380 *ibid.*, p12.

381 Pam Townshend, Shire President, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p12.

- \$50,000 for compliance officer time and costs; and
- \$30,000 for the time spent by other local government staff.³⁸²

In contrast, Amanda Walker, Director of WA HomeStay (an online booking platform for registered Short-Term Rentals), said a local government had told her:

“Please don’t tell me what addresses are listing on your platform, because we do not have the people to check whether they’re registered or not. And even if you tell me, and we know they are not registered, we don’t have the resources to go and do anything about it.”³⁸³

The City of Busselton said the maximum infringement amounts needed to be increased to between \$5,000 and \$10,000 to “act as a significant deterrent”. It noted, however, that these amounts would likely result in an increasing number of people contesting the matter in court.³⁸⁴

This has been the experience of the City of Miami Beach in Florida, United States of America. Prior to 2016, a breach of Miami Beach’s law against Short-Term Rentals resulted in a US\$1,500 fine. An amendment increased the penalty to US\$20,000 for the first violation and an additional US\$20,000 for each subsequent offence up to US\$100,000 (further violations will incur a \$100,000 fine).³⁸⁵

Some owners have challenged the increased fines as a “constitutionally excessive” under the Florida Constitution.³⁸⁶ However, another owner (who was fined \$20,000 for violating the local laws) responded by selling her investment property, achieving the City’s aim to shut down non-compliant operators.³⁸⁷

Finding 24

The maximum fines that local governments can issue to Short-Term Rentals that fail to comply with local planning schemes, local policies or local laws are not substantial enough to deter non-compliance.

Prosecuting non-compliant Short-Term Rentals through the court

The Shire of Augusta-Margaret River sought a “State-level prohibition on advertising of short-stay use without approval” to ease what it called the “compliance burden.” The Shire referred to the significant amount of evidence local governments must currently gather in

382 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p3; Submission 30A, BnbGuard, p1.

383 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p4.

384 Submission 75, City of Busselton, p6.

385 Scott Zamost *et al.*, ‘[Unwelcome guests: Airbnb, cities battle over illegal Short-Term Rentals](#)’, *CNBC*, 24 May 2018, accessed 7 May 2019; Eric Boehm, ‘[Miami Beach Shut Off Home’s Electricity, Water, Over Unpaid Airbnb Fines](#)’, *Reason*, 6 December 2018, accessed 7 May 2019.

386 Eric Boehm, ‘[Miami Beach Shut Off Home’s Electricity, Water, Over Unpaid Airbnb Fines](#)’, *Reason*, 6 December 2018, accessed 7 May 2019.

387 Tariro Mzezewa, ‘Airbnb and Miami Beach are at War. Travelers are Caught in the Crossfire’, *International New York Times*, 26 March 2019.

...when [a holiday house] is not operating as a holiday house, it is a dwelling, so it is a perfectly legitimate enterprise, and the fact that it is advertised does not in itself constitute an offence. So we actually have to gather evidence about the transaction taking place between someone who is staying in one of these premises and the person who is letting it—the commercial transaction.

To do that we have to visit the site, we have to interview the people who are staying there, they have to basically accept that they have stayed there for a charge. That is not only resource intensive but it is quite tricky to do, and it is not hard to subvert that process.

*Nick Logan, Acting Director
Sustainable Development, Shire of
Augusta-Margaret River*

order to issue an infringement to, or prosecute, the operator of a non-compliant Short-Term Rental.³⁸⁸

Even if local governments can provide evidence that an unauthorised operator is advertising their property as a Short-Term Rental, this is insufficient to support a successful prosecution, because advertising shows an intent to rent, rather than establishing the actual fact of a rental.³⁸⁹ As the Shire of Augusta Margaret River explained, “[a] property owner must be caught in the act rather than simply advertising.”³⁹⁰

The City of Busselton has successfully prosecuted one unauthorised Short-Term Rental under planning legislation, but this required witness statements from both a neighbour and the short-term guests using the house. The City noted not all neighbours are prepared to act as a witness and, in its experience, hosts are starting to instruct guests to tell compliance officers they are family or friends of the host.³⁹¹

Although a successful prosecution under a local law or the *Planning and Development Act 2005* can result in a penalty of between \$5,000 and \$200,000 for each offence and another \$500 to \$25,000 each day the offence continues, local governments are only likely to pursue prosecution in the most clear-cut cases. This is because they weigh the likely success of the case against the cost of pursuing a prosecution, which can consume approximately \$30,000 of ratepayers’ funds.³⁹²

Lowering the evidentiary bar local governments are currently required to meet would enable prosecutions to be used as a more effective mechanism to deter non-compliant Short-Term Rentals. This approach seems to have been adopted in Portugal, where it appears the Government assumes a property is being used as a Short-Term Rental:

...when a building or a fraction of it is presented, made available or is subject to any intermediation as an accommodation intended for tourists or short-term rentals, namely on websites or travel agencies; or when it is furnished

388 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

389 Robert Farley, Acting Director Planning and Development, City of Perth, *Answers to Questions on Notice*, 24 June 2019, p2.

390 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

391 Submission 75, City of Busselton, p6.

392 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p4; See also Submission 36, City of Belmont, p3.

*and equipped and offers complementary services, such as cleaning or a reception desk, for periods of less than 30 days...*³⁹³

Finding 25

Local governments must gather significant evidence to secure a successful prosecution against non-compliant Short-Term Rentals. Currently, evidence that an unapproved premises is being advertised as a Short-Term Rental is insufficient because it shows intent to rent, rather than establish the actual fact of a rental. Local governments must also gather witness statements from neighbours and guests to prove that the premises has, in fact, been let as a Short-Term Rental.

5.7 The legality of Short-Term Rentals in strata schemes

Evidence submitted to the Inquiry suggests local governments and the DPLH accept the permissibility of short-term letting in strata schemes is ultimately determined by strata by-laws, rather than local laws or a LPS (see Box 5.1).³⁹⁴ Even if planning approval for short-term letting is granted by a local government, it would not override the need for an owner to seek approval from the building's strata company.

This position was supported in the only Short-Term Rental case that has, to date, reached the Court of Appeal in WA: *Byrne v The Owners of Ceres River Apartments Strata Plan 55597*. The Court found that even if an owner had secured planning approval for short-term letting, he or she did not have the right to lease their lot as a Short-Term Rental if their strata scheme's by-laws said the property had to be used by residents only.³⁹⁵ The opposite is true

Box 5.1: Strata schemes and Short-Term Rentals

Under the *Strata Titles Act 1985* (STA) a strata scheme is comprised of 'by-laws' or a 'management statement'; the plan (depicting lots); and upon registration, the body corporate. The STA requires subdivision approval by the Western Australian Planning Commission under the *Planning and Development Act 2005* prior to registration of a strata plan to create a strata scheme. The STA contains deemed by-laws for strata schemes that will come into effect on registration of the scheme. The subdivider/developer may supplement the deemed by-laws with further or varied by-laws, or replace them in their entirety. The planning decision-maker may also require a by-law for a relevant purpose. A land use restriction can exist on the strata plan as well as in by-laws. **Once a strata scheme has been established, a planning approval does not override the need for an approval of the body corporate** [emphasis added].

Source: Direct quote from Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, p7.

393 Airbnb, [Portugal's Registration Process: Frequently Asked Questions](#), nd, accessed 28 May 2019.

394 Submission 7, Town of Port Hedland, p2; Submission 191, City of Mandurah, p6. See also City of Mandurah, [Holiday Homes: Information Sheet](#), nd, accessed 21 June 2019; Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, p7.

395 *Byrne v The Owners of Ceres River Apartments Strata Plan 55597* (2017) WASCA 104; Submission 56, Quattro Apartments, p2; Emily Piesse, '[Airbnb honeymoon nearing its end as Perth councils push for regulation](#)', *ABC News*, 4 March 2018, accessed 29 May 2019.

in Victoria where, in 2016, the Supreme Court found strata companies do not have the power to prohibit Short-Term Rentals under the existing legislation.³⁹⁶

Nevertheless, Short-Term Rental owners and strata companies can still have vastly different understandings about the type of letting that is—or should be—permitted in their scheme. The interpretation of by-laws sit at the heart of this matter.

The Strata Community Association (WA) (SCA WA) used the Court of Appeal’s decision to illustrate this complexity. The relevant by-law stated “a proprietor of a residential lot may only use his lot as a residence.” The Court held that this precluded the apartment from being used as tourist or holiday accommodation. Yet SCA WA pointed out that the Court of Appeal decision “does not go so far as to determine that the by-law in that case precludes the lot being let for short periods of time.” In other words, it might not preclude owners from letting their principal places of residence. Further, the decision does not “provide clarity where by-laws are in different terms to the by-law considered in that case.”³⁹⁷

SCA WA board member Rachel Cosentino raised further concerns about relying on by-laws to regulate Short-Term Rentals in strata schemes:

*The danger is that you have basically your neighbourhood dictating what you can and cannot do with your private property. That is, I think, a dangerous precedent and a dangerous concept that potentially undermines proprietary rights. You would not have that in a neighbourhood that was not a strata community—it would not be able to dictate how you use your freestanding home—and yet your neighbours in a strata scheme potentially could.*³⁹⁸

However, there are many forms of property where owners ‘buy’ the right to occupy a physical premises and, in so doing, agree to be bound by a set of rules. Strata has long been recognised as a form of property where a purchaser agrees to be bound under by-laws which may constrain certain aspects of property use or impose additional burdens. Retirement homes and senior’s villages similarly place constraints on an owner’s completely free and unfettered enjoyment of their residence.

Recent reforms to the *Strata Titles Act 1985*

Western Australia’s 2018 strata reforms, introduced by the *Strata Titles Amendment Act 2018*, are yet to come into force, but have potentially altered this approach. According to the SCA WA, the reforms:

...contain a different articulation of what by-laws can be made by a strata company, and which preclude unfairly prejudicial or oppressive by-laws. A

396 Environment and Planning Committee (Vic), *Inquiry into the Owners Corporations Amendment (Short-Stay Accommodation) Bill 2016*, June 2017, pp2–3.

397 Submission 127, Strata Community Association (WA), p5.

398 Rachel Cosentino, Board Member, Strata Community Association (WA), *Transcript of Evidence*, 12 June 2019, p3.

*similar by-law might in particular situations be found by the SAT [State Administrative Tribunal] to be invalid.*³⁹⁹

Whether the position accepted by local governments and the DPLH is still accurate in light of the 2018 reforms may not be tested until it is challenged by an owner and considered by the SAT.

It should be noted, however, that the reforms will likely clarify how strata companies can amend their by-laws to prohibit (or, conversely, expressly permit) Short-Term Rentals. There are two types of by-laws under the *Strata Titles Act 1985*:

1. 'governance' by-laws, which relate to the operation of the strata company; and
2. 'conduct' by-laws, which set out acceptable behaviour of owners and occupiers.

Creating, amending or repealing governance by-laws require a unanimous vote at a strata company meeting (known as a resolution without dissent). Conduct by-laws can be amended, created or repealed by a special resolution, which according to SCA WA, means "50% of both the number of lots and 50% of the unit entitlement must vote in favour, and no more than 25% of lots and 25% of unit entitlement votes against the proposal." Depending on the owners voting for and against the proposal and their respective holdings, however, a special resolution "might require 75% of all lots and unit entitlement to vote in favour."⁴⁰⁰

Some Inquiry participants indicated strata by-laws concerning short-term letting have been classified as governance by-laws, making the prohibition of Short-Term Rentals in a scheme all-but impossible.⁴⁰¹

The Regulations supporting the amended Act are likely to make it easier for such strata companies to manage Short-Term Rentals by classifying these by-laws as conduct by-laws. The Regulations are to be promulgated in the second half of 2019.⁴⁰²

Additional State guidance is part of the solution

These matters could be clarified through clear policy guidance issued by State authorities. Landgate, the WA statutory authority responsible for delivering the strata reforms, has a *Guide to Strata Titles* and has released a series of strata title Policy and Procedure Guides. Although the guides are written in plain English, they do not provide strata companies with clear guidance about how to manage Short-Term Rentals. The policy and procedure guides, for example, reflect the structure of the *Strata Titles Act 1985* and therefore do not include specific discussion on Short-Term Rentals.⁴⁰³

399 Submission 127, Strata Community Association (WA), p5.

400 Kara Grant, General Manager, Strata Community Association (WA), *Answers to Questions on Notice*, 28 June 2019, p2.

401 Closed submission 86, p1; Submission 147, YHA Australia, p1.

402 Kara Grant, General Manager, Strata Community Association (WA), *Answers to Questions on Notice*, 28 June 2019, p2; Landgate, [All about the reform](#), 24 June 2019, accessed 2 July 2019.

403 Landgate, [Strata Titles policy and procedure guides](#), 28 June 2019, accessed 2 July 2019.

Chapter 5

Tourism WA said State guidance should be updated to include discussion on the sharing economy, particularly:

- rights and obligations of owners, and the strata company;
- insurance issues;
- renovations or additions to the property; and
- standard by-laws.⁴⁰⁴

In addition, the DPLH draft *Options Paper* said a standard model by-law for use by planning decision makers, which is then set out by policy, “may be beneficial.” It would provide a “strong and consistent position across the State to be applied as required.”⁴⁰⁵

Finding 26

Landgate’s strata title Policy and Procedure Guides do not appear to specifically address the short-term letting of lots nor how by-laws can be used by strata companies to better manage Short-Term Rentals in their strata schemes.

Model by-laws to assist strata companies

Schedule 1 and Schedule 2 of the *Strata Titles Act 1985* currently contain standard by-laws that apply to all new and existing strata companies. Schedule 1 by-laws may be amended, repealed or added by a resolution without dissent, whereas Schedule 2 by-laws may be amended, repealed or added by a special resolution (see discussion above). New by-laws and any amended or repealed by-laws must be lodged with Landgate and registered on the strata plan.⁴⁰⁶

For larger developments, a management statement is often drafted by the developer and registered on the strata plan. SCA WA’s Ms Cosentino identified a high risk in that:

*...there is nothing that requires by-laws to be professionally drafted, if you like. A strata company can amend its by-laws without the involvement of a lawyer and, indeed, without the involvement of a strata manager.*⁴⁰⁷

In tourist regions such as Broome and the South West, Ms Cosentino acknowledged that there is a sophistication around the development of by-laws for strata schemes which are specifically for traditional Short-Stay Accommodation, but by-laws were often less well-developed for strata schemes designed for residential use.⁴⁰⁸

She also said that strata by-laws could quickly become out-of-date:

404 Submission 126, Tourism WA, pp6–7.

405 Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, pp8–9.

406 Landgate, *A Guide to Strata Titles: Information Guide*, Western Australia, June 2017, p24.

407 Rachel Cosentino, Board Member, Strata Community Association (WA), *Transcript of Evidence*, 12 June 2019, p2.

408 *ibid.*

*They are drafted in the past and do not necessarily address things that have not been foreshadowed as future developments. Where there is a mismatch between what is happening now and how the by-laws were drafted in the past, that is the first problem.*⁴⁰⁹

Ms Cosentino supported the Government working with the strata industry to develop model by-laws for strata schemes, and to clarify whether Short-Term Rentals were banned in an apartment building or might be allowed.⁴¹⁰ She cautioned against the mandatory adoption of any model by-laws, however, as “[t]he strata company should ultimately retain the ability to self-govern”.⁴¹¹

When the 2018 strata reforms were considered by the Western Australian Parliament, Alyssa Hayden MLA, the Member for Darling Range, asked Hon Rita Saffioti MLA, the Minister for Planning, whether she could advise:

*...whether the Government is proposing to update the strata guidelines to help individuals understand how they can best protect themselves from needing to have an awkward moment if they do not want to have short-stay accommodation in their apartment block?*⁴¹²

The Minister responded that the State Government will be “able to put on our website examples of model by-laws so that we can assist strata companies, and that’s what we intend to do.”⁴¹³

Providing model by-laws online, rather than incorporating them into legislation (as is the current practice), should enable the model by-laws to be updated more frequently than is possible through the legislative process. This will in turn allow strata companies to better respond to developments such as the growth of Short-Term Rentals in their schemes.

Finding 27

The State Government intends to publish online model by-laws for strata companies.

5.8 Other jurisdictions’ models for strata title

Another possible way of addressing the growth of Short-Term Rentals in strata schemes and its associated issues is to follow the models of other Australian jurisdictions. The New South Wales model received some support from Inquiry participants.⁴¹⁴ This model, which is yet to be implemented, will amend strata scheme management laws to clarify that by-laws can prohibit short-term letting, but not for the operator’s principal place of residence. This enables people to offer hosted accommodation and rent out their homes when they are

409 Rachel Cosentino, Board Member, Strata Community Association (WA), *Transcript of Evidence*, 12 June 2019, p2.

410 *ibid.*

411 *ibid.*

412 Alyssa Hayden MLA, Legislative Assembly, *Hansard*, 22 August 2018, p5085.

413 Hon Rita Saffioti MLA, Minister for Planning, Legislative Assembly, *Hansard*, 22 August 2018, p5085.

414 Submission 252, Airbnb template submissions; Rachel Cosentino, Board Member, Strata Community Association (WA), *Transcript of Evidence*, 12 June 2019, p4; Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p2.

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away (i.e. on holiday). As is suggested for WA strata reforms, the NSW amendments will also enable strata companies to adopt a by-law prohibiting Short-Term Rentals by special resolution.⁴¹⁵

Victoria, meanwhile, has implemented laws aimed at better managing guests' behaviour in apartment buildings. The Victorian Civil and Administrative Tribunal (the equivalent of WA's SAT) can now:

- fine guests up to \$1,100 for making unreasonable noise or behaving badly; causing a health, safety or security hazard; damaging common property; or obstructing a resident from the using their property;
- force owners whose properties have been used for unruly parties to pay their neighbours up to \$2,000 in compensation;
- order owners whose guests have damaged common property to pay compensation; and
- ban apartments from short-term renting if it has received three breaches or more within a two year period.

Consumer Affairs Victoria can mediate disputes; however, owners are required to first try and address their problems internally through the owners corporation's dispute resolution processes.⁴¹⁶ Owners corporations are the equivalent of WA's strata companies.

Western Australia's 2018 strata reforms appear to have similarly strengthened the SAT process. Currently, the SAT is unable to impose financial penalties for a breach of by-laws unless the by-laws include penalty provisions. Under the 2018 amendments, the SAT will likely be able to:

- order a penalty to be paid even if the by-laws do not specify a penalty;
- impose a higher penalty than is possible under the current regime; and
- make monetary compensation orders for breaches of by-laws that result in loss (i.e. damage that short-term tenants cause to common areas).⁴¹⁷

Any updates to WA's strata title guides should incorporate a discussion of this resolution process.

Victoria is also considering additional changes which seek to provide strata companies with greater powers to manage Short-Term Rentals in their complexes. These include lowering

415 Hon Anthony Roberts, Minister for Planning and Housing, and Hon Matt Kean, Minister for Innovation and Better Regulation (NSW), *Short-term holiday letting plan a win-win*, Media Release, 5 June 2018.

416 Marlene Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation (Vic), *Stamping Out Bad Behaviour In Short-Stay Apartments*, media release, 8 August 2018; Jimmy Thomson, '[How your state's strata laws compare](#)', *Financial Review*, 4 April 2019, accessed 28 May 2019.

417 Kara Grant, General Manager, Strata Community Association (WA), *Answers to Questions on Notice*, 28 June 2019, p2.

the threshold for commencing a legal proceeding to a simple majority. Currently, 75% of all owners must support taking legal action.⁴¹⁸

In addition, individual owners could be liable for extra charges that arise from using their properties as Short-Term Rentals. If the changes in Victoria are adopted, owners corporations will be able to separately levy lot owners for:

- *the cost of building insurance premiums on the basis of lot entitlement and differential risk;*
- *insurance excesses and increased premiums resulting from culpable actions;*
- *insurance excesses relating to single-lot claims;*
- *unrecoverable damage to common property; and*
- *maintenance costs arising from particular uses of lots.*⁴¹⁹

It appears WA's current and amended strata titles legislation similarly enables strata companies to make a by-law to "alter the basis for levying proprietors", but evidence to the Inquiry suggests many strata companies are either unaware of these provisions or struggle to use them.⁴²⁰ Any updated guidance should specifically include details about how strata companies can make a by-law to separately levy lot owners for any additional costs incurred as a result of short-term letting activities.

Recommendation 4

The Minister for Planning direct the relevant government agency to work with stakeholders to develop model by-laws that assist strata companies to better manage Short-Term Rentals in their strata scheme. These model by-laws should include:

- by-laws that, if adopted by a strata company, would prevent owners from letting their lots as Short-Term Rentals; and
- by-laws that, if adopted by a strata company, would enable owners to let their lots as Short-Term Rentals.

Recommendation 5

The Minister for Planning direct Landgate to update their strata titles guidance to include discussion of the powers and processes open to strata companies to manage Short-Term Rentals in strata schemes.

418 Jimmy Thomson, '[How your state's strata laws compare](#)', *Financial Review*, 4 April 2019, accessed 28 May 2019; Consumer Affairs Victoria, '[Owners Corporations and Other Acts Amendment Bill – Summary of reform proposals](#)', p3, accessed on 28 May 2019; [Owners Corporations and Other Acts Amendment Bill Exposure Draft](#), s.9, accessed on 28 May 2019.

419 Consumer Affairs Victoria, '[Owners Corporations and Other Acts Amendment Bill – Summary of reform proposals](#)', p3, accessed on 28 May 2019.

420 Submission 39, Peter Goff, p2; Submission 140, Jennie Church, p2; Submission 109, Name withheld, p2.

Chapter 6

A Proposal for Registration and Data Provision

We think that a central registration system is central. ... I think without a registration system the difficulty of compliance across all [platforms] is pretty difficult. So, registration is central to what we believe.

Tracey Foxall, Regional Manager, Booking.com.⁴²¹

6.1 There is widespread support for registration

Over the course of the Inquiry, registration emerged as the central solution to many of the problems associated with the operation of Short-Term Rentals. The Committee recognises the distinct, but different, needs and roles of the State Government agencies and local government authorities managing the consequences of their rapid growth in the past five years.

State Governments will have a mind to macro factors such as:

- consumer protection and safety;
- insurance;
- tourism sector development;
- broader planning and land use considerations; and
- access to affordable housing.

Local governments' priorities will focus on amenity considerations, impacts on the provision of community services and facilities, local planning and land use.

No other Australian jurisdiction currently has an operating Short-Term Rental registration scheme. The Tasmanian Parliament legislated for one in late May 2019. The new *Short Stay Accommodation Act 2019* (Tas) commenced on 4 June 2019, but includes a six-month transition period before its registration requirements come into effect.⁴²²

The majority of Inquiry stakeholder groups recognised Short-Term Rentals needed to be registered (see Box 6.1 for a description of what registration means to the Committee) or licensed, including:

- Traditional Accommodation providers;⁴²³

421 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p2.

422 Tasmanian Government, [Short Stay Accommodation Act 2019](#), nd, accessed 16 September 2019.

423 Submission 41, Ramada Vetroblu Scarborough Beach, p2; Submission 63, Margaret River Guest House, p5; Submission 64, Westerley Accommodation, p3; Submission 79, Seashells Hospitality Group, p2.

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- neighbours of Short-Term Rentals;⁴²⁴
- self-appointed industry data-providers;⁴²⁵
- local governments;⁴²⁶
- the State agency for tourism;⁴²⁷
- advocacy groups;⁴²⁸
- Short-Term Rental managers;⁴²⁹
- Short-Term Rental owners;⁴³⁰ and
- online booking platforms.⁴³¹

Western Australian Planning Commission (WAPC) Chairman David Caddy also told the Committee that, in his personal view, Short-Term Rentals should be registered.⁴³²

State planning guidance has historically supported a registration model for the Short-Stay Accommodation sector. *Planning Bulletin 99—Holiday Homes Guidelines* (2009), produced by the WAPC to guide the management of holiday homes under the local planning regime, recommends local governments establish and maintain “a register of approved holiday homes”. It stipulates registers should include a property’s:

- *basic details ... including the contact details of the owner and/or manager;*
- *property address; and*
- *configuration (bedroom number, number of beds, bathrooms, car parking spaces etc).*⁴³³

Stakeholders differed on what a Western Australian registration model should look like. Generally, Traditional Accommodation owners supported more restrictive, interventionist approaches. They said Short-Stay Accommodation registration should be limited to certain types of premises, in approved locations, with specific conditions imposed, such as minimum

424 Submission 45, Bernie Masters, p3; Submission 56, Quattro Apartments, p3.

425 Submission 30, BnbGuard, p5; Submission 187, Inside Airbnb, p15.

426 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, pp5, 10; Submission 156, City of Subiaco, p2; Submission 120, City of Fremantle, p3; Submission 19, Town of Cambridge, p8.

427 Nathan Harding, Chairman, Tourism WA, *Transcript of Evidence*, 10 April 2019, p1.

428 Lisa Kazalac, Acting Chief Executive Officer, Shelter WA, *Transcript of Evidence*, 19 June 2019, p2; Submission 130, Registered Accommodation Providers of the Margaret River Region, p6.

429 Lyda Hayward, Property Manager, Pass Your Keys Pty Ltd, *Transcript of Evidence*, 8 May 2019, p4; David Moyes, Managing Director, Private Properties Australia, *Transcript of Evidence*, 1 May 2019, p7.

430 Gehan Perera, Airbnb host, *Transcript of Evidence*, 12 June 2019, p12; Submission 133, Select Stays, p6.

431 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p2; Submission 42, WA HomeStay, p1; Submission 164A, Stayz, p1.

432 David Caddy, Chairman, Western Australian Planning Commission, *Transcript of Evidence*, 26 June 2019, p3.

433 Western Australian Planning Commission, *Planning Bulletin 99—Holiday Homes Guidelines*, Western Australia, September 2009, p2.

Box 6.1: What does the Committee mean when it says 'registration'?

Registration and licensing sit on a continuum. Registration is a 'light-touch' approach, whereby a property owner/manager is simply required to provide basic information to an agency about a Short-Stay Accommodation property.

Registration applications cannot generally be refused. The register holder does not seek to limit the growth of Short-Term Rentals or control their activities by specific means, but rather merely collects data about their locations. Any amenity issues can be managed through general mechanisms available to local government. The local laws of the Cities of Fremantle and Busselton are based on this approach.

Licensing sits at the other end of the continuum and represents a far more interventionist approach. Regulating entities can require Short-Term Rentals to meet (and demonstrate ongoing compliance with) a range of conditions to both gain and hold a licence.

Local governments can use licensing to control the growth, location and forms of Short-Term Rentals and also to specifically control a range of operational activities, to address any local issues associated with Short-Term Rentals. This approach is associated with cities such as Barcelona and San Francisco, which have experienced housing shortages as a result of Short-Term Rental growth.

Source: Submission 30, BnbGuard, p5; L. Crommelin, L. Troy, C. Martin, and S. Parkinson, *Technological disruption in private housing markets: the case of Airbnb*, Australian Housing and Urban Research, Melbourne, October 2018, p58.

and/or maximum stay periods, maximum occupancy, and provision of parking. They also tended to support inspection regimes wherever short-stay facilities contained assets similar to Traditional Accommodation providers (such as kitchens, swimming pools etc).

In contrast, Short-Term Rental owners tended to support light-handed approaches that would not restrict the types of premises that can be let and imposed few operational conditions. They also favoured no or low registration fees.

6.2 The benefits of registration

Mandatory registration would allow the collection of data about the Short-Term Rental industry, enabling regulators to determine the industry's size and scope, and assess the impact of short-term letting on the WA economy, regions and communities. As Christof Pforr, Tourism Professor at Curtin University, said:

*It is very important that any jurisdiction understands the supply situation. From that, it is very important to also understand the dynamics, because this actually relates to how you respond to implications.*⁴³⁴

Inquiry participants also said that, depending on the model adopted, mandatory registration may enable local governments to:

- introduce registration requirements and conditions to address the local context;⁴³⁵

⁴³⁴ Dr Christof Pforr, Professor of Tourism, Curtin University, *Transcript of Evidence*, 10 April 2019, p12.

⁴³⁵ Submission 70, Stay Margaret River, p6.

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- more easily identify Short-Term Rentals and actively enforce applicable registration conditions;⁴³⁶
- introduce a higher ‘rate in the dollar’ for Short-Term Rentals, which could help to level the “uneven playing field” experienced by Traditional Accommodation providers (see Chapter 3);⁴³⁷ and
- direct any registration fees towards enforcement and/or destination marketing.⁴³⁸

It was also submitted that mandatory registration would provide guests with the “peace of mind” that the premises they were renting was compliant with requirements of the registration agency.⁴³⁹

The introduction of a registration scheme would **not** require a whole-scale revision of local laws and planning policies currently used to manage Short-Stay Accommodation. As discussed in Chapter 5, despite some issues with the existing regimes, they can and do provide a sound management framework for Short-Term Rentals.

The introduction of registration is a straight-forward way to strengthen local governments’ ability to enforce compliance, without overhauling their local laws and planning policies, and would also facilitate the provision of much-needed information to the State Government.

Finding 28

There is widespread agreement that Short-Term Rentals in Western Australia should be registered.

6.3 The State Government’s role

State Government agencies have various responsibilities and interests in the Short-Term Rental industry, including tourism sector development and destination marketing, consumer protection and safety, housing affordability, planning and land use, bushfire safety, and supporting local governments’ ability to enforce their local laws, planning schemes and policies (see Chapters 4 and 5).

These roles and interests are all currently performed with limited data about the supply and demand dynamics in this industry. All would be better served through the central collection of consistent, baseline data. This would in turn enable early issue and trend identification, and facilitate the development of appropriate policy responses.

The State Government is arguably best-positioned to identify the baseline sets of data required to facilitate its policy-making and regulatory functions, but should also consider the macro-level data sets that would be of use to local government.

436 Submission 130, Registered Accommodation Providers of the Margaret River Region, p14.

437 Submission 75, City of Busselton, p12; Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

438 Submission 182, Australian Hotels Association (WA), p30; Submission 46, Banksia Tourist and Park, p2; Submission 171, Tahlia Jones, p1; Submission 79, Seashells Hospitality Group, p2.

439 Submission 63, Margaret River Guest House, p5.

Should all Short-Term Rentals in Western Australia be registered?

For a registration system to be most effective for both State and local government purposes, all premises offering both unhosted and hosted Short-Term Rentals should be registered and be required to provide a basic level of information that should be held in a centralised database. International jurisdictions such as Japan have settled on this type of registration model (see Box 6.2).

In line with the discussion in Box 6.1, this does not necessarily mean that both forms of accommodation should also be subject to more rigorous operational or licensing requirements. The imposition of a more interventionist framework should be a matter for the relevant local government authority, in light of their specific circumstances.

Many Inquiry participants suggested hosted Short-Term Rentals should not be subject to the same operating conditions as their unhosted counterparts, as they caused fewer amenity issues and provided a more authentic local experience.⁴⁴⁰ The AHA WA, for example, said that hosted Short-Term Rentals should be “exempt from more stringent planning controls”⁴⁴¹ and only held to standards “not too different from those that are operating in the B&B space”.⁴⁴² It said unhosted Short-Term Rentals should be:

- restricted to principal places of residence;
- only let for a maximum of 30 days annually; and
- registered and required to meet “minimum standards relating to insurance, fire, health and safety.”⁴⁴³

The Shire of Augusta-Margaret River said it requires planning approval for both hosted and unhosted accommodation, but it has a more “permissive policy approach” to hosted Short-Term Rentals. Unlike unhosted Short-Term Rentals, they are “generally permitted throughout the Shire” and are “more self-managed”. This means the local government does not examine their management and emergency evacuation requirements as closely as it does unhosted Short-Term Rentals.⁴⁴⁴

Resort Chief Executive Officer Rod Lisson said unhosted Short-Term Rentals should be banned completely and hosted Short-Term Rental owners expected to meet the same standards as B&Bs.⁴⁴⁵ Other Traditional Accommodation providers focused on stronger

440 Pam Townshend, Shire President, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p2; Richard Jones, Manager, Geographe Cove Resort, and Rhys Johnson, Manager/Director, Mandalay Holiday Resort and Tourist Park, *Transcript of Evidence*, 30 April 2019, p7; Dr Klaudia Mierswa, Policy Officer, Shelter WA, *Transcript of Evidence*, 19 June 2019, p3; Submission 188, Tourism Council WA, p4; Bradley Woods, CEO, Australian Hotels Association (WA), *Transcript of Evidence*, 13 March 2019, p3; Submission 151, City of Vincent, p1.

441 Submission 182A, Australian Hotels Association (WA), p9.

442 Bradley Woods, CEO, Australian Hotels Association (WA), *Transcript of Evidence*, 13 March 2019, p11.

443 Submission 182A, Australian Hotels Association (WA), p9.

444 Nick Logan, Acting Director Sustainable Development, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p7.

445 Roderick Lisson, Director, Footprints at Preston Beach, *Transcript of Evidence*, 30 April 2019, p8.

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regulations for unhosted Short-Term Rentals. They did not see hosted accommodation as being their direct competitors.⁴⁴⁶

Airbnb, which lists the greatest number of Short-Term Rentals in WA, submitted that if a registration system was introduced, it should be limited to non-principal places of residence (i.e. unhosted Short-Term Rentals).⁴⁴⁷ It did not justify this proposal, but for non-principal places of residence, it said:

*...any registration system should be quick, simple, and cost-effective to ensure there continues to be maximum investment in Western Australia's economy and tourism industry, and there should be no restriction on the number of nights hosted.*⁴⁴⁸

However, there are strong arguments against this position.

First, owners offering unhosted Short-Term Rentals could simply claim they are providing hosted accommodation, and therefore avoid registration. Without the data that accompanies registration, local governments would remain in their current predicament, able to neither locate Short-Term Rentals nor enforce compliance with their planning schemes.

Exempting one form of short-term letting would also reduce the quality of data provided. As discussed in Chapter 1, for example, around 30% of Airbnb listings in WA offer hosted accommodation—all of which would remain invisible to regulators and policy makers if they were exempt from registration. According to online platform Stayz:

*Discrimination between hosted and unhosted STRA [Short-Term Rental accommodation] misses the opportunity to collect meaningful data for the entire STRA sector and leaves State, local government and WA communities with an incomplete picture of the dynamics of STRA.*⁴⁴⁹

The need for comprehensive data about the industry also strengthens calls for all Short-Term Rentals, regardless of local government area, to be registered. The City of Busselton, while supporting a state-wide registration system, was one of the few organisations suggesting local governments could “opt-in” or “opt-out” through a council resolution, if they considered it unnecessary to participate.⁴⁵⁰

446 Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast; Suzanne Keynes, Owner/Manager, Inn the Tuarts Guest Lodge; and Roderick Lisson, Director, Footprints at Preston Beach, *Transcript of Evidence*, 30 April 2019, p9.

447 Submission 160, Airbnb, p20.

448 *ibid.*

449 Submission 164A, Stayz, p2.

450 Submission 75, City of Busselton, pp13–14.

Booking.com, in contrast, did not support local governments ‘opting out’ of a registration system. Public Affairs Head Kees Jan Boonen suggested this approach might prevent the State from having a “good overview” of WA’s Short-Term Rental industry.⁴⁵¹

A state-wide requirement to register Short-Term Rental properties is likely to also increase owners’ awareness about the need to comply with local laws or local planning controls. Amanda Walker, Director of online booking platform WA HomeStay, said some owners have been letting their holiday homes for decades but never sought local government approval “because it has never been enforced or they do not know about it.” A state-wide registration requirement, accompanied by a communication strategy about the need to register, would assist owners’ knowledge of the Short-Term Rental legal framework:

*If there was a state-wide policy advertised, which everyone is aware of, that you have to be registered, then that cuts out the miscommunication that is happening with some of these property managers and home owners that have operated for decades and never had to register...*⁴⁵²

The registration of owners or premises?

The Committee heard some evidence supporting the registering of Short-Term Rental owners, rather than their premises. In *Options Paper: Options for regulating sharing economy short-term accommodation in WA*, the Department of Planning, Lands and Heritage (DPLH) considered a type of registration in the form of a ‘licence’ for options 5.3, 5.4 and 5.5 (see Appendix Six).

Under these options the DPLH proposed the licence be issued to the owner of the property, and not the premises itself, under a local law. This means that, unlike planning approvals under an LPS, the licence will not ‘run with the land’; if the Short-Term Rental is sold, the new owner will have to obtain a new licence. Owners will also be unable to transfer their licence to another premises.⁴⁵³

Such a licence would not negate the need for any planning approvals required under the LPS, and would:

*...provide the opportunity for the planning, building and health officers within local government to apply any requirements considered appropriate such as emergency evacuation plans, fire alarms, car parking bays etc. ... This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated.*⁴⁵⁴

451 Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Transcript of Evidence*, 8 May 2019, pp2, 3. See also Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Answers to Questions on Notice*, 24 May 2019, p2.

452 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p3.

453 Jacquie Stone, Director Policy, Strategy and Engagement, Department of Planning, Lands and Heritage, Email, 9 August 2019, p1.

454 Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, p8.

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Under the DPLH model, local governments would use a local law to require “individuals running short-term accommodation businesses” to register annually for their licence.⁴⁵⁵ The draft *Options Paper* noted that the City of Fremantle’s local law operated in this way.⁴⁵⁶

State Government authority Tourism WA supported this approach, emphasising the need for a “simple and user friendly” system to encourage owners to participate in the system. It also offered the City of Fremantle’s local law as an example of a simple system already in place.⁴⁵⁷

However, it can be difficult to define and identify the ‘individuals’ operating Short-Term Rentals. As Chapter 2 outlined, the Short-Term Rental industry includes businesses managing multiple Short-Term Rentals on behalf of property owners. Under the system proposed by the DPLH, it is unclear whether the property managers within these businesses would be licensed, or each individual owner.

The registration of all forms of accommodation?

The previous discussion has centred on a registration model for Short-Term Rentals in WA, in part justified by the need to acquire a more complete picture of market dynamics and develop appropriate policy responses.

The Committee did not receive any evidence to suggest that other jurisdictions have expanded their Short-Term Rental registration schemes to capture the Traditional Accommodation industry.

However, there is a growing convergence of the Traditional Accommodation industry and Short-Term Rentals, as described in section 1.5. Many hotels, motels, holiday homes and B&Bs are advertising their properties on platforms such as Airbnb and Booking.com and Traditional Accommodation providers are also creating their own Airbnb-style platforms.⁴⁵⁸ As this report has discussed, there are also clear relationships between the supply and demand dynamics in the two markets.

State and local government authorities currently possess a significant volume of information about the Traditional Accommodation industry, acquired through existing licensing and registration processes. It would be of value to both State and local government entities to utilise this information when developing policy for the Short-Stay Accommodation and tourism sectors.

The Committee is reluctant to recommend the imposition of an additional reporting requirement on the Traditional Accommodation industry, particularly where registration and

455 Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018, p8.

456 *ibid.*, p6.

457 Submission 126, Tourism WA, p6.

458 Richard Jones, Manager, Geographe Cove Resort, *Transcript of Evidence*, 30 April 2019, p11; Rhys Johnson, Manager/Director, Mandalay Holiday Resort and Tourist Park, *Transcript of Evidence*, 30 April 2019, p10; Henrietta Hughes, Owner/Proprietor, Toby Inlet Bed and Breakfast; *Transcript of Evidence*, p10; Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Answers to Questions on Notice*, 24 May 2019, p3; Jane Purdie, Owner, Rosewood Guesthouse, *Transcript of Evidence*, 1 May 2019, pp3–4.

licensing requirements already exist. Any case for the expansion of registration must have a clearly articulated rationale—particularly if it would notionally duplicate some form of existing process.

Whilst there may not be an immediate case for extending registration requirements to traditional industry participants, State and local government authorities should nonetheless consider how the information they currently collect could be collated in a format that would be useful for broader policy and trend analysis.

Finding 29

All properties providing Short-Term Rentals—both hosted and unhosted—in Western Australia should be registered. This would enable State and local government policy makers to confirm and monitor the size and scope of the sector, and will better inform any resulting regulatory response, and facilitate consistent and effective enforcement.

Finding 30

Any property registration system for Short-Term Rentals needs to be simple, low cost and user-friendly.

Finding 31

Whilst there is no immediate case for extending registration to all forms of Short-Stay Accommodation, State and local governments should consider how to better utilise the information currently gathered under existing registration and licensing schemes for Traditional Accommodation.

Managing a central register

There was a clear preference amongst many Inquiry participants for the State Government to manage a central register of Short-Term Rentals, in part because it would provide the information and regulatory consistency that WA currently lacks (see Chapter 5).

In addition, State management of a single, central register would increase efficiency and simplicity for participants. The online platforms offered support for a uniform approach. Stayz said that the only way the Government could obtain appropriate data was “through a state-wide, compulsory and simple registration system for all properties listed on a short-term rental accommodation platform.”⁴⁵⁹

It was also suggested that a central register would improve the accountability and transparency of local government management of this industry by providing State oversight of their actions.⁴⁶⁰ For example, the Committee received several submissions alleging that some local government councillors and officials are running Short-Term Rentals without planning approval.⁴⁶¹

459 Submission 164A, Stayz, p1; Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p2.

460 Submission 99, Margaret River Guest House, p3.

461 Closed submission 1, p1; Closed submission 53, p2.

Finding 32

A register, with consistent baseline disclosure requirements, will improve the availability of information about the Short-Stay Accommodation sector, improve policy development, and should improve Short-Term Rental regulation across local government authorities.

Need for greater liaison across the State Government

The issues explored in this report in favour of, and opposed to, Short-Term Rentals involve a number of State Government departments, as well as many local governments. Gail McGowan, Director General of the DPLH, said that at this stage her Department had liaised at a broad level with just Tourism WA to consider the impacts of these developments.⁴⁶²

The Committee received a range of suggestions about which WA Government agency should have responsibility for administering a state-wide register. The Australian Hotels Association (WA) (AHA WA) suggested the DPLH.⁴⁶³ The DPLH, meanwhile, struggled to identify a single department that could lead a whole-of-government approach. Director General Gail McGowan told the Committee:

It might not fit neatly, say, in Planning or in Industry Regulation and Safety or in Tourism—if it in fact belongs to a government agency—but you then in a sense charge one agency with leading in that and then coordinating that effort. Given the breadth of the problem, you will not get a solution that sits obviously with one agency or one local government.⁴⁶⁴

She suggested that any consumer protection or compliance function could sit in the “industry regulation and safety space”, although she stressed that she did not want to be speaking on behalf of another agency.⁴⁶⁵

At least one submission supported Tourism WA managing the registration of Short-Term Rentals.⁴⁶⁶ Tourism WA, in contrast, supported the registration model in the DPLH draft *Options Paper* (see options 5.4 and 5.5 in Appendix Six), which involves each local government developing their own unique register.⁴⁶⁷

Despite the clear need for inter-agency collaboration, ‘whole of government’ responses seem limited. Ms McGowan said that although the DPLH had worked with Tourism WA in the past, it had not engaged in discussions about a coordinated approach to Short-Term Rentals since the Inquiry’s commencement.⁴⁶⁸ Ms McGowan’s conversations with other

462 Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 26 June 2019, p4.

463 Submission 182, Australian Hotels Association (WA), p30.

464 Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 26 June 2019, p5.

465 *ibid.*, pp5–6.

466 Submission 62, APIWA, p4.

467 Nathan Harding, Chairman, Tourism WA, *Answers to Questions on Notice*, 30 April 2019, p1.

468 Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 26 June 2019, p3.

agencies about Short-Term Rentals in WA were “at the very broad level ... but not in terms of what might a regime look like.”⁴⁶⁹

Finding 33

Many stakeholders agreed the State Government should manage a central register but there was little consensus on which authority should have primary responsibility for it.

A number of Ministers have an interest in the management of Short-Stay Accommodation, including Planning, Commerce, Housing, Emergency Services, Tourism and Local Government. In Chapter 2, the positive economic impacts of Short-Term Rentals was discussed and, in Chapter 3, the alternative view was put forward by Traditional Accommodation providers. In Chapters 2 and 4, we discussed the relationship between tourism and Short-Term Rental growth. Chapter 4 also addressed housing displacement and affordability and fire safety issues. We identified the important roles that local governments and the planning framework play in regulating Short-Term Rentals in Chapter 5, and recommended specific changes to the Ministers for Planning and Local Government. Later in this chapter, we go on to discuss consumer protection for guests staying in Short-Term Rentals, a matter which falls within the commerce portfolio.

The successful implementation of a registration scheme will depend on clear lines of accountability for the administration of the scheme, and identification of the levers available to enforce mechanisms for non-compliance. Much of the policy work in this area to date has been undertaken through the Minister for Planning. However, the recommendations listed in this report do not refer to a specific Minister unless direct evidence has been presented to the Committee clearly identifying or recommending assignment to a particular portfolio.

Finding 34

A number of agencies and ministerial portfolios have an interest in the regulation of Short-Stay Accommodation. It is vital that the Government clearly identify the lead agency and portfolio with primary accountability for industry regulation.

Recommendation 6

The Ministers for Commerce, Local Government, Planning and Tourism establish an interdepartmental working group to coordinate whole-of-government policy responses for Short-Stay Accommodation.

Registration numbers and Short-Term Rental listings

Inquiry participants submitted that the State Government should issue registration numbers to all Short-Term Rental properties. They also stated that WA’s registration model should be accompanied by laws requiring that advertisements for all Short-Term Rentals on all platforms include registration numbers.⁴⁷⁰ This would reduce the difficulties local governments currently face in identifying Short-Term Rentals and ascertaining whether they

469 Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 26 June 2019, p4.

470 Submission 62, APIWA, p5; Submission 63, Margaret River Guest House, p5; Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p3.

have been approved for that land use or, where applicable, registered under the local law (see Chapter 5).

This requirement would quickly remove Short-Term Rentals that are not compliant with the local laws or policies (see Box 6.2 for the result of Japan’s new Short-Term Rental law). As Augusta-Margaret River Shire Councillor Ian Earl said:

*...for the State to have some legislation that says you must—must—have a shire or local government approval number prominently on your advertising ... I suspect we will get rid of 75 or 80% of the problem.*⁴⁷¹

Mrs Walker, Director of WA HomeStay, also said the requirement to include a registration number on listings would “incentivise” owners to register.⁴⁷²

The use of registration numbers in WA would allow local governments to compare advertisements against their registration information and more easily identify premises that have not been approved for short-term letting and are “breaking the rules”.⁴⁷³ In these cases, it might be that owners have listed a false registration number.

Box 6.2: The impact of Japan’s new registration system on illegal Short-Term Rental listings

The introduction of Japan’s *minpaku* law in mid-2018 saw the effectiveness of an approach requiring registration numbers. Between March and June 2018, the number of illegal Japanese Airbnb listings were said to have dropped by 80%; only premises registered with the Government were able to be advertised and few owners had proven their premises met the rigorous standards before the law came into force.

The national *Private Lodging Business Act* was passed in June 2017 and became effective from 15 June 2018. It requires three types of operators—the ‘private lodging business operator’, the ‘private lodging administrator’ and the ‘private lodging agent’—to register with either a prefectural governor or the mayor of specified cities or the 23 wards in Tokyo. These operators are limited to providing their premises for no more than 180 days a year, with local limits providing for lower ceilings (e.g. historic districts in Kyoto and Nara prefectures).

The new law is complex with ‘private lodging agents’ being registered and supervised by the Japan Tourism Agency; ‘private lodging administrators’ being registered and supervised by the Minister of Land, Infrastructure, Transport and Tourism; and the ‘private lodging business operators’ supervised by the prefectural governor or city mayor.

As there have been few court cases arising from the new law it is unclear whether there are civil or criminal penalties, and who they are levied against or enforced by. An earlier bill to revise the *Travel Agency Act* would allow the government to impose fines of up to ¥1 million (US\$8,800), up from ¥30,000 (US\$260), on unauthorised private lodging operators.

Japan’s Short-Term Rental listings did not remain low for long. Only 2,210 property owners had reportedly registered by the time the *minpaku* law came into force. By April 2019, this had risen to 14,700. There are predictions that the Short-Term Rental market in Japan will double by 2020.

Source: Eri Sugiura, ‘[Airbnb begins to recover in Japan, a year after crackdown](#)’, *Nikkei Asian Review*, 17 April 2019, accessed 7 May 2019; Japan Tourism Agency, [About Private Lodging Business Act](#), nd, accessed 23 July 2019; ‘[Cabinet OKs heavier penalties for unauthorized private lodging operators](#)’, *The Japan Times*, 7 March 2017, accessed 23 July 2019.

471 Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p4.

472 Amanda Walker, Director, WA HomeStay Pty Ltd, *Transcript of Evidence*, 8 May 2019, p5.

473 Submission 30, BnbGuard, p5.

Evidence indicated there will not be widespread inclusion of registration numbers on listings unless it is a legal obligation. Booking.com Regional Manager Tracey Foxall told the Committee, “I think what we would like to see, then, is that it is requirement, versus a goodwill gesture, to ensure that there is a level playing field between platforms.”⁴⁷⁴

Subsequent evidence from Booking.com indicated it supported overseas approaches whereby platforms are “legally obligated” to show registration numbers next to listings.⁴⁷⁵

Getting individual online booking platforms to voluntarily include registration numbers is unlikely to be successful because the market is fragmenting. Although Airbnb is currently the largest online booking platform in WA, the “most active sites” in Sydney and Melbourne are now misterb&b.com (which offers LGBTQ-friendly Short-Term Rentals) and Tujia.com (a Chinese-language site).⁴⁷⁶

International examples suggest that even if one platform voluntarily complies with locally-specific conditions, some Short-Term Rental owners will simply re-list their sites with other platforms. For example, the number of nights an entire dwelling can be rented in a year is capped in Greater London. Airbnb automatically closes bookings for a property once the limit is reached;⁴⁷⁷ however, reportedly owners either re-register their property so it appears as if it is a new listing, or simply begin advertising on a different online booking platform.⁴⁷⁸

Because Short-Term Rental sites are “cheap and easy to set up”, their numbers are rapidly increasing. BnbGuard, an Australian company providing Short-Term Rental accommodation control services to strata companies and local governments, said “most won’t even be aware of the rules, let alone want to cooperate with a government in a foreign country with no ability to enforce demands.”⁴⁷⁹

These developments suggest that failure to include a registration number on an advertisement should result in infringement notices and fines for both the owner and the online booking platform. As discussed in Chapter 5 in relation to fines and infringements for breaches of planning or local laws, these penalties should be high enough to act as a deterrent. For example, the City of Miami Beach, Florida fines owners US\$20,000 for the first violation of its Short-Term

If somebody could just go on to the platforms, check all the ads and see the unique identifier quickly, that would reduce the workload enormously, rather than having to pull up each individual thing. If you have gone onto Airbnb and Stayz and all these platforms, it is very hard to find the address unless you book, so it does take quite a lot of time. If we just could have the unique identifier, that would certainly make compliance a lot less resource intensive for us.

*Pam Townshend, Shire President,
Shire of Augusta-Margaret River*

474 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p3.

475 Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Answers to Questions on Notice*, 24 May 2019, p3.

476 Submission 30A, BnbGuard, p3.

477 Airbnb, [Night Limits in Amsterdam and London: Frequently Asked Questions](#), 17 January 2019, accessed 8 May 2019.

478 Guy Lynn and Aurelia Allen, [‘Airbnb time limits ‘ineffective in London’ councils say’](#), *BBC News*, 10 February 2017, accessed 7 May 2019.

479 Submission 30A, BnbGuard, p3.

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Rental law and an additional US\$20,000 for each subsequent offence up to US\$100,000 (further violations will incur a US\$100,000 fine).⁴⁸⁰

Finding 35

Imposing a requirement that Short-Term Rentals listed by online booking companies include a valid registration number has quickly removed non-compliant Short-Term Rentals in other markets. If introduced in Western Australia, it could also assist local governments to more easily identify unapproved premises.

Finding 36

Online booking platforms are unlikely to voluntarily include registration numbers on their listings in Western Australia.

The effect of requiring Short-Term Rentals to obtain a registration number before listing online, coupled with the increasing occurrence of traditional listings on these platforms, also needs to be considered. The Committee has recommended that the interdepartmental working group considers the treatment of Traditional Accommodation Providers as part of developing a registration scheme, noting that there may be unintended consequences arising from the introduction of a system that requires a particular category of Short-Stay Accommodation provider (Short-Term Rentals) to display registration numbers on an online booking system, but not others (Traditional Accommodation providers).

In San Francisco, Short-Term Rentals must be registered with the City of San Francisco and display their registration numbers on all listings that advertise their premises (see Box 6.3). However, Traditional Accommodation providers are exempt from these regulations. In the “license or registration number” section provided on all San Franciscan Airbnb listings, hotels simply have the words “[I]icense not needed per OSTR [Office of Short-Term Rentals]” rather than the unique registration number that accompanies all Short-Term Rental listings.

Consumer protection and insurances

Questions were raised during the Inquiry about whether guests are sufficiently protected if something goes wrong during their stay at a Short-Term Rental. The Committee received evidence from a guest who, after booking an unhosted Short-Term Rental through Airbnb, arrived at the house to find it “looked like it had never seen a clean in many months.” He noted the dirtiness of the house in the review he made through Airbnb, which the owner subsequently challenged. The owner offered to refund the cost of the guest’s stay, provided the guest withdraw his review from the website. The guest complied but received less than a third of the promised refund. He said he contacted Airbnb but:

...after many emails they wiped their hands of the issue and pursuing a refund as offered by owner because I had been guilty of “using extortion” against the owner and we hadn't taken any photos to substantiate our claims.⁴⁸¹

480 Scott Zamost *et al.*, ‘[Unwelcome guests: Airbnb, cities battle over illegal Short-Term Rentals](#)’, *CNBC*, 24 May 2018, accessed 7 May 2019; Eric Boehm, ‘[Miami Beach Shut Off Home’s Electricity, Water, Over Unpaid Airbnb Fines](#)’, *Reason*, 6 December 2018, accessed 7 May 2019.

481 Submission 192, Miles Leahy, p1.

The Department of Mines, Industry Regulation and Safety (DMIRS) said its Consumer Protection Division has a limited role in relation to the regulation of this industry, as the majority of the regulation occurs under existing local government planning and health laws. Consumer Protection's role occurs within the Australian Consumer Law (ACL) framework, where Short-Stay Accommodation is considered a service. The consumer guarantees in the ACL require that the accommodation service "is provided with due care and skill and that the accommodation is fit for purpose" and prohibits providers from "making statements that are incorrect or likely to create a false impression."⁴⁸²

DMIRS said the ACL applies irrespective of the platform on which the accommodation service is advertised or accessed by consumers, and "irrespective of whether it is a major hotel chain or **a private individual leasing out their home or apartment** within the share economy [emphasis added]."⁴⁸³

This position was reiterated in Airbnb's submission. The online booking platform submitted the Grattan Institute's report, *Peer-to-peer pressure: Policy for the sharing economy*, which said "the Australian Consumer Law (ACL) applies to both platforms and suppliers who are in business. Industry-specific regulation also applies in some cases."⁴⁸⁴

During 2018, Consumer Protection received 103 complaints in relation to Short-Stay Accommodation throughout WA and only 18 (or 17%) of these seem to relate to accommodation in a private individual's premises advertised on Airbnb and Stayz. The majority of complaints that year were in regard to hotels, motels, caravan parks or B&Bs.⁴⁸⁵

The vast majority of complaints from someone booking a Short-Term Rental will be made to the platform they used to make the booking. For example, while Booking.com only has three Australian offices, it:

*...has customer service departments all around the world and we have those covered 24 hours a day, 365 days of the year in up to 43 languages. ... If a property is unwilling or unable for whichever reason to meet its obligations, then Booking.com will facilitate and pay if necessary for any relocations that need to happen, or any support that happens as a result of that.*⁴⁸⁶

Where a guest has had a very poor experience, or where there have been a number of complaints about the property, Booking.com will remove it. For serious cases, they will "immediately delist the property pending a full investigation, and only once we are satisfied in total, we reopen."⁴⁸⁷

482 Submission 180, Department of Mines, Industry Regulation and Safety, p1.

483 *ibid.*

484 Jim Minifie and Trent Wiltshire, *Peer-to-peer pressure: Policy for the sharing economy*, Grattan Institute, 2016, p49 in Submission 160A, Airbnb.

485 Submission 180, Department of Mines, Industry Regulation and Safety, p2.

486 Tracey Foxall, Regional Manager, Booking.com, *Transcript of Evidence*, 8 May 2019, p6.

487 *ibid.*, p7.

Chapter 6

Similarly, Airbnb will remove properties from its platform “if the host receives a number of negative feedback and is not able to show Airbnb the improvements that they are going to make and continues to get bad reviews”.⁴⁸⁸

Airbnb’s global business model is based on consumers trusting their platform, whether as a consumer or a provider of an accommodation service. It told a UK parliamentary inquiry that consumers need to feel secure that:

*...the platform is providing adequate levels of protection, that they are there to resolve any problems, and that the platform is being run in compliance with the law and industry best practices. Industry self-regulation can play a clear part here, as can competition between platforms to provide innovative products such as our ‘host guarantee’.*⁴⁸⁹

As discussed in section 3.3, some online platforms offer people who list on their sites public liability insurance. Questions were raised by some witnesses, however, about the likelihood of Airbnb approving claims made under its Host Protection Insurance. When Short-Term Rental operators list on Airbnb, they tick a box confirming they comply with all local rules and regulations.⁴⁹⁰ It is unclear whether insurance claims would be approved if it was discovered owners had falsely indicated when they registered that they adhered to all local requirements (i.e. were approved by local governments).

Some Inquiry participants warned that, in the absence of specific public liability insurance, local governments may be ultimately liable for any accidents that occur in unauthorised Short-Term Rentals. As Grahaem Donovan, the major shareholder in the Bunbury Apartment Motel and Bunbury Motel, said, “they knew they existed, but they did not take the appropriate steps to protect the public.”⁴⁹¹

Questions were also raised around the liability of a strata company in strata complexes, should guests be injured in common areas that are not compliant with the Building Code of Australia.⁴⁹²

It is difficult to test these assertions as public liability claims relating to Short-Term Rentals are relatively rare. Following the tragic death of four-year-old Marco Seraji at a Queensland property listed and booked through Airbnb, Airbnb’s Australia and New Zealand Manager Sam McDonagh told the ABC:

488 Sam McDonagh, Director, Country Manager Australia and New Zealand, Airbnb, *Transcript of Evidence*, 20 February 2019, p12.

489 Airbnb, ‘[Written evidence, OPL0061](#)’ in House of Lords Select Committee On The European Union Internal Market Sub-Committee (UK), *Online platforms and the Digital Single Market: Oral and written evidence*, October 2015, p31, accessed 1 July 2019.

490 Pam Townshend, Shire President, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p13.

491 Grahaem Donovan, Major Shareholder and Director, Andabrook Pty Ltd, trading as Bunbury Apartment Motel and Bunbury Motel, *Transcript of Evidence*, 30 April 2019, p2. See also Grahaem Donovan, Submission 107A, p1; Submission 70, Stay Margaret River, p3.

492 Submission 39, Peter Goff, p2.

*In 2017, there were more than 49 million trips at Airbnb listings worldwide... Liability insurance incidents (claims under our Host Protection Insurance program) were reported to us 0.001% of the time in countries where the program was active.*⁴⁹³

Marco's death may be an important test case, with one lawyer suggesting his family will not receive any compensation even if the host was covered by Airbnb's Host Protection Insurance. Principal lawyer at Maurice Blackburn, Alison Barrett said the Host Protection Insurance:

*...would generally only kick in when the host or the landlord has been at fault or been negligent for the circumstances of the injury ... For this particular [swing set] case, for example, you would need to prove that the owner of the property was aware or should have been aware that the swing posed a risk to children who used it — and in light of that knowledge, that they then failed to repair the swing or to maintain it or to remove it. If this was a tragic accident that was no one's fault, there will be no compensation payable to the family.*⁴⁹⁴

The NSW Legislative Assembly Committee on Environment and Planning considered the issue of insurance coverage in its Inquiry into the Adequacy of the Regulation of Short-Term Holiday Letting in NSW. Its report found "landlords should hold insurance to cover short-term letting" but did not recommend that it be mandatory.⁴⁹⁵ The NSW Committee heard evidence from insurance representatives that Short-Term Rentals are a "commercial activity and consequently, ordinary household insurance does not provide adequate coverage." It largely left the question to local governments of whether a property owner's insurance is adequate, stating it "could be a matter for a council, referencing the Code in its development control plan and consents".⁴⁹⁶

The draft NSW Code of Conduct was recently released for public comment.⁴⁹⁷ Section 5.4.3 of the draft requires hosts to hold "public liability insurance that is valid for the occupancy period." This insurance must cover the death or injury of a guest or visitor and any damage or loss of a guest's or visitor's property at the premises.⁴⁹⁸

Insurance companies do offer specific products tailored for owners of Short-Term Rental properties advertised on "a recognised sharing economy platform". These policies include 'pay by night' options.⁴⁹⁹

493 Lily Nothling, '[Airbnb liability: What happens if someone dies or is injured during their stay?](#)', ABC News, 26 September 2018, accessed 24 May 2019.

494 *ibid.*

495 Legislative Assembly Committee on Environment and Planning (NSW), [Adequacy of the Regulation of Short-Term Holiday Letting in New South Wales](#), October 2016, p20, accessed 18 June 2019.

496 *ibid.*, p21.

497 Department of Planning, Industry and Environment (NSW), [Have your say on short-term-rental accommodation reforms](#), 14 August 2019, accessed 21 August 2019.

498 Department of Planning, Industry and Environment (NSW), [Draft Code of Conduct for the Short-Term Rental Accommodation Industry](#), 14 August 2019, pp8-9, accessed 21 August 2019.

499 Share Cover, [What is and isn't covered?](#), nd, accessed 19 July 2019.

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However, as noted in section 3.3, it is not compulsory for other businesses in WA to have public liability insurance, so such a requirement may be regarded as an unfair burden on the Short-Term Rental industry.

Finding 37

Short-Term Rental providers may not hold adequate public liability insurance, leaving them personally liable if a guest is injured due to the owner's fault or negligence. This may place consumers at considerable risk.

Recommendation 7

The interdepartmental working group should:

1. Establish the baseline requirements for a state-wide registration scheme, including:
 - a. the minimum information required for both hosted and unhosted premises;
 - b. the cycle of registration;
 - c. registration costs for the State register (separate from any additional local government fees, charges or costs);
 - d. the most appropriate agency to hold the register; and
 - e. the treatment of Traditional Accommodation providers.
2. Determine the legal mechanisms through which the State Government can introduce and enforce a registration scheme, including consequences for non-compliance.
3. Determine the most appropriate mechanism to collect and manage the registration data.
4. Determine the information disclosure requirements for online platforms and appropriate enforcement mechanisms.
5. Determine information sharing mechanisms between State and local government authorities, including information gathered under existing registration and licensing regimes for Traditional Accommodation.
6. Determine what information, if any, should be made publicly available.
7. Ensure that local governments maintain the ability to require the provision of additional information and impose additional licensing or operational requirements, depending on their particular circumstances.

The interdepartmental working group's activities should incorporate appropriate consultation mechanisms with local government authorities and relevant stakeholders.

6.4 Validation and data provision by online booking platforms

Validation of registration numbers before listing Short-Term Rentals

Several Inquiry participants submitted that online booking platforms should be required to confirm that all Short-Term Rentals are approved before listing them on their sites (i.e. confirming their registration numbers are valid).⁵⁰⁰

This would reduce the monitoring and enforcement burden on local government. As the Shire of Broome submitted, it would help local governments to avoid “a reactive process of compliance which it is often not resourced to address.”⁵⁰¹

Online booking platforms have the capacity—but not necessarily the motivation—to validate registration numbers. Booking.com suggested not only could it set up a mandatory field that owners were required to fill in before their Short-Term Rental could be listed, but it could actually check whether the registration number was valid. Public Affairs Head Kees Jan Boonen said:

*Similar to a credit card that checks the numbers, we can check if the numbers are correct, if it is the right field et cetera. So we do that due diligence on our side whether that registration number is correct.*⁵⁰²

However, Mr Boonen later qualified his statement, saying:

*Booking.com (as an intermediary) is not responsible for validating registration numbers in any jurisdiction we operate. If a government decides to implement a legal registration requirement, of which we are supportive, **it is of our opinion that the enforcement must remain with the Government** [emphasis added].*⁵⁰³

Online booking platforms have complied with other international jurisdictions’ legal requirements to include registration numbers. For example, properties listed on Airbnb in Japan, Barcelona and San Francisco must display registration numbers.

Some platforms have been less amenable to laws in some jurisdictions that make them responsible for verifying properties’ registration. Airbnb sued New York City in 2016 after it became illegal to advertise entire apartments as unhosted accommodation. The platform agreed to settle a month and a half later, on the proviso that “New York City only enforces the new law against hosts and does not fine Airbnb itself.”⁵⁰⁴

500 Kirsten Wood, Manager Planning and Building Services, Shire of Broome, *Transcript of Evidence*, 24 May 2019, p2; Submission 188, Tourism Council WA, p19; Submission 75, City of Busselton, pp14, 16; Ian Earl, Shire Councillor, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p3.

501 Submission 13, Shire of Broome, p4.

502 Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Transcript of Evidence*, 8 May 2019, p3.

503 Kees Jan Boonen, Head of Public Affairs, APAC, Booking.com, *Answers to Questions on Notice*, 24 May 2019, p1.

504 Andrew Liptak, [‘Airbnb has settled its lawsuit with New York City over Short-Term Rental fines’](#), *The Verge*, 3 December 2016, accessed 3 May 2019.

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In late 2018, the City of Miami Beach introduced a new law requiring online platforms to list the business licence and resort tax registration numbers for properties listed on their site. Airbnb later sued the City on the basis that the requirement to list business licence and resort tax registration numbers violated federal law, and contended that websites could not be held responsible for third-party content on their platforms. This action has not yet concluded.⁵⁰⁵

Finding 38

Although online booking platforms have the capacity to validate registration numbers before listing Short-Term Rentals, they have resisted this role in other jurisdictions.

Finding 39

Online booking platforms should be required to display a valid registration number issued under the registration scheme.

Recommendation 8

The relevant Minister should ensure, through appropriate legislative or regulatory mechanisms, that online platforms are required to display a valid registration number for Short-Term Rentals, issued under the registration scheme.

The interdepartmental working group should consider and provide advice to the Minister on the appropriate requirements for Traditional Accommodation.

Sharing relevant data with the State Government

In addition to the information provided by owners through a State registration process, the provision of data held by online platforms would maximise the effectiveness of a registration system.

Also, if local governments place nightly caps on Short-Term Rentals as a condition of registration (see section 6.6), the only way the local government can confirm the owner has complied is by accessing letting information from online booking platforms.

Many submissions from the Traditional Accommodation industry, including from AHA WA, demanded that online booking platforms “share relevant data with authorities.”⁵⁰⁶

BnbGuard recommended that governments develop “platform-agnostic solutions” when regulating the Short-Term Rental industry, and ideally platforms would be required to:

*...send host and booking data directly to any government that wanted it, and enforce any local rules directly. This is not technically difficult to do for larger players, though it is bad for business, and so rarely done.*⁵⁰⁷

505 Taylor Dolven and Kyra Gurney, ‘[Airbnb sues Miami Beach over new rules requiring rental sites to police listings](#)’, *Miami Herald*, 4 January 2019, accessed 7 May 2019.

506 Submission 182, Australian Hotels Association (WA), p32; Submission 41, Ramada Vetroblu Scarborough Beach, p2; Submission 57, Summerstar Tourist Parks, p3; Submission 60, Name withheld, p1; Submission 80, Name withheld, p1.

507 Submission 30, BnbGuard, p10.

The large platforms are already providing data to comply with accommodation limits in some international jurisdictions, as summarised in Table 6.1. Chris Lehane, Airbnb's Global Head of Policy, acknowledged that "[w]e've passed over 500 government partnerships around the world, many many of those include sharing data."⁵⁰⁸

Airbnb is seen by some as one of the industry's better players in this regard. BnbGuard said while Expedia is battling to avoid regulations in jurisdictions such as New Orleans, Airbnb is sharing host data with governments in over 20 jurisdictions.⁵⁰⁹ Since 2018, for example, it has shared information with Spanish tax authorities that includes the number of days a dwelling has been let.⁵¹⁰

In 2016, Airbnb also trialled the Friendly Buildings Program in the United States of America, sharing its apartment letting data with buildings' strata companies. Once signed up to the program, strata companies could access details of the Airbnb lets in their buildings, cap the number of nights the Short-Term Rentals could be let and receive a 5% to 10% commission on every booking.⁵¹¹ This program is now offered in Canada and Australia, but is only available in buildings where the by-laws do not prohibit Short-Term Rentals.⁵¹²

Other Australian jurisdictions are establishing frameworks that enable the State to obtain data from online booking platforms. In Tasmania, recently-passed legislation will require all online platforms offering Short-Term Rentals in the State's residential zones (under current planning schemes) to provide their data quarterly to the newly-created Director of Building Control. Enforcement of the new requirements in Tasmania's *Short Stay Accommodation Act 2019* will be the responsibility of the Director of Building Control. Local planning authorities will retain their role in enforcing requirements under the *Land Use Planning and Approvals Act 1993* (Tas).⁵¹³

The new Tasmanian Act commenced on 4 June 2019 and includes a six-month transition period. Short-Stay Accommodation businesses hosted on platforms that do not need to comply with this Act include "premises that are constructed or renovated for use as a hotel, motel or caravan park."⁵¹⁴

At the conclusion of the transition period, booking platforms will be penalised if they publish listings without a registration number or do not provide the

The Tasmanian Parliament recently passed nation-leading legislation establishing a state-wide data sharing partnership with online STRA [Short-Term Rental Accommodation] platforms like Stayz. ... We believe a similar policy approach would also work in WA.

Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway)

508 Lisa Visentin and Alexandra Smith, '[NSW government to impose 180-night cap on Airbnb properties in Sydney](#)', *Sydney Morning Herald*, 5 June 2018, accessed 3 July 2019.

509 Submission 30, BnbGuard, p10.

510 Airbnb, [Tax data sharing in Spain: Frequently Asked Questions](#), nd, accessed 6 May 2019.

511 Airbnb, [Airbnb Friendly Buildings Program](#), nd, accessed 5 July 2019; Jimmy Thomson, '[Airbnb's latest Friendly Buildings Program could help anti-holiday letting campaigners in NSW](#)', *Domain*, 21 March 2017, accessed 5 July 2019.

512 Denise Lash, '[Updates to Airbnb's Friendly Buildings Program](#)', *Lash Condo Law*, 3 April 2019, accessed 5 July 2019.

513 Hon Leonie Hiscutt, Leader of the Government, Legislative Council (Tas), *Hansard*, 22 May 2019.

514 *ibid.*

required data to the Director of Building Control. Penalties for the platforms are a maximum of \$16,300 per premises and a recurring penalty of up to \$1,630 per day. Owners of Short-Term Rentals can also be fined up to \$8,150 per premises if they list their site on a platform without providing the required information, or if they provide misleading information.⁵¹⁵

The NSW Short-Term Rental industry is also undergoing reform. The *Fair Trading Amendment (Short-Term Rental Accommodation) Act 2018 (NSW)* was assented to in August 2018. This Act includes a Code of Conduct that will apply to Short-Term Rental industry participants and may:

- *provide for the registration of residential premises used for the purposes of Short-Term Rental accommodation arrangements and for the registration system to include details about when residential premises are used for those purposes;*⁵¹⁶ and/or
- *require the provision of information or reports to the Secretary relating to the Short-Term Rental accommodation industry and the operation of the code.*⁵¹⁷

Companies that breach the Code of Conduct will face significant financial penalties, including fines of up to \$1.1 million. Fines for individuals will be up to \$220,000.⁵¹⁸

The draft Code of Conduct, which was recently released for public feedback, does not include a registration system. However, the NSW Government is still considering introducing an industry-led register. In a discussion paper on the new regulatory framework, it indicated that it regards the Short-Term Rental industry as the “best placed to administer the register” because

*industry participants already hold much of the information that would need to be included in an effective STRA property register ... [and] also has in place exiting systems and processes that collect real-time STRA data.*⁵¹⁹

Following the 2018 announcement of the NSW reforms, Mr Lehane, Airbnb’s Global Head of Policy, said “Airbnb was comfortable with sharing its data with government agencies.”⁵²⁰ Yet, until the scope, intention and outcomes of the proposed industry-led register are finalised, it is unclear whether the platform will be required to do so.

515 Department of Justice (Tas), [Short Stay Accommodation Act 2019: Overview](#), June 2019, accessed 4 July 2019.

516 *Fair Trading Amendment (Short-Term Rental Accommodation) Act 2018*, (NSW), s. 54B(2)(c).

517 *ibid.*, s. 54B(2)(e).

518 Lisa Visentin and Alexandra Smith, ‘[NSW government to impose 180-night cap on Airbnb properties in Sydney](#)’, *Sydney Morning Herald*, 5 June 2018, accessed 3 July 2019.

519 New South Wales Government, *Short-Term Rental Accommodation: A new regulatory framework discussion paper*, Sydney, August 2019, p15.

520 Lisa Visentin and Alexandra Smith, ‘[NSW government to impose 180-night cap on Airbnb properties in Sydney](#)’, *Sydney Morning Herald*, 5 June 2018, accessed 3 July 2019.

Provision of data by other industry participants

Data can also be provided by companies not associated with the online platforms, such as AirDNA and BnbGuard.⁵²¹ BnbGuard is already providing the City of Busselton with regular reports from over 50 Short-Term Rental websites. These reports include data such as host names, availability, description and expected revenue, as well as the actual property address of listings.⁵²²

BnbGuard's service comes at a cost. The City will pay it around \$20,000 during 2019–20.⁵²³ The City confirmed that this service was assisting its compliance efforts:

*The information we are now getting from BnBGuard does seem to credibly identify real addresses, and may in fact be sufficient evidence to identify a place as an unapproved holiday house for compliance purposes.*⁵²⁴

BnbGuard acknowledges that it cannot always identify all of the listings in an area. Although it successfully identifies more than 80% of standalone property listings, it struggles to identify the specific lots within a multi-dwelling premises, such as apartment buildings, because of the minimal information that is publicly available. BnbGuard technology identifies Short-Term Rental addresses by automatically comparing listing data against other public data.⁵²⁵

Airbnb was critical of the accuracy of data provided by third parties about its letting operations, describing it as “neither accurate nor reliable.” It said that data from such companies was unreliable as it confused an entire home listing with entire homes, while they could be a granny flat. Another error it claims for this data is that it cannot “accurately differentiate between a listing that is booked or rented and a listing that is simply blocked out.”⁵²⁶

Regulators would not need to rely on third parties if the data they required was provided by the online platforms.

Finding 40

Major online platforms are complying with requirements to share their Short-Term Rental data with governments in many jurisdictions, including in Tasmania. Where they do not, there are alternate sources for this data but online platforms claim this data is not accurate.

521 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p3.

522 Submission 30A, BnbGuard, p1.

523 Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p3.

524 Paul Needham, Director, Planning and Development Services, City of Busselton, Email, 3 May 2019, p1.

525 Submission 30A, BnbGuard, pp1–2.

526 Brent Thomas, Head of Public Policy, Australia and New Zealand, Airbnb, *Answers to Questions on Notice*, 10 April 2019, p3.

Recommendation 9

The relevant Minister prepare regulations requiring online platforms to provide data on all Short-Term Rental properties listed in Western Australia to the government agency with primary responsibility for the state-wide registration system, on a disclosure cycle to be recommended by the interdepartmental working group.

6.5 Should information on the register be publicly available?

It was submitted to the Committee that information listed on a Short-Term Rental register should be publicly available. This would serve a number of functions, including enabling guests to verify that they are renting compliant premises.⁵²⁷

Publicly available data would also allow prospective home owners to determine whether neighbouring homes are Short-Term Rentals and consider the impact this might have on the enjoyment of the property. Currently, there is no way for potential purchasers to easily ascertain whether this is a material risk to their purchase. As Christina Newton outlined, finding yourself as the neighbour of a Short-Term Rental can greatly impact your quality of life:

We have had guests staying at these short-stay properties that have allowed their kids to start screaming at 5.30 in the morning. We have also been verbally abused by guests staying there. We have been repeatedly subjected to their rowdy drinking games, parties and foul language until very late into the night. ... We have had guests looking over our fence commenting about our vehicles, commenting about our dog and even watching our child playing in our backyard. They have even flown drones only metres above our house. ... We have had guests repeatedly leaving their dogs unattended at these properties, because we can hear them barking all day. The same guests are then throwing their cigarette butts and dog faeces over our fence into our backyard.⁵²⁸

If the register included property ownership and/or management details, it would also enable aggrieved neighbours to lodge complaints about amenity issues experienced at the property. The same result could, however, be achieved with compulsory signage on Short-Term Rentals, identifying the short-stay use and listing the property manager's contact details, as is currently required by the Shire of Augusta-Margaret River,⁵²⁹ and the City of Fremantle.⁵³⁰

At least three international jurisdictions have developed a publicly available register for Short-Term Rentals. Guests staying at Miami Beach are able to enter the street number and street name of their Short-Term Rental and, if it is listed, confirm the premises is properly authorised. If the Short-Term Rental is not listed, guests are encouraged to contact the City

527 Submission 99, Margaret River Guest House, p3.

528 Christina Newton, Resident, *Transcript of Evidence*, 1 May 2019, pp9–10.

529 Shire of Augusta-Margaret River, *Local Planning Policy 7: Short Stay Accommodation*, September 2018, clause 5.

530 City of Fremantle, *Short Stay Accommodation Local Law 2008*, clause 2.4.

of Miami Beach.⁵³¹ This process provides the City with another mechanism through which to identify non-compliant Short-Term Rentals.

After concerns raised by Governor Charlie Baker, the Massachusetts House and Senate leaders agreed on a Bill in December 2018 to regulate Short-Term Rentals. In addition to a new tax, the Bill establishes a state-wide registry to operate from 1 July 2019. Aspects of the registry will be publicly available, including the street name of the premises, but not the street number.⁵³²

The City of Barcelona has developed a website for guests to detect if they have booked an unlicensed tourist flat. The City encourages tourists to ensure their Short-Term Rental is licensed before they book it, and if they discover it is not, then to report it to the City to “help us to fight fraud.”⁵³³

The Committee did not receive any evidence about the risks associated with a public register, such as the privacy and security implications for owners of Short-Term Rentals. It is open to the State Government to limit the publication of certain categories of information it collects for its Short-Stay Accommodation registration database to address any privacy issues, whilst pursuing other legitimate public policy outcomes.

Western Australia already has public registers, including for permanent liquor licences, current approved manager licences and various security licences. An examination of these registers suggests only businesses have their physical addresses listed; the information publicly available for individual licence holders is just their names and licence number.⁵³⁴

Finding 41

A publicly available register of Short-Term Rentals would enable guests to confirm the compliance of their Short-Term Rentals; local governments to uncover unregistered Short-Term Rentals; prospective property owners to identify Short-Term Rentals in their desired neighbourhood; and aggrieved existing neighbours to lodge complaints and have their amenity impacts addressed.

As the Committee has already recommended in Recommendation 7(6), the privacy implications of a public register should be considered by the interdepartmental working group.

6.6 Beyond baseline data: conditional registration, licensing and the role for local governments

Beyond the light-handed ‘information provision’ approach recommended for the state-level registration scheme, there was general agreement that local governments should determine

531 City of Miami Beach, [Practice Safe Renting](#), 2019, accessed 8 July 2019.

532 Zeninor Enwemeka, ‘[What To Know About The Mass. Bill To Regulate Airbnb](#)’, *wbur*, 21 December 2018, accessed 22 July 2018.

533 Ajuntament de Barcelona, [Flat Detector](#), nd, accessed 23 August 2019.

534 Racing, Gaming and Liquor, [Find a Licence](#), nd, accessed 8 July 2019; Western Australia Police Force, [Current Licence Holders](#), 18 June 2019, accessed 8 July 2019.

other conditions of registration or licensing requirements.⁵³⁵ As one local government explained, this model would allow “a degree of variability in the approach taken by individual local governments”.⁵³⁶

The City of Busselton suggested that the registration model could mirror WA’s administration of liquor licences.⁵³⁷ Under the *Liquor Control Act 1988*, the Department of Local Government, Sport and Cultural Industries (DLGSC) grants liquor licences. However, all liquor licence applications must include certificates from their local government confirming that their premises comply with planning laws and the relevant health, food, and building requirements. DLGSC cannot finalise an application until the certificates are provided.⁵³⁸

Internationally, this approach is already applied. In Barcelona, owners apply for a Short-Term Rental licence from their local council. Their properties must meet certain requirements, which are determined by individual local councils. If the local council approves the application, it then sends the relevant information to the State tourism agency. This body issues the unique registration number showing the owners are licensed and lists them on the Catalan Tourism Register.⁵³⁹

Short-Term Rental owners in Portugal follow a similar registration process, although the registry is maintained at a national level.⁵⁴⁰

Applying the registration scheme to address local issues: conditional registration and licensing

There was strong support for the proposition that local governments should retain the ability to address local conditions.

The Committee has recommended a ‘light touch’ registration scheme that is intended to have minimal cost and information provision obligations. It aims to collect information, but obviously would not, in itself, operate to address the many local issues raised in this inquiry. The register can, however, be used by local governments as a tool to develop appropriate responses to many local issues highlighted in this Inquiry.

535 Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway), *Transcript of Evidence*, 20 February 2019, p6; Paul Needham, Director Planning and Development Services, City of Busselton, *Transcript of Evidence*, 30 April 2019, p14; Submission 125, City of Rockingham, p1; Submission 126, Tourism WA, p4; Submission 177, Habitat Resource Broome, p3; Submission 188, Tourism Council WA, pp18, 19; Kees Jan Boonen, Head Public Affairs, APAC, Booking.com, *Transcript of Evidence*, 8 May 2019, p2; Submission 182, Australian Hotels Association (WA), p30; Submission 42, WA HomeStay, pp2–3.

536 Submission 75, City of Busselton, p14.

537 *ibid.*

538 Department of Local Government, Sport and Cultural Industries, [New Licence Applications Online: Information Bulletin and Lodgement Checklist](#), nd, accessed 17 July 2019.

539 C. Pforr, M. Volgger and K. Coulson, [The Impact of Airbnb on WA’s Tourism Industry](#), Bankwest Curtin Economics Centre, October 2017, p72, accessed 14 June 2019; Airbnb, [Catalonia’s Home Sharing Registration Process: Frequently Asked Questions](#), 6 August 2018, accessed 17 July 2019.

540 Eacham Curry, Director, Government and Corporate Affairs, Expedia Group (Stayz/HomeAway), *Transcript of Evidence*, 20 February 2019, pp4–5; Airbnb, [Portugal’s Registration Process: Frequently Asked Questions](#), nd, accessed 28 May 2019.

Box 6.3: San Francisco's management of Short-Term Rentals

Many of San Francisco's regulations seek to address commercialised sharing and the diversion of housing stock to short-term letting. Short-Term Rentals are defined as properties let for less than 30 consecutive nights.

Since 2014, Short-Term Rental owners in San Francisco have been required to register with the City. They must be a permanent resident of the Short-Term Rental (i.e. must spend at least 275 nights a year at the premises) and have lived there for at least 60 days before applying. In practice, this means owners are only able to rent out the unit in which they live. Proof of residency must accompany registration applications.

Affordable housing types (such as public housing units or single room occupancy) cannot be used as Short-Term Rentals.

Owners must also meet the following conditions:

- have registered with the City as a business and obtained a Business Registration Number.
- have registered with the City as a Short-Term Rental. A certificate number from the City office responsible for the administration of regulations must be included in all listings. As at July 2019, a US\$250 application fee applied and the registration was valid for two years.
- only let 90 unhosted nights per calendar year. (There is no limit to the number of nights the premises can be let as hosted accommodation).
- maintain property liability insurance of at least US\$500,000.

Since 2016, online booking platforms have been prohibited from taking booking fees from unregistered hosts. Online booking platforms are further required to:

- submit a monthly affidavit to the City affirming that they have exercised reasonable care to verify hosts using their service are lawfully registered with the City; and
- maintain business records for no less than the prior three years for each of their hosts and Short-Term Rental transactions, and provide this information to the City upon request.

In response, Airbnb and HomeAway sued the City in the Federal Court and the law was temporarily put on hold. After settling in 2017, however, Airbnb agreed to work with the City to register hosts and collect data from people who list their premises for under 30 days.

Airbnb now offers a "pass-through" registration system, which allows owners to apply for a short-term Residential Rental Certificate and Business Registration Certificate through its site. Owners can advertise their properties while the City considers their application but if it is declined, Airbnb must remove the listing and cancel any reservations that commence seven or more days from the rejection date.

Owners must submit quarterly reports to the City, listing all short-term stays that have occurred in the period. They must also renew their business registration annually.

The requirement for booking platforms to ensure any listed properties are registered began to be implemented in January 2018 and resulted in the number of Airbnb listings reducing by around 55% between August 2017 and January 2018.

Source: Submission 145, Edith Cowan University, p12; San Francisco Business Portal, *Short-Term Residential Rental Guide*, City of San Francisco, San Francisco, 2017; Airbnb, [San Francisco's Registration Process: Frequently Asked Questions](#), nd, accessed 8 July 2019; C. Pforr, M. Volgger and K. Coulson, [The Impact of Airbnb on WA's Tourism Industry](#), Bankwest Curtin Economics Centre, October 2017, p71, accessed 14 June 2019; Michelle Robertson, [Here's how much California Airbnb hosts make on average](#), SFGATE, 17 January 2019, accessed 8 July 2019.

Any additional burdens imposed by local governments would move the regime beyond mere data provision (required for the light touch state-level registration scheme recommended by the Committee) and into the realm of conditional registration and licensing.

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Local governments can use the registration process to require that owners and their premises meet additional specific requirements before they can be registered. For example, if the registration process depended on the production of some form of registration certificate, a local government could place conditions on registration certificates to address particular local amenity issues associated with Short-Term Rentals.⁵⁴¹ Requirements may differ depending on the impact that Short-Term Rentals are having on a community (see Figure 1.2 for the rates of listings by local government), or the specific issue a local authority wishes to address, such as bushfire safety.

The 'policy levers' available to local governments include approving or refusing registration applications according to:

- the dwelling type;
- the location of the premises;
- whether it is hosted or unhosted;
- whether it is a principal place of residence; and/or
- the owners' insurance coverage.⁵⁴²

Box 6.3 outlines how San Francisco uses some of these policy levers to manage Short-Term Rentals.

Local governments could attach specific conditions for registration, including the maximum number of occupants or attendees at the premises at any one time; a manager who is able to respond to complaints or requests within a specified period of time; the amount of off-street parking to be provided for guests; and changes to rating levels. Maximum or minimum nightly caps received considerable attention during the Inquiry, and stakeholders' positions about this condition are outlined below.

It remains unclear whether placing such conditions on registration certificates would first require local governments to introduce a local law for Short-Term Rentals. The Committee asked the DPLH its view on whether a registration program under a local law was a stronger justification for introducing differential rates than development approval. It responded:

*Local laws are made under the Local Government Act 1995. The Department of Local Government, Sport and Cultural Industries administer the provisions of the Local Government Act. As such, the DPLH is not able to offer a view on this matter.*⁵⁴³

541 Kees Jan Boonen, Head Public Affairs, APAC, Booking.com, *Transcript of Evidence*, 8 May 2019, pp2-3; Submission 182, Australian Hotels Association (WA), p30.

542 Professor Kerry Brown, Director, Centre for Innovative Practice, School of Business and Law, Edith Cowan University, *Transcript of Evidence*, 10 April 2019, p7.

543 Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Answers to Questions on Notice*, 2 July 2019, p2.

Even if a premises or owner meets the requirements for registration, approval may not be guaranteed. When Berlin introduced its licensing system in 2018, for example, City officials predicted they would likely reject 95% of permit applications due to a housing shortage.⁵⁴⁴

As outlined in Chapter 5, some WA local governments are already using these policy levers through their local laws or planning approval processes. A state-wide registration system would enable them to continue to do so. Other local governments might be encouraged to introduce similar requirements or conditions, where necessary. Unlike the current situation, the policy levers would not be undermined by the enforcement difficulties arising from an inability to locate non-compliant Short-Term Rentals.

Finding 42

Local governments should have the ability to determine any additional conditions or licensing requirements for the registration of a Short-Term Rental. This would allow them to retain the flexibility to respond to local conditions.

Recommendation 10

The relevant Minister introduce a state-wide registration scheme for Short-Term Rentals based on the parameters developed by the interdepartmental working group, coupled with data provision requirements for online platforms.

Local government authorities should be responsible for:

- approving additional registration requirements for properties within their boundaries;
- developing additional registration criteria, suited to their particular circumstance;
- enforcing compliance with their local controls;
- managing complaints about Short-Term Rentals; and
- setting and imposing penalties for non-compliance with local requirements.

The process for information collection and disclosure should be developed by the interdepartmental working group, in consultation with local government.

Introducing minimum or maximum caps on nights

A proposal that received considerable attention was the potential for local governments to cap the number of nights a Short-Term Rental can be let. Those who favoured these limits included stakeholders operating in the Traditional Accommodation industry, who suggested there should be a minimum stay of either seven or 14 nights placed on Short-Term

⁵⁴⁴ Philip Oltermann and Stephen Burgen, '[Berlin and Barcelona use sleuths to root out illegal holiday lets](#)', *The Guardian*, 21 May 2018, accessed 30 May 2019.

Rentals.⁵⁴⁵ The seven day minimum was suggested as this is the minimum historically used for holiday homes in the South West.⁵⁴⁶

The Margaret River Guest House argued Short-Term Rentals should not be able to operate for a one or two night minimum stay so they are not directly competing with hotels, motels, and bed and breakfasts (B&Bs). Such short stays led to “unhosted properties in the short-stay market [and] allows weekend party houses to disrupt residents and neighbours on a regular basis.”⁵⁴⁷

Some submissions suggested that there should be a cap on the maximum number of nights a premises can be let within a calendar year. Suggestions ranged from 28 days through to the 90-day limit currently applied in parts of the United Kingdom and US.⁵⁴⁸ Data site Inside Airbnb provided data showing that the majority of ‘entire home’ Airbnb listings in WA are being rented for more than 30 days per year, and nearly a third are being rented for more than 90 nights per year.⁵⁴⁹ It supported a maximum cap of 90 days, as is used in a number of overseas jurisdictions, such as Madrid and Berlin (see Table 6.1).

Table 6.1: International jurisdictions’ caps on Short-Term Rental availability

Jurisdiction	Details of the cap
France	Paris and 17 regional cities have capped entire homes to 120 nights per calendar year. ⁵⁵⁰
Germany	Berlin residents are limited to 90 days per year for a second, unhosted, home. ⁵⁵¹
Japan	Properties can only be rented out for 180 nights per year. Additional restrictions have been introduced in some cities. ⁵⁵²
New Zealand	The Queenstown Lakes District Council has a 28-day cap in its outer residential zones and a 90-day cap in the centre of Queenstown. ⁵⁵³
Spain	The City of Madrid has a 90-day cap in response to the effect of overconcentration of tourists in the central district. ⁵⁵⁴
The Netherlands	Amsterdam City Council has lowered its cap from 60 to 30 days per calendar year, but has been unable to enforce it with Airbnb. ⁵⁵⁵
United Kingdom	The UK Government has capped the number of nights a whole property can be rented in Greater London to 90 nights per calendar year. Airbnb automatically closes bookings for a premises once it has reached the limit. ⁵⁵⁶
United States of America	It is illegal for an apartment in New York City to be rented out for less than 30 days, unless the permanent resident is present. ⁵⁵⁷ San Francisco residents can only let their principal place of residence, and unhosted accommodation is capped at 90 days. ⁵⁵⁸

545 Submission 31, Name withheld, p2; Submission 40, Mandalay Holiday Resort, p3; Submission 133, Select Stays, p4.

546 Submission 130, Registered Accommodation Providers of the Margaret River Region, p6.

550 Airbnb, [Night Limits in France: Frequently Asked Questions](#), 2019, accessed 3 July 2019.

551 It appears owners renting out less than 50% of their residence are also required to obtain a registration number, but this is provided free-of-charge from the respective district office. See Airbnb, [Berlin](#), nd, accessed 7 May 2019.

552 ‘[Airbnb says forced to cancel bookings under new Japan law](#)’, *Asia One*, 8 June 2018, accessed 7 May 2019; Eric Johnston, ‘[Let’s discuss Airbnb and minpaku laws](#)’, *The Japan Times*, 18 June 2018, accessed 7 May 2019; Rethink Tokyo, [The future of Airbnb in Japan: Cloudy, with a strong chance of bureaucracy](#), 22 May 2018, accessed 7 May 2019.

553 Amanda Cropp, ‘[Hospitality industry gives thumbs up to Queenstown crackdown on Airbnb](#)’, *Stuff*, 9 November 2017, accessed 5 July 2019.

In Australia, the NSW Government is considering amendments to its planning rules to limit unhosted Short-Term Rentals to no more than 180 days per year in Greater Sydney. Initially, there will be no limits throughout NSW for hosted Short-Term Rentals, although councils outside of Greater Sydney will be able to introduce a cap no lower than 180 days for unhosted premises.⁵⁵⁹

In February 2019, the NSW Minister for Planning and Housing announced that, due to the high concentration of Short-Term Rentals in some parts of Byron Shire, he would issue a Ministerial Direction inviting the Shire Council to prepare a Planning Proposal to introduce a 90-day cap for unhosted accommodation in the Shire's most impacted towns.⁵⁶⁰

Finding 43

A number of jurisdictions place caps on the number of nights that unhosted Short-Term Rentals can be let.

Short-Term Rental supporters disagreed with the proposal to regulate the number of letting nights. Some argued it could make holidays unaffordable for most working families.⁵⁶¹ One submission noted that “[v]irtually no guest stays in Perth a minimum of 14 nights while on a holiday. Would the AHA members wish to follow the same guideline?”⁵⁶² Airbnb said that there should be no restriction on the number of nights hosted by a Short-Term Rental in WA for “principal places of residence.”⁵⁶³

Bernie Masters said that for hosts, the “cost of a one night stay is higher than for multiple nights because of cleaning and servicing fees”. Mr Masters also argued against a maximum limit of 180 days as “[t]his unreasonably restricts the ability of a person’s right to use their property in ways that they choose.”⁵⁶⁴

551 It appears owners renting out less than 50% of their residence are also required to obtain a registration number, but this is provided free-of-charge from the respective district office. See Airbnb, [Berlin](#), nd, accessed 7 May 2019.

552 [‘Airbnb says forced to cancel bookings under new Japan law’](#), *Asia One*, 8 June 2018, accessed 7 May 2019; Eric Johnston, [‘Let’s discuss Airbnb and minpaku laws’](#), *The Japan Times*, 18 June 2018, accessed 7 May 2019; Rethink Tokyo, [The future of Airbnb in Japan: Cloudy, with a strong chance of bureaucracy](#), 22 May 2018, accessed 7 May 2019.

553 Amanda Cropp, [‘Hospitality industry gives thumbs up to Queenstown crackdown on Airbnb’](#), *Stuff*, 9 November 2017, accessed 5 July 2019.

554 Submission 145, Edith Cowan University, p8.

555 [‘Amsterdam fails to reach deal with Airbnb on holiday rental rules’](#), *DutchNews.nl*, 27 February 2019, accessed 4 July 2019.

556 Guy Lynn and Aurelia Allen, [‘Airbnb time limits ‘ineffective in London’ councils say’](#), *BBC*, 10 February 2017, accessed 7 May 2019.

557 C. Pforr, M. Volgger and K. Coulson, [The Impact of Airbnb on WA’s Tourism Industry](#), Bankwest Curtin Economics Centre, October 2017, pp68–69, accessed 14 June 2019.

558 *ibid.*, p70.

559 Department of Planning and Environment (NSW), [Proposed amendments to planning rules](#), 20 May 2019, accessed 3 July 2019.

560 Department of Planning and Environment (NSW), [Short-Term Rental accommodation in Byron Shire](#), 20 May 2019, accessed 3 July 2019.

561 Submission 249, Amber Lamprecht, p1.

562 Submission 74, Name withheld, p1.

563 Submission 160, Airbnb, p20.

564 Submission 45, Bernie Masters, p1.

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The Chamber of Commerce and Industry of WA proposed that implementing restrictions on the amount of nights a host can share their property will be a “complex bureaucratic process and create further confusion around the compliance obligations of prospective hosts.”⁵⁶⁵

When a Short-Term Rental is listed as unavailable on an online booking platform it does not necessarily mean it is being let to guests. Some owners will argue that their premises was being used by family or friends at such times. Because only the platform can see whether the Short-Term Rental is unavailable due to a booking or because the owner has made it unavailable, such claims are hard to disprove.⁵⁶⁶ This makes it very difficult for governments to manage nightly limits unless they use external companies whose technology can interrogate the listings “across hundreds of sites at scale and cost effectively.”⁵⁶⁷

Given the difficulties in obtaining accurate data on the number of nights a premises has been used for short-term letting, BnbGuard told the Committee it was more effective to base compliance on the availability of a property, as this is much easier to track across multiple online hosting platforms, and without their cooperation.⁵⁶⁸

BnbGuard suggested regulators:

- cap the number of day a property can be advertised—this would separate the commercial operations (which would presumably be advertised year round) from owners who only occasionally let their principal places of residence; and
- tax Short-Term Rentals according to their advertised availability—as Short-Term Rentals being run as businesses would be advertised more frequently than the “Mums and Dads renting out for the summer”, taxing properties according to their advertised availability would mean those benefitting most from the industry would be taxed accordingly.⁵⁶⁹

Finding 44

Caps on Short-Term Rental availability are currently primarily intended to address local conditions. It is appropriate that they be determined at the local government level until such time that the State Government determines that a different approach is warranted.

6.7 Use registration fees to enforce compliance

Local governments should retain enforcement responsibilities for any additional conditions they impose for the registration of Short-Term Rentals. To address some of the resourcing concerns they have in relation to enforcing compliance (discussed in Chapter 5), they could charge registration application fees that they then use to offset some of the enforcement costs. These should, however, be at the discretion of the appropriate local government authority.

565 Submission 163, Chamber of Commerce and Industry of Western Australia, p14.

566 Submission 30A BnbGuard, p2.

567 *ibid.*, p3.

568 Submission 30, BnbGuard, p1.

569 *ibid.*, p7.

The imposition of registration costs received considerable stakeholder attention. A number of Airbnb hosts, using a template provided by Airbnb, submitted they believed in “the right of people to share their houses and apartments ... without extreme regulations like caps and costly registration processes.”⁵⁷⁰ However, exactly what constitutes “costly registration processes” depends on the stakeholder group being consulted.

So, basically, if you over-regulate, that is an issue. If you under-regulate that is an issue. So striking that balance is important to clean up that end of the market that is creating a lot of the problems that we find ourselves facing today.

*David Moyes, Managing Director,
Private Properties Australia*

Traditional Accommodation providers tended to favour higher registration costs, comparable to those borne by B&Bs, hotels and motels. Robert McDonald, who owns Bushy Lake Chalets, saw it as a way of evening out the playing field and reducing the number of non-compliant Short-Term Rentals. He believed if there was a “level playing field, you would see a natural progression of a lot of the [unapproved] houses come out.”⁵⁷¹

In contrast, Airbnb supported the South Australian model for managing Short-Term Rentals, where there is no registration or licensing system, and therefore no associated fees.⁵⁷²

HomeStay WA said “costly registration fees and regulation requirements, will result in most holiday homes leaving the market.” This would mean “losing an amazing holiday accommodation option that is used by millions of families, groups and people every year.”⁵⁷³ David Moyes, Managing Director of holiday home rental company Private Properties, also warned that increased registration costs would encourage people “to go to the dark side” and operate Short-Term Rentals without local government approval.⁵⁷⁴

The NSW Legislative Assembly Committee on Environment and Planning’s inquiry into the regulation of short-term holiday letting in NSW favoured registered Short-Term Rental operators paying a fee to fund the maintenance of a register and the associated compliance regime.⁵⁷⁵

One way local governments could balance these competing interests is through the introduction of differential registration fees. Unhosted Short-Term Rentals, which tend to have a greater impact on local government services, could be charged higher registration fees than hosted Short-Term Rentals.

Boston has introduced this model, charging hosted Short-Term Rentals \$25 per annum and \$200 for unhosted premises.⁵⁷⁶ The State of Massachusetts introduced a new 5.7% tax on Short-Term Rentals from 1 July 2019 (the same rate as for hotels). The new tax is for

⁵⁷⁰ Submission 252, Airbnb template submissions.

⁵⁷¹ Robert McDonald, Owner/Operator, Bushy Lake Chalets, *Transcript of Evidence*, 1 May 2019, p11.

⁵⁷² Submission 160, Airbnb, p15.

⁵⁷³ Submission 42, HomeStay WA, pp3, 5.

⁵⁷⁴ David Moyes, Managing Director, Private Properties Australia, *Transcript of Evidence*, 1 May 2019, p8.

⁵⁷⁵ Legislative Assembly Committee on Environment and Planning, Report 1/56, *Adequacy of the Regulation of Short-Term Holiday Letting in NSW*, NSW Parliament, Sydney, October 2016, p16.

⁵⁷⁶ Airbnb, [Boston, MA](#), 31 May 2019, accessed 5 July 2019.

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premises rented out for more than 14 nights per year, and will operate separately to cities and towns' own regulations, such as Boston's.⁵⁷⁷

Finding the correct balance will be difficult, especially if local governments seek to generate enough revenue to offset their compliance costs, as many Inquiry participants suggested.⁵⁷⁸ Chief Executive Officer of the Tasmanian Tourism Industry Council, Luke Martin, questioned whether any model would enable local governments to cover in full their enforcement costs.⁵⁷⁹

Even if registration fees do cover some of the enforcement costs, there is the possibility that local governments will simply redirect these funds to higher priority areas. The City of Busselton listed the range of compliance issues it currently manages, such as:

*...unauthorised sand extraction, including extraction that affects superficial aquifers; unauthorised waste disposal, including disposal of asbestos and other hazardous waste; unauthorised vegetation clearing; and unauthorised development of commercial premises on major roads...*⁵⁸⁰

The City explained that, compared to these issues, unapproved Short-Term Rentals were a lower priority given the harm they could cause was “substantially less than the harm caused by most instances of unauthorised sand extraction, and certainly less than the harm caused by any unauthorised waste disposal.” It concluded “it is probably not a wise use of finite resources to prioritise holiday home compliance over these other kinds of compliance issues on an ongoing basis.”⁵⁸¹

As such, there is a risk that the introduction of registration fees would not result in increased compliance activities by local governments. Traditional Accommodation providers' frustration at the apparent apathy of local government to enforce Short-Term Rental compliance (as outlined in section 5.4), may therefore continue. Ultimately, however, local governments are accountable to their local ratepayers for raising revenue and expenditure.

Enforce compliance against online booking platforms

Section 6.3 above focused on the State Government's role in enforcing requirements with respect to the state-level registration scheme—particularly information provision obligations for online platforms.

Some local governments submitted that the State Government should also enforce compliance with conditional or licensing requirements through online booking platforms.

577 Zeninor Enwemeka, '[With Regulations Looming, Airbnb Says It Had A Record Year In Mass.](#)', *wbur*, 7 January 2019, accessed 22 July 2019.

578 Submission 112, *Pass Your Keys*, p5; Rhys Johnson, Manager/Director, Mandalay Holiday Resort and Tourist Park, *Transcript of Evidence*, 30 April 2019, p2; Submission 46, Banksia Tourist and Park Home Village, p2; Submission 182, Australian Hotels Association (WA), p30; Submission 79, Seashells Hospitality Group, p3; Gail McGowan, Director General, Department of Planning, Lands and Heritage, *Transcript of Evidence*, 26 June 2019, p6.

579 Luke Martin, CEO, Tourism Industry Council Tasmania, *Transcript of Evidence*, 13 February 2019, p13.

580 Submission 75, City of Busselton, p10.

581 *ibid.*

The Committee did not receive detailed information on enforcement mechanisms and has recommended that it be a discreet part of the interdepartmental working group's scope.

Online booking platforms have generally not responded to local government calls to ensure that the premises listed on their sites comply with local requirements. The City of Perth said it had approached Stayz and Airbnb (as well as property management companies Executive Apartments and Astra Apartments) in the past to emphasise the need for Short-Term Rentals to have the correct approvals.⁵⁸² This does not seem to have worked, as the City said the number of complaints regarding unlawful Short-Term Rentals is increasing.⁵⁸³

The State is more likely to have a greater influence on the behaviour of online booking platforms than individual local governments. Nick Logan, Acting Director Sustainable Development for the Shire of Augusta-Margaret River, explained:

...we have tried in the past but it is very difficult for us to engage with the platforms; they are just not really interested. I think that is one of the key points why we think the restriction should be at a State level; it just carries that much more power. For us, it is possible that we could try to do it by a planning condition and say, "You cannot advertise on a particular platform unless you have an approval", but us taking Airbnb through the State Administrative Tribunal or trying to prosecute them would be just impossible.⁵⁸⁴

Internationally, some online booking platforms have sued local authorities in response to increasing regulation of the Short-Term Rental industry. As discussed in sections 5.4 and 5.6, local governments are finding it difficult to enforce their existing regulations due to the cost of enforcement. It is therefore unlikely they would regard a costly court case as a good use of ratepayers' funds. The City of Busselton said it was:

...vital that the State play a role in regulating at the platform level. Without a requirement of this kind, the City cannot see that any form of regulation will be sustainable, as the costs and complexity of enforcing controls against

I think if you want to have a credible system, it is absolutely vital that the State regulates the platforms. I think that would have to, effectively, be done in the form of a registration number that is very similar to the idea of where we talked about the certificate of local government authority or whatever you want to call it. The local government that issued the certificate then would know which property it relates to. The State's role, effectively, is to make sure those certificate numbers are provided.

Paul Needham, Director Planning and Development Services, City of Busselton

582 Margaret Smith, Manager Development Approvals, City of Perth, *Transcript of Evidence*, 15 May 2019, pp11–12.

583 Robert Farley, Acting Director Planning and Development, City of Perth, *Answers to Questions on Notice*, 24 June 2019, 24 June 2019, pp1–2.

584 Nick Logan, Acting Director Sustainable Development, Shire of Augusta-Margaret River, *Transcript of Evidence*, 2 May 2019, p12.

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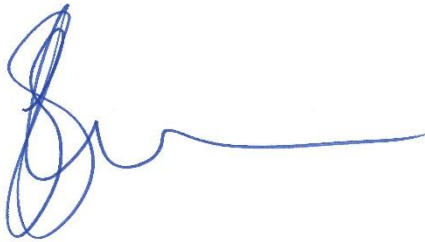
*individual owners is such that local governments will simply be overwhelmed...*⁵⁸⁵

The Committee did not receive any evidence as to the type of enforcement action the State Government should take. This matter should be further investigated by the proposed interdepartmental working group.

The Committee affirms its general position that local governments should be responsible for administering or enforcing any local requirements, but considers that the interdepartmental working group should consult with local governments and stakeholders regarding the appropriateness and form of State versus local government action aimed at online platforms or owners.

Finding 45

The imposition of additional registration fees, or compliance costs for local requirements, should be at the discretion of the local government authority, with appropriate accountability mechanisms.

A handwritten signature in blue ink, consisting of a large, stylized initial 'S' followed by a long horizontal line.

MS J.J. SHAW, MLA
CHAIR

585 Submission 75, City of Busselton, p14.

Appendix One

Inquiry Terms of Reference

The Economics and Industry Standing Committee will inquire into and report on matters relating to the regulation of Short-Stay Accommodation in Western Australia, with particular reference to:

1. The forms and regulatory status of Short-Stay Accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities.
2. The changing market and social dynamics in the Short-Stay Accommodation sector.
3. Issues in the Short-Stay Accommodation sector, particularly associated with emerging business models utilising online booking platforms.
4. Approaches within Australian and international jurisdictions to ensure the appropriate regulation of Short-Stay Accommodation.

Appendix Two

Submissions received

No.	Name	Position	Organisation
1	Closed		
2	Marcella and Tony Lynch	Airbnb hosts	
3	Andrei Koeppen		
4	Shane Banister-Jones		
5	Donna and Robert Stain	Owners/Operators	Where The Gum Trees Are
6	Peter Mills	Airbnb host	
7	David Rentz	Chief Executive Officer	Town of Port Hedland
8	Name withheld		
9	Stephen Thornton		
10	Name withheld		
11	Robert Baily	Short-Term Rental owner	
12	Glenn and Sara Willmott	Owners	Short-term accommodation business
13	Sam Mastrolembo	Chief Executive Officer	Shire of Broome
14	Rolf Chorley	Director	Hillarys Harbour Resort
15	Ken Fairfield		
16	Gehan Perera	Airbnb host	
17	David Bornmann	Director of Operations	The Marina, Mindarie
18	Graeme Bissett	Manager, Planning and Development	Shire of Toodyay
19	Brett Cammell	Manager, Planning Strategies and Economic Development	Town of Cambridge
20	Brian Spitteler	Managing Director	Bushland Cottages Pty Ltd
21	Brian Spitteler	Managing Director	Shevaroys Pty Ltd
22	Brian Spitteler	Managing Director	Margaret River Bungalows Pty Ltd
23	Brian Spitteler	Managing Director	Hideaway Unit Trust
24	Rick Jones	Manager	Geographe Cove Resort
25	Rod Quartermain		
26	Louise and Chris Stokes	Proprietors	Holberry House
27	Terry and Angela Lewis	Managers	Cocos Beach Bungalows

Appendix Two

No.	Name	Position	Organisation
29	Ellen Lilly	General Manager	The Bull and Bush Charter Tavern
30/30A	Reuben Schwarz	Chief Operating Officer	BnbGuard
31	Name withheld		
32	Clive and Margaret Johnson		
33	Julie Scott	Short-Term Rental owner	
34/34A/34B	Graham Nicol	Director/Principal	Executives Escapes
35	Brian King	Director	Jurien Bay Hotel Motel
36	Natasha Griggs	Acting Director Community and Statutory Services	City of Belmont
37	Hannah Thomas	Airbnb host	
38	Patricia and Derek Weston	Hosts	Shark Bay Bed and Breakfast
39	Peter Goff		
40	Rhys Johnson	Manager/Director	Mandalay Holiday Resort and Tourist Park
41	Nathan Baker	General Manager	Ramada Vetroblu Scarborough Beach
42	Amanda Walker	Director	WA HomeStay Pty Ltd
43	Name withheld		
44	Ian MacRae	Airbnb host	
45	Bernie Masters		
46	Marisa Arena		Banksia Tourist and Park Home Village
47	Marisa Arena		Belvedere Caravan Park
48	Tash Gibson	Front of House and Marketing Manager	Ocean Centre Hotel, Geraldton
49	Name withheld		
50	Vincent Jenkins	Acting Manager, Development Services	Shire of Plantaganet
51	Julie Clayton	Airbnb host	
52	Name withheld		
53	Closed		
54	John Cooper	Owner	Marri Lodge and Cottages
55	Helen and Terry Langlois	Managers	Heritage Trail Lodge
56	Adrian Vallis	Chair, Council of Owners	Quattro Apartments
57	John and Dani Layman	Directors	Summerstar Tourist Parks

No.	Name	Position	Organisation
58	Serge Le Goueff	Host	Lanterns Retreat
59	Roderick Lisson	Chief Executive Officer	Footprints at Preston Beach
60	Name withheld		
61	Melissa Gosselin	Hotel Manager	Adina Apartment Hotel Perth Barrack Plaza
62	Linda Ross	Chief Executive Officer	API WA Reward Club
63	Debbie Noonan	Owner/Operator	Margaret River Guest House
64	Ian and Gillian Nicholas	Partners	Westerley Accommodation
65	Riccardo Quadrelli	Manager	Old Fire Station Backpackers
66	Gaynor and David Clarke	Owners/Hosts	Cape Howe Cottages
67	Name withheld		
68	Name withheld		
69	Name withheld		
70	Justin Hickman	Managing Director	Stay Margaret River
71	Lucia Dunstan	Strategic Planning Officer	City of Cockburn
72	Richard Murphy	Park Manager	Discovery Parks
73	Helen Barrett	Owner/Host	Como Bed and Breakfast
74	Name withheld		
75	Mike Archer	Chief Executive Officer	City of Busselton
76	Cinde Fisher, Steve Harrison, Sharna Kearney	Joint Chief Executive Officers	Margaret River Busselton Tourism Association
77	Peter Barrett	Owner	Carnarvon Motel
78	Closed		
79	Gareth Thomas	Chief Operating Officer	Seashells Hospitality Group
80	Name withheld		
81	Peter Neville	General Manager	Country Comfort Perth
82	Jennifer Willcox	Administration Support	Tree Top Walk Motel
83	Closed		
84	Karen Bendik-Benbrell	General Manager	Wattle Grove Motel/Bentley Motel
85	Sandy and David Noske	Proprietor	Prideaus of Margaret River
86/86A/86B	Closed		
86C	Name withheld		

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No.	Name	Position	Organisation
87	Suzanne Keynes	Owner/Manager	Inn The Tuarts Guest Lodge
88	Aravindhan Rajaratnam	Owner	Cozy Stay
89	Ivan Sandler	Owner	Sojourn on Gale Luxury Bed and Breakfast
90	Geoffrey West	Owner	Wagin Motel
91	Tiago Neto	Motel Manager	Karri Forrest Motel
92	Name withheld		
93	Closed		
94	Elizabeth Jack	Chief Executive Officer	Denmark Chamber of Commerce
95	John Quartermaine	Airbnb host	
97	Name withheld		
98	Michael Andrews	Airbnb host	
99	Peter Noonan	Owner/Operator	Margaret River Guest House
100	Alan and Diane Alldis	Accommodation providers	
101	Sunny Sardana	Franchise Manager	Comfort Apartments, South Perth
102	Alec and Alison Leatherday		
103	Adrian Fini	Director	FJM Property/Fini Group
104	Trish Burt	Convener	Neighbours Not Strangers
105	Paul Camins	Executive Director Development Services	City of Albany
106	Deonne Kingsford	Airbnb host	
107	Grahaem Donovan	Shareholder and Director	Andabrook Pty Ltd, trading as Bunbury Apartment Motel and Bunbury Motel
108	Rob and Julie Saunders	Owners/Operators	Big4 Taunton Farm Holiday Park
109	Name withheld		
110	Name withheld		
111	Jamie and Lara McCall	Owners/Operators	Burnside Organic Farm
112	Lyda Hayward	Owner and Property Manager	Pass Your Keys Pty Ltd
113	Kim and Lauren Aspland	Owners/Managers	Acacia Chalets
114	Alan Ford	General Manager	Alex Hotel
115	Evan Lewis	Resort Manager	Broadwater Resort
116/116A	Judy and Mark Fisher	Owners/Managers	Wyadup Brook Cottages
117	Dr Con Berbatis		

No.	Name	Position	Organisation
118	Alison and Manuel Nunez	Owners/Operators	Manuel Towers Boutique Accommodation
119	Andy LeMessurier	Airbnb host	
120/120A	Paul Garbett	Director Planning and Strategic Projects	City of Fremantle
121	Barry Green	Owner/Operator	Boronia Farm
122	Chris Terelinck	Director, Planning and Development	City of Gosnells
123	Robert and Melisande McDonald	Owners/Operators	Bushy Lake Chalets
124	Danielle Beckwith-Bolton	Licensee/Proprietor	Dunsborough and Exmouth Holiday Homes
125	Michael Parker	Chief Executive Officer	City of Rockingham
126	Rebecca Brown	Chief Executive Officer	Tourism WA
127	Kara Grant	General Manager	Strata Community Association WA
128	Sally Kelly	Managing Director	Assured Hospitality
129	Cherie Hindle	Owner/Operator	Glenbrook Estate
130/130A	Debbie Noonan	Spokesperson	Registered Accommodation Providers of the Margaret River Region
131	David Martin	Owner	Stormflower Vineyard
132	Jenny Martin	Unit Owner	Bunker Bay Resort
133	Keith Melville	Managing Director	Select Stays
134	Tim and Sara Greasy	Owner/Manager	Bina Maya Yallingup Escape
135	Closed		
136	Juliana Payne	Chief Executive Officer	Restaurant and Catering Industry Association
137	Stuart Lamont	Chief Executive Officer	Caravan Industry Association of Australia
138	Joyce DiMascio	Chief Executive	Exhibition and Event Association of Australasia
139	Stuart Gale	Business Development Executive	Quest Apartments
140	Jennifer Church		
141	Christine and Graeme Edwards	Owners	Emu Beach Chalets

Appendix Two

No.	Name	Position	Organisation
142	Closed		
143	Nick Logan	Acting Director Sustainable Development	Shire of Augusta-Margaret River
144	Sue Stein	Operator	Trigg Retreat Bed and Breakfast
145	Professor Kerry Brown	Director, Centre for Innovative Practice	Edith Cowan University
146	Brett Mace	Chief Executive Officer	Australian Institute of Building Surveyors
147	Domenic Pimpinella	Western Regional Manager	YHA Australia
148	Stacey Graham	President	Tourism Rockingham Inc.
149	Nish Patel	Short-Term Rental owner	
150	Joanne Burges	Executive Manager People and Place	Western Australian Local Government Association (WALGA)
151	Jordan Koroveshi	Coordinator, Policy and Place	City of Vincent
152	Emiliano and Sylvia Barzotto	Managing Partners	Anchorage Guest House
153	Heath Michael	Managing Director	Retail and Trade Brands Advocacy
154	Lewis Hawkins and Jane Taylor	Owners/Operators	Margaret River Chalets
155	David Smith	Head of Licensed Parts	Top Parks
156	Alexander Petrovski	Manager, Planning Services	City of Subiaco
157	Kim and Cecily Hancock	Owners	Bay Village Resort and Spa Dunsborough
158	Lorraine Young		
159	Kim Gardner	Owner	Tree Elle Retreat
160/160A	Brent Thomas	Head of Public Policy, Australia and New Zealand	Airbnb
161	Joe Lembo	Owners/Operator	Motel Le Grande
162	Samantha Reece	Director	WA Apartment Advocacy
163	Christopher Rodwell	Chief Executive Officer	Chamber of Commerce and Industry of Western Australia

No.	Name	Position	Organisation
164/164A	Eacham Curry	Director, Government and Corporate Affairs	Expedia Group (Stayz/HomeAway)
165	Sam Gill	Manager, Property Development	Smiths 2014 Pty Ltd
166	Gary Bird	Acting Chief Executive Officer	Town of Cottesloe
167	Ross Forbes-Stephen	Manager	Cable Beachside Villas
168	Closed		
169	Name withheld		
170	John Howe	Owner	Spencer Suites Albany
171	Tahlia Jones		
172	Donna Cocking	Owner/Operator	Mandurah Caravan and Tourist Park
173	Name withheld		
174	Michael Tucak		
175	Kees Jan Boonen	Head Public Affairs, Asia Pacific	Booking.com
176	Sandra Gardiner-Wilson		
177	Michael Leake	Manager	Habitat Resort Broome
178	David Moyes	Managing Director	Private Properties Australia Pty Ltd
179	Name withheld	Owner/Manager	Broome Beach Resort
180	David Smith	Director General	Department of Mines, Industry Regulation and Safety
181	Peter Natrass		
182/182A	Bradley Woods	Chief Executive Officer	Australian Hotels Association (WA)
183	Amela Catak	Airbnb host	
184	Yvonne Hart	Secretary	Cottesloe Residents and Ratepayers Association
185	Name withheld		
186	Michelle Mackenzie	Chief Executive Officer	Shelter WA
186A	Lisa Kazalac	Acting Chief Executive Officer	
187	Murray Cox	Founder	Inside Airbnb
188	Evan Hall	Chief Executive Officer	Tourism Council WA
189	Peter Davis	Chairman	Astra Apartments
190	Meredith Hammat	Secretary	Unions WA
191	Ann Harrop	Senior Planner, Planning Services	City of Mandurah

Appendix Two

No.	Name	Position	Organisation
192	Miles Leahy		
193	Jacqueline Lang	Airbnb host	
194	Keith Gennoe	Airbnb superhost	
195	Lisa Burnette	President	People with Disabilities Western Australia
195A	Samantha Jenkinson	Executive Director	
196	Kim Ribbink	Short-Term Rental owner	
197	Anna and Matt Ramrath	Owners	Windrose Bed and Breakfast
198	Gary Tuffin	Chief Executive Officer	Town of East Fremantle
199	Craig Kenyon	Chief Executive Officer	Caravan Industry Association of Western Australia
200	Irene Minson		
201	Lorili Jacobs	Airbnb host	
202	Matthew Harper	Airbnb host	
203	Nikki Carstairs	Airbnb host	
204	George Jones	Airbnb host	
205	Sue Bezuidenhout	Airbnb host	
206	Damian Kutrzyk	Airbnb host	
207	Sasha Barac	Airbnb host	
208	Christine Cooper	Airbnb host	
209	Geoffrey Bonds	Airbnb host	
210	Diana Paolucci	Airbnb host	
211	Felicity Simpson	Airbnb host	
212	Julie Wyatt	Airbnb host	
213	Jeff Beckitt	Airbnb host	
214	Leni Arti	Airbnb host	
215	Craig Geehman	Airbnb host	
216	Derek Weston	Airbnb host	
217	Lyn Whitfield-King	Airbnb host	
218	Chris Everitt	Airbnb host	
219	Stephen Yarwood	Airbnb host	
220	Jen McRae	Airbnb host	
221	Lou-Ann Bottomley	Airbnb host	
222	Anna Killigrew	Airbnb host	
223	Silvia Kurz	Airbnb host	
224	Simon Peet	Airbnb host	
225	Jane Baijal	Airbnb host	
226	Carol Best	Airbnb host	
227	Angela Tillier	Airbnb host	
228	Lisa Hill	Airbnb host	
229	Albert Grincer	Airbnb host	
230	Natalie Warner	Airbnb host	
231	Kathleen Larsen	Airbnb host	
232	Kathryn Blomley	Airbnb host	
233	Claudio Ruminot	Airbnb host	

No.	Name	Position	Organisation
234	Sean Giddings	Airbnb host	
235	John Simmonds	Airbnb host	
236	Deborah Haggitt	Airbnb host	
237	John Tarpey	Airbnb host	
238	Norman Vandome	Airbnb host	
239	Dwayne Coto	Airbnb host	
240	Kris Giesen	Airbnb host	
241	Jemma Wuthenow	Airbnb host	
242	Sally Kelso	Airbnb host	
243	Amy Kitchen	Airbnb host	
244	Robina Simpson	Airbnb host	
245	Vicki Lee	Airbnb host	
246	Chelsea Davies	Airbnb host	
247	Jenny Gleeson	Airbnb host	
248	Sue Hansen	Airbnb host	
249	Amber Lamprecht	Airbnb host	
250	Peter Mills	Airbnb host	
251	Sam Rauf	Airbnb host	
252	95 Airbnb template submissions	Airbnb hosts	
253	Name withheld		
254	Laurie Maiolo	Short-Term Rental owner	
255	Richard Munro	Chief Executive Officer	Accommodation Association of Australia
256	Name withheld		
257	Jon Lukman	Innkeeper	Kangaroo Inn
258	Rod and Margaret Lewis	Short-Term Rental owner	
259	Rob Jeffress	Chair	Australian Short Term Rental Accommodation
260	Lou-Ann Bottomley	Host	Apartment on St Alouarn
261	Dr Naomi Godden	Chair	Just Home Margaret River
262	Thor Farnworth	Manager Sustainability Planning and Development	City of Bunbury
263	Richard Morton		
264	Peter Kalbfell	Director/Skipper	Jet Adventures
265	John Carroll		

Appendix Three

Public hearings

Date	Name	Position	Organisation
31 October 2018	Gail McGowan	Director General	Department of Planning, Lands and Heritage
	Jacqueline Stone	Director Policy and Projects	
	Kylie Woods	Senior Legal Officer	
13 February 2019	Joanne Burges	Executive Manager People and Place	Western Australian Local Government Association
	Vanessa Jackson	Policy Manager Planning and Improvement	
	Evan Hall	Chief Executive Officer	Tourism Council WA
	Luke Martin	Chief Executive Officer	Tourism Industry Council Tasmania
20 February 2019	Brent Thomas	Head of Public Policy Australia and New Zealand	Airbnb
	Sam McDonagh	Director, Country Manager Australia and New Zealand	
	Eacham Curry	Director, Government and Corporate Affairs (Stayz/HomeAway)	Expedia Group
	Dr Vanessa Findlay	Policy and Strategy Adviser	
13 March 2019	Bradley Woods	Chief Executive Officer	Australian Hotels Association (WA)
	Paul Garbett	Director Planning and Strategic Projects	City of Fremantle
	Matthew Hammond	Manager, Economic Development and Marketing	
	Pasqualino Bracone	Manager, Approval Services	City of Wanneroo
10 April 2019	Nathan Harding	Chairman, Board of Commissioners	Tourism WA
	Campbell Fletcher	Policy and Planning Manager	
	Professor Kerry Brown	Director, Centre for Innovative Practice	School of Business and Law, Edith Cowan University

Appendix Three

	Associate Professor Hadrian Djajadikerta	Associate Dean (Research)	
	Dr Christof Pforr	Professor (Tourism)	Faculty of Business and Law, Curtin University
	Dr Michael Volgger	Senior Lecturer	
30 April 2019 Margaret River	Paul Needham	Director Planning and Development Services	City of Busselton
	Kelvin Storey	Team Leader Strategic Planning and Urban Design	City of Bunbury
	Richard Jones	Manager	Geographe Cove Resort
	Rhys Johnson	Manager/Director	Mandalay Holiday Resort and Tourist Park
	Gavin Farrell	Owner	BIG4 Beachlands Holiday Park
1 May 2019 Margaret River	Debbie Noonan	Spokesperson	Registered Accommodation Providers of the Margaret River Region
	Peter Noonan	Co-founder	
	Sharna Kearney	Joint Chief Executive Officers	Margaret River Busselton Tourism Association
	Stephen Harrison		
	Mark Fisher	Owner/Manager	Wyadup Brook Cottages
	Judith Fisher		
	Louise Stokes	Proprietor	Holberry House
	David Martin	Owner	Stormflower Vineyard
	Alan Wilkes	Owner	Edge of the Forest Motel
	Robert McDonald	Owner/Operator	Bushy Lake Chalets
Jane Purdie	Owner	Rosewood Guesthouse	
2 May 2019 Margaret River	Pam Townshend	Shire President	Shire of Augusta-Margaret River
	Ian Earl	Councillor	
	Nick Logan	Acting Director Sustainable Development	
8 May 2019	Kees Jan Boonen	Head Public Affairs, Asia Pacific	Booking.com
	Tracey Foxall	Regional Manager, Oceania	
	Lyda Hayward	Owner and Property Manager	Pass Your Keys Pty Ltd
	Amanda Walker	Director	WA HomeStay Pty Ltd
15 May 2019	Robert Farley	Acting Director Planning and Development	City of Perth
	Margaret Smith	Manager Development Approvals	
	Ann Harrop	Senior Planner, Planning Services	City of Mandurah

	Ben Dreckow	Manager, Planning and Land Services	
	Stacey Graham	President	Tourism Rockingham Inc.
24 May 2019	Michael Leake	Manager	Habitat Resort Broome
	Kirsten Wood	Manager Planning and Building	Shire of Broome
	Andre Stuyt	Director Development and Community	
	Elizabeth Jack	Chief Executive Officer	Denmark Chamber of Commerce
	Paul Camins	Executive Director Development Services	City of Albany
	Alexander Bott	Coordinator Planning Services	
	12 June 2019	Robert Taylor	Chief Executive Officer
Rachel Cosentino		Board Member	Strata Community Association (WA)
19 June 2019	Lisa Kazalac	Acting Chief Executive Officer	Shelter WA
	Dr Klaudia Mierswa	Policy Officer	
	Samantha Jenkinson	Executive Director	People with Disabilities Western Australia
	Christopher Rodwell	Chief Executive Officer	Chamber of Commerce and Industry of Western Australia
	Rick Newnham	Chief Economist	
	Adrian Fini	Director	FJM Property/Fini Group
	David Bornmann	Director of Operations	The Marina Mindarie
26 June 2019	David Caddy	Chairman	Western Australian Planning Commission
	Gail McGowan	Director General	Department of Planning, Lands and Heritage

Appendix Four

Closed hearing

Date	Name	Position	Organisation
30 April 2019 Margaret River	Rodney Hughes	Director/General Manager	Abbey Beach Resort


Appendix Five

Public depositions

Date	Name	Position	Organisation
30 April 2019 Margaret River	Grahaem Donovan	Shareholder and Director	Andabrook Pty Ltd, trading as Bunbury Apartment Motel and Bunbury Motel
	Roderick Lisson	Chief Executive Officer	Footprints at Preston Beach
	Suzanne Keynes	Owner/Manager	Inn the Tuarts Guest Lodge
	Henrietta Hughes	Owner/Proprietor	Toby Inlet Bed and Breakfast
1 May 2019 Margaret River	Karen Derbyshire	Manager	Marri Lodge and Cottages
	David Moyes	Managing Director	Private Properties Australia Pty Ltd
	Lewis Hawkins	Owner/Operator	Margaret River Chalets
	Barry Green	Owner/Operator	Boronia Farm
	Veronica Bruce	Resident	Busselton
	Christina Newton	Resident	Busselton
	Donna Seaton	Owner	Grange on Farrelly
	Dr Naomi Godden	Chair	Just Home Margaret River
12 June 2019	Suzanne O'Neill	Airbnb host	
	Ian Hamer	Airbnb host	
	Aravindhan Rajaratnam	Owner	Cozy Stay
	Keith Gennoe	Airbnb superhost	
	Jack Frater	Airbnb host	
	Stephen Yarwood	Property Manager	Let Go Pty Ltd
	Gehan Perera	Airbnb host	
	Ian MacRae	Airbnb host	
	George Jones	Airbnb host	
	Margaret Gibson	Airbnb host	
	David Darn	Airbnb host	
19 June 2019	Penelope Robins	Resident	Bullsbrook
	Emiliano Barzotto	Managing Partner	Anchorage Guest House
	Brian Spitteler	Proprietor	All About Margaret River Pty Ltd
	Samantha Reece	Director	WA Apartment Advocacy

Appendix Six

Department of Planning, Lands and Heritage’s draft options for regulating Short-Term Rentals⁵⁸⁶



**Department of Planning,
Lands and Heritage**

GOVERNMENT OF
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5. State and Local Government based options

Regulation of short-term accommodation can be accommodated via a number of planning and non-planning mechanisms at differing scales to suit requirements. The following options are listed in order of increasing regulation.

5.1 No change to current arrangements

Current Planning Bulletins 99 *Holiday Homes*, 49 *Caravan Parks* and 83 *Tourism* are silent on the sharing economy. These bulletins do provide guidance to local government on the appropriate location for tourist accommodation and options local governments may wish to consider through regulation such as restricting land uses within particular zones/locations within the scheme and having a form of license/approval/registration of short-term rental operators. This approach does not provide specific guidance on short-term accommodation where a room within a home or a granny flat are being rented through sharing economy platforms.

A number of local governments that have significant short-term accommodation demand, such as the City of Fremantle, Augusta Margaret River and Busselton, have utilised a range of existing planning and legal mechanisms to regulate short-term accommodation to suit their respective needs (i.e. scheme provisions, planning policies and local laws).

Benefits	Limitations
<ul style="list-style-type: none"> • Provides local government with complete discretion to tailor regulation to their specific needs • Requires no additional resource from state government 	<ul style="list-style-type: none"> • Inconsistent approaches across WA • Could restrict tourism accommodation in appropriate locations • Lack of regulation to industry

5.2 Provide guidance delineating between hosted/un-hosted accommodation leaving full regulatory discretion to local government

The current draft Position Statement (PS) on Tourism introduces the land use definition of **hosted accommodation** as ‘a portion of a dwelling or entire ancillary dwelling used to provide short-term accommodation with a permanent live in host (owner/occupier/manager) but does not include a bed and breakfast or caravan park or serviced apartment’. The introduction of a definition for hosted accommodation fills a gap in the current *Local Planning Scheme Regulations 2015* (LPS Regs). Improved definition of short-term accommodation as a result of the sharing economy takes a similar approach to that proposed in NSW. Under the draft PS, the WAPC does not consider it necessary to regulate hosted accommodation, given the operator resides in the dwelling or on-site and its tourism value is incidental to the primary residential land use, but does not preclude regulation should the local government choose to do so. This is based on the concept that the local government is best informed about tourism activity within its boundary and its impact on local communities. Should a local government consider it necessary to amend their scheme to specifically address this form of tourist accommodation, it is recommended the above definition is utilised to ensure consistency across the state.

All other forms of short-term accommodation (un-hosted) are considered in accordance with existing definitions in the LPS Regs (Appendix 1). The draft PS proposes these forms of short-term accommodation such as holiday homes are regulated at the local government’s discretion as currently undertaken. The draft PS and draft guidelines provide guidance on scenarios in which local government may wish to regulate such as allowing forms of short-term accommodation as a P use in areas of high demand/tourism value or as an X use in predominantly residential areas.

Benefits	Limitations
<ul style="list-style-type: none"> • Limits regulation on small scale individual operators renting out a room in their home • Provides local government with discretion 	<ul style="list-style-type: none"> • Unlikely to provide any regulation of those renting rooms in their home for short-term accommodation

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⁵⁸⁶ Department of Planning, Lands and Heritage, *Options for regulating sharing economy short-term accommodation in WA*, Western Australia, August 2018.



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<ul style="list-style-type: none"> • Provides for regulation of larger scale (un-hosted) short-term accommodation tailored to the local government's specific needs 	<ul style="list-style-type: none"> • Inconsistent approaches across WA • Could restrict tourism accommodation in appropriate locations
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5.3 Clear policy framework to regulate un-hosted short-term accommodation with implementation detail by local government

Amend current wording within the draft PS to state that the WAPC considers regulation of un-hosted short-term accommodation to be necessary. The approach on how it is regulated could be left to the discretion of local governments with clear guidance and a framework provided by the WAPC. Options for which guidance could be provided may include but not be limited to:

a) Recommend amendment to Local Planning Schemes

1. Make all or specific types of short-term accommodation (e.g. holiday home, serviced apartments) a D use in the local planning scheme and require planning approval to operate. Through conditions on a planning approval local government could require specific matters such as the provision of car parking bays to be addressed. This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated. Guidance in the form of criteria could assist local governments in determining where and at what scale this should apply. Planning approval could also restrict the number of days accommodation is available for short-term rent (i.e. for un-hosted short-term accommodation limit days of operation to a range between 90-180 days/year in Greater Perth and coastal areas, and up to 365 days/year in all other regions of WA in consultation with respective local governments. Hosted accommodation will not be limited in terms of days of operation). Consider an appropriate minimum consecutive length of stay (for example, the City of Fremantle impose a minimum stay of 2 consecutive nights).

2. Make all or specific types of short-term accommodation an X use within certain areas of the local planning scheme. This could apply to specific types of short-term accommodation or certain locations. Guidance in the form of criteria could assist local government in determining where this should apply.

b) Recommend introduction of local law under Local Government Act 1995

Local governments could introduce a local law requiring individuals running short-term accommodation businesses to register for a license with the local government annually. This would provide the opportunity for the planning, building and health officers within local government to apply any requirements considered appropriate such as emergency evacuation plans, fire alarms, car parking bays etc. The license is tied to the operator of the business not the building itself. This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated. As previously mentioned, the City of Fremantle utilises this approach. The drafting of a standard/model local law under the *Local Government Act 1995* may be beneficial.

c) Local Planning Scheme Regulations 2015

The definition of hosted accommodation will need to be inserted into the LPS Regs to assist local governments in distinguishing levels of regulation for different forms of short-term accommodation.

To ensure definitions in the LPS Regs align with the dwelling types in the *SPP 3.1 - Residential Design Codes (R-Codes)*, a new definition is considered necessary to capture the use of residential apartments that are proposed to be used as short-stay accommodation (holiday apartment). In addition, an amendment will need to be made to the existing definition for holiday accommodation to ensure that one dwelling in a group of dwellings on one lot is captured. The new definitions and changes to existing definitions proposed in this option are:



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Accommodation type	Dwelling type under the R-Codes	Existing definition under the LPS Regs	Proposed definition (yellow highlight to show amendments)
Hosted accommodation	Single Dwelling, with or without ancillary accommodation	None	Hosted accommodation 'a portion of a dwelling or entire ancillary dwelling used to provide short-term accommodation with a permanent live in host (owner/occupier/manager) but does not include a bed and breakfast or caravan park or serviced apartment'
Holiday house	Single Dwelling	Holiday House 'means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast'	No changes proposed to this definition
Holiday accommodation	Grouped Dwelling	Holiday Accommodation 'means 2 or more dwellings on the one lot used to provide short term accommodation for persons other than the owner of the lot'	Holiday accommodation 'means 1 or more grouped dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot, but does not include hosted accommodation'
Holiday apartment	Multiple Dwelling	None	Holiday apartment 'means a multiple dwelling that is used to provide short-term accommodation'

d) *Strata Titles Act 1985*

Under the *Strata Titles Act 1985* (STA) a strata scheme is comprised of 'by-laws' or a 'management statement'; the plan (depicting lots); and upon registration, the body corporate. The STA requires subdivision approval by the WAPC under the *Planning and Development Act 2005* (PD Act) prior to registration of a strata plan to create a strata scheme. The STA contains deemed by-laws for strata schemes that will come into effect on registration of the scheme. The subdivider/developer may supplement the deemed by-laws with further or varied by-laws, or replace them in their entirety. The planning decision-maker may also require a by-law for a relevant purpose. A land use restriction can exist on the strata plan as well as in by-laws. Once a strata scheme has been established, a planning approval does not override the need for an approval of the body corporate. The drafting of a standard/model by-law for use by planning decision makers, which is then set out by policy, may be beneficial.

Enforcement and compliance of use and development in a strata scheme is more complex than in a conventional green title context, given that there are both public (e.g. local government, body corporate) and private parties (individual owners) that have standing.

The options above can be used in isolation or in combination.

Benefits	Limitations
<ul style="list-style-type: none"> Minimal regulation on small scale individual operators renting out a room in their home Moderate regulation on small commercial operators (holiday homes) Provides local government with discretion to tailor 	<ul style="list-style-type: none"> Inconsistent approaches across WA Could restrict tourism accommodation in appropriate locations May result in no regulation in some locations



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<p>regulation on short-term accommodation to their specific needs</p> <ul style="list-style-type: none"> • By-law would provide revenue generation to assist with regulation • Model strata by-law provide strong and consistent position across state to be applied as required 	
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5.4 Clear policy framework to regulate un-hosted short-term accommodation with the introduction of deemed provisions

Amend current wording within the draft PS to state that the WAPC considers regulation of un-hosted short-term accommodation to be necessary. WAPC to provide clear guidance and a framework for local governments through deemed provisions. Options may include but not be limited to:

a) Deemed provisions under the Local Planning Scheme Regulations 2015

Deemed provisions under the LPS Regs would be read into all schemes on gazettal. Deemed provisions could insert the hosted accommodation definition to provide distinction between hosted and un-hosted forms of short-term accommodation, as well as, insert the holiday apartment definition and amend the holiday accommodation definition to further strengthen the terminology used and align with the R-Codes. Deemed provisions could restrict the presence of short-term accommodation or restrict certain types or apply standardised minimum requirements through mandatory planning approval.

Deemed provisions could make all or specific types of short-term accommodation a D use in local planning schemes and require planning approval to operate. This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated. Deemed provisions could also restrict the number of days accommodation is available for short-term rent. NSW are limiting days of operation to 180 days/year in Greater Sydney for un-hosted short-term accommodation. A similar approach could be introduced across the state or in particular locations within WA.

Where heavy regulation is considered appropriate deemed provisions could allocate specific types of short-term accommodation as an X use within the local planning scheme making it a prohibited use.

b) Recommend introduction of local law under Local Government Act 1995

Local governments could introduce a local law requiring individuals running short-term accommodation businesses to register for a license with the local government annually. This would provide the opportunity for the planning, building and health officers within local government to apply any requirements considered appropriate such as emergency evacuation plans, fire alarms, car parking bays etc. The license is tied to the operator of the business not the building itself. This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated.

c) Strata Titles Act 1985

Under the *Strata Titles Act 1985* (STA) a strata scheme is comprised of 'by-laws' or a 'management statement'; the plan (depicting lots); and upon registration, the body corporate. The STA requires subdivision approval by the WAPC under the *Planning and Development Act 2005* (PD Act) prior to registration of a strata plan to create a strata scheme. The STA contains deemed by-laws for strata schemes that will come into effect on registration of the scheme. The subdivider/developer may supplement the deemed by-laws with further or varied by-laws, or replace them in their entirety. The planning decision-maker may also require a by-law for a relevant purpose. A land use restriction can exist on the strata plan as well as in by-laws. Once a strata scheme has been established, a planning approval does not override the need for an approval of the body corporate. The drafting of a standard/model by-law for use by planning decision makers, which is then set out by policy, may be beneficial.



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Enforcement and compliance of use and development in a strata scheme is more complex than in a conventional green title context, given that there are both public (e.g. local government, body corporate) and private parties (individual owners) that have standing.

The options above can be used in isolation or in combination.

Benefits	Limitations
<ul style="list-style-type: none"> • Consistent planning approach across WA • Still provides ability to tailor regulation to scale or type of short-term accommodation • Reduces local government influence on the location and scale of short-term accommodation • By-law would provide revenue generation to assist with regulation • Model strata by-law provide strong and consistent position across state to be applied as required 	<ul style="list-style-type: none"> • Deemed provisions complicates line of sight by having provision physically siting outside of the LPS • Deemed provisions may fail to address local variations • Could restrict tourism accommodation in appropriate tourism locations • Reduces local government influence on the location and scale of short-term accommodation • Would require criteria to determine appropriate scale and type of short-term accommodation to be regulated (if not a blanket approach)

5.5 Fully Regulate

Introduce State level regulation of short-term accommodation. Full regulation of short-term accommodation could be accommodated via a number of mechanisms or combination of mechanisms, including but not limited to:

a) Deemed provisions under the Local Planning Scheme Regulations 2015

Deemed provisions under the LPS Regs would be read into all schemes on gazettal. Deemed provisions could insert the hosted tourist accommodation definition to provide distinction between hosted and un-hosted forms of short-term accommodation, as well as, insert the holiday apartment definition and amend the holiday accommodation definition to further strengthen the terminology used and align with the R-Codes. Deemed provisions could restrict the presence of short-term accommodation or restrict certain types or apply standardised minimum requirements through mandatory planning approval.

Deemed provisions could make all or specific types of short-term accommodation a D use in local planning schemes and require planning approval to operate. This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated. Deemed provisions could also restrict the number of days accommodation is available for short-term rent. NSW are limiting days of operation to 180 days/year in Greater Sydney for un-hosted short term accommodation. A similar approach could be introduced across the state or in particular locations within WA.

Where heavy regulation is considered appropriate deemed provisions could allocate specific types of short-term accommodation as an X use within the local planning scheme making it a prohibited use.

b) Model local law under Local Government Act 1995

Introduction of a model local law to require individuals running a short-term accommodation business to register for a license with LG annually. This would provide the opportunity for the planning, building and health officers within LG to apply any requirements considered appropriate such as emergency evacuation plans, fire alarms, car parking bays etc. The license is tied to the operator of the business not the building itself. This could apply to all forms of short-term accommodation, different types or be differentiated based on scale such as number of individuals to be accommodated.



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These approaches could also be regulated on the length of stay, as in NSW, hosted short-term holiday letting could be exempt development 365 days per year. When un-hosted, a limit to rent out properties (short term holiday let) for 180 days/year in Greater Perth up to 365 days in all other areas of WA could apply. Some specific tourism areas could have greater control through their schemes.

c) Strata Titles Act 1985

Under the STA a strata scheme is comprised of 'by-laws' or a 'management statement'; the plan (depicting lots); and upon registration, the body corporate. The STA requires subdivision approval by the WAPC under the PD Act prior to registration of a strata plan to create a strata scheme.

Given the planning decision-maker may require a by-law for a relevant purpose. A use restriction can appear on the strata plan as well as in by-laws. Once a strata scheme has been established, a planning approval doesn't override the need for an approval of the body corporate. The drafting of a standard/model by-law for use by planning decision makers, which is then set out by policy, may be beneficial.

Smaller and older strata schemes, are likely to currently rely on the deemed by-laws in the STA, which are generally silent in relation to short term letting, but in new and larger strata schemes it would be expected that they do purport to set out restrictions on short term letting.

Benefits	Limitations
<ul style="list-style-type: none"> • Provides for strong and consistent regulation across the state • Still provides ability to tailor regulation to scale or type of short-term accommodation • Reduces local government influence on the location and scale of short-term accommodation • Local law would provide revenue generation to assist with regulation • Local law allows planning, building and health to operate together • Strata by-law provide strong and consistent position across state to be applied as required 	<ul style="list-style-type: none"> • Deemed provisions complicates line of sight by having provision physically siting outside of the LPS • Consistent approach across WA that fails to address local variations (if blanket approach taken) • Could restrict tourism accommodation in appropriate tourism locations • Reduces local government influence on the location and scale of short-term accommodation • Would require criteria to determine appropriate scale and type of short-term accommodation to be regulated (if not a blanket approach) • Local law outside of the PD Act • Strata by-law outside of the PD Act

Appendix Seven

Committee's functions and powers

The functions of the Committee are to review and report to the Assembly on:

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.



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