



**Accommodation  
Association  
of Australia**

**Short-term holiday letting in NSW –**  
**Submission of**  
**Accommodation Association of Australia**

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## **EXECUTIVE SUMMARY**

- The Accommodation Association noted the recommendations in the final report of the NSW Parliament Legislative Assembly Committee on Environment and Planning inquiry into the adequacy of the regulation of short-term holiday letting in NSW.
- The accommodation industry supports the development of a definition of short-term rental accommodation and all short-term rental accommodation being subject to the same regulations/legislation.
- Any building in which short-term letting is conducted must meet requirements under Class 3 of the Building Code of Australia.
- The industry does not support any scenario which permits a group of residential apartments to operate as a quasi-hotel.
- The industry believes the Holiday and Short-Term Rental Code of Conduct has proven to be ineffective in the regulation of short-term letting/tourism accommodation in NSW to the detriment of consumer safety and housing affordability, among other things.
- The number one priority for the NSW Government when it is considering changes to the regulatory regime for short-term (or tourism) accommodation must be consumer safety.
- The emergence of quasi-hotels is one of the most significant negative consequences of the lack of regulation of sharing economy accommodation in Australia.
- The recent rapid emergence of sharing economy providers of tourism accommodation has resulted in job losses in the accommodation industry in NSW.
- The recent rapid emergence of sharing economy accommodation providers is having a significant detrimental impact on the level of rental and housing affordability, notably in Sydney.
- Sharing economy platforms are ruining the business environment for hotels, motels and other compliant tourism accommodation businesses outside of our major cities.
- Companies which operate online platforms for Australian residential properties to be used for tourism accommodation are avoiding payment of taxes in Australia.
- Every local government authority in NSW should formally establish a regime to ensure compliance with planning laws and building fire safety requirements, funded by significant fines for non-compliance of not less than \$1 million per property.

## **INTRODUCTION**

1. The Accommodation Association of Australia is pleased to provide the following submission to be considered by the NSW Government as it considers changes to the regulatory environment for the provision of short-term (tourism) accommodation, including short-term holiday letting, in NSW.

## **ABOUT THE ACCOMMODATION ASSOCIATION**

2. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for Australia's accommodation industry.
3. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced and holiday apartments, bed and breakfasts, guesthouses, backpackers and timeshare establishments in metropolitan, regional and rural Australia, across all states and territories.
4. The Association's members include major hotel and motel chains, and serviced apartment groups.
5. The Association's membership base includes almost 2000 properties and more than 110,000 guest rooms, many of which are located in regional and rural areas of NSW.

## **TOURISM AND ACCOMMODATION – OVERVIEW**

6. Tourism directly contributes \$52.918 billion to Australia's gross domestic product (GDP), 3.2 per cent of Australia's total GDP.<sup>1</sup>
7. There are 580,200 people directly employed in the Australian tourism industry – 4.9 per cent of total employment.<sup>2</sup>
8. Accommodation businesses add \$7.462 billion of gross value to the Australian economy.<sup>3</sup>
9. There are 82,800 people employed in the accommodation sector of the Australian tourism industry.<sup>4</sup>
10. There are 4445 tourism accommodation establishments in Australia.<sup>5</sup>
11. There are 1424 tourism accommodation establishments in NSW.<sup>6</sup>

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<sup>1</sup> Tourism Satellite Account 2015-16, Australian Bureau of Statistics

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Tourist Accommodation, Australia, 2015-16, Australian Bureau of Statistics

<sup>6</sup> Ibid

12. There are 249,131 tourism accommodation rooms in Australia and 676,638 bed spaces.<sup>7</sup>

13. There are 75,235 tourism accommodation rooms in NSW and 201,714 bed spaces.<sup>8</sup>

## **POLICY CONTEXT**

14. There have been a number of recent changes in the public policy environment relating to the regulation of tourism accommodation in Australia.

15. The precursor to the current round of consultation by the NSW Government was a comprehensive inquiry into the adequacy of the regulation of short-term holiday letting in NSW by NSW Parliament's Legislative Assembly Committee on Environment and Planning.

16. The final report of this inquiry was released in October 2016 and contained 12 recommendations.

17. The NSW Government publicly released its response to the final report in April 2017.

18. Shortly after, the NSW Government launched a fresh consultation on the regulation of short-term holiday letting in NSW and an Options Paper to guide this consultation was released in July 2017.

19. In South Australia, in June 2016, the Deputy Premier, Hon John Rau MP, announced – with little or no consultation – that the South Australian Government had “provided clarification to South Australians who use their residential property as a short-term rental, also known as home sharing” and that the South Australian Government has made it clear “that a person's period of stay in a residential property should not constitute a ‘change in use’ under the Development Act”. Therefore, this, effectively, gave sharing economy accommodation platforms, such as Airbnb, free rein to operate in South Australia with virtually no regulation.<sup>9</sup>

20. In September 2017, the South Australian Tourism Industry Council (SATIC) released the following key policy positions:

- The South Australian Government to develop and implement regulations for the sharing economy accommodation industry. To protect already established accommodation provider investments both metropolitan and regional, jobs, rental access, rental affordability and amenity; and
- SATIC is also calling for the Australian Government to implement measures to enable a fair and equitable application of taxation to sharing economy accommodation providers.<sup>10</sup>

21. The Accommodation Association supported SATIC's position, stating:

“The accommodation industry is supporting calls for the South Australian Government to properly regulate sharing economy providers, including Airbnb. The Accommodation

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<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> Media Release, Hon John Rau MP, 7 June 2016

<sup>10</sup> Tourism Industry Policy Agenda 2017-2018, SATIC, September 2017

Association of Australia said that unless the SA Government moves to address this issue, the safety of domestic and international visitors is at risk.”<sup>11</sup>

22. In Tasmania, the State Government undertook extensive consultation on reforms to the regulation of tourism accommodation within its jurisdiction, as part of broader changes to the statewide planning scheme.
23. The changes meant that from 1 July 2017 for properties which are rented for a fee:
  - Owners of investment properties which are over 300 square metres must obtain approval from their local council to accommodate guests; and
  - Owners of investment properties or shacks which are less than 300 square metres must complete a form declaring their property meets minimum safety standards and lodge this form with their local council before accommodating guests.
24. For Tasmanian residents who own their home and wish to rent out up to four rooms, no approvals are required.
25. The primary impact of the changes to the regime in Tasmania is that they have created a far more level-playing field between quasi-hotels – residential buildings with apartments which are being used for short-stay accommodation – and compliant hotels, motels and serviced apartments.

## **PARLIAMENTARY INQUIRY – ACCOMMODATION INDUSTRY POLICY POSITIONS**

26. The Accommodation Association noted the recommendations in the final report of the NSW Parliament Legislative Assembly Committee on Environment and Planning inquiry into the adequacy of the regulation of short-term holiday letting in NSW.
27. The Accommodation Association also notes the NSW Government’s response to the recommendations in the report.
28. Accordingly, the Accommodation Association is pleased to provide its views on the recommendations:
  - Recommendation 1: The NSW Government develops a definition of short-term rental accommodation and that it should be permitted. Government response: Qualified support. Accommodation Association view: The accommodation industry supports the development of a definition of short-term rental accommodation and all short-term rental accommodation being subject to the same regulations/legislation. Any building in which short-term letting is conducted must meet requirements under Class 3 of the Building Code of Australia, including – but not limited to – building fire safety (fire alarms, fire egresses, fire-fighting equipment, fire signage, emergency procedures and all other safety and security requirements imposed on the legitimate, tax-paying accommodation industry).
  - Recommendation 2: Short-term letting of rooms in any property where the landlord or host is present should be permitted as exempt development. Government response: Qualified support. Accommodation Association view: The industry does

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<sup>11</sup> Media Release, Accommodation Association of Australia, 9 October 2017

not support any scenario which permits a group of residential apartments to operate as a quasi-hotel.

- Recommendation 3: Short-term letting of a principal place of residence be permitted as exempt development. Government response: Qualified support. Accommodation Association view: Any building in which short-term letting is conducted must meet requirements under Class 3 of the Building Code of Australia.
- Recommendation 4: Short-term letting of empty properties should be permitted as exempt development where the development does not exceed applicable impact thresholds and complying development where the development exceeds applicable impact thresholds. Government response: Qualified support. Accommodation Association view: The industry is strongly opposed to this recommendation on the basis that it would, effectively, legalise quasi-hotels.
- Recommendation 5: The NSW Government should investigate the impact of the growth of short-term rental accommodation on traditional accommodation operators and identify opportunities to reform current regulations. Government response: Qualified support. Accommodation Association view: The industry supports this recommendation.
- Recommendation 6: The NSW Government should participate in the management of the Holiday and Short-Term Rental Code of Conduct to ensure it has a broadly-based management structure and increases its industry coverage. Government response: Qualified support. Accommodation Association view: The industry believes the code of conduct has proven to be ineffective in the regulation of short-term letting/tourism accommodation in NSW to the detriment of consumer safety and housing affordability, among other things.
- Recommendation 7: The NSW Government should develop a compliance system for short-term rental accommodation which considers the use of investigate powers, streamlined development assessment, the Holiday and Short-Term Rental Code of Conduct and “party house” provisions. Government response: Qualified support. Accommodation Association view: The current regulatory regime has proven to be ineffective in the regulation of short-term letting/tourism accommodation in NSW to the detriment of consumer safety and housing affordability, among other things.
- Recommendation 8: The NSW Government should prepare advice for councils and the community outlining the changes which will apply to short-term rental accommodation and implements a communication and monitoring program. Government response: Support. Accommodation Association view: The industry supports this recommendation and that there should be much higher penalties for properties which are not compliant with planning laws and for councils who do not properly enforce the law.
- Recommendation 9: Local councils should be responsible for communicating with all landowners about their rights and obligations. Government response: Support. Accommodation Association view: While communication from local councils is important, the NSW Government should also take responsibility for clearly communicating any changes to the regulatory regime.
- Recommendation 10: The NSW Government should consider amending strata regulations to give owners corporations more powers to manage and respond to adverse behaviour resulting from short-term letting in their buildings. Government

response: Support. Accommodation Association view: The industry supports any measure which minimises the incidence of adverse behaviour.

- Recommendation 11: The NSW Government should review of the impact of short-term letting in the strata environment within three years. Government response: Qualified support. The Accommodation Association does not have a view on this recommendation.
- Recommendation 12: The NSW Government implements a program to collect data on the holiday industry generally and short-term letting, in particular, to assess the economic contribution of short-term letting on housing affordability and community viability. Government response: Qualified support. Accommodation Association view: The industry supports this recommendation given the significant negative impact the sharing economy is having on rental/housing affordability.

29. On the findings in the report, the accommodation industry respectfully disputes finding 4 that short-term letting should be regarded as residential use and as such, it should not trigger any Building Code of Australia requirements. By making this finding, the committee, is exempting all residential buildings used for short-term letting from having to provide disability access, therefore, effectively, denying people with a disability the opportunity to stay in these properties. If hotels, motels and serviced apartments must provide disability access, then all properties used for short-term letting should have to provide disability access.

## **TOP PRIORITY – CONSUMER SAFETY**

30. It is the submission of the Accommodation Association that the number one priority for the NSW Government when it is considering changes to the regulatory regime for short-term (or tourism) accommodation must be consumer safety.

31. Hotels, motels, serviced apartments and other forms of traditional tourism accommodation must meet strict requirements to help ensure the safety of their customers.

32. These requirements include, but are not limited to:

- Compliance with building fire safety standards (fire alarms, fire egresses, fire-fighting equipment, fire signage, emergency procedures and other safety and security requirements);
- Having insurance in place which covers guests staying in a public place; and
- Compliance with planning laws.

33. Any building in which short-term letting is conducted must meet requirements under Class 3 of the Building Code of Australia.

34. Hotels, motels, serviced apartments and other forms of traditional tourism accommodation must meet higher standards for disability access and accessible rooms than residential properties.

35. The NSW Government should take into account a coronial investigation into a fatality which occurred in a fire at a property in southern NSW which, at the time of the fire, was thought to be operating as a non-compliant tourism accommodation property.

## **MAJOR ISSUE – QUASI-HOTELS**

36. The emergence of quasi-hotels is one of the most significant negative consequences of the lack of regulation of sharing economy accommodation in Australia.
37. Quasi-hotels have come about through the practice of a common owner of several apartments – many of which could be in the same building – listing vacant apartments on online platforms which promote residential properties for use as tourism accommodation.
38. It should be clearly stated the Accommodation Association is not advocating for a protectionist regime for operators of “bricks and mortar” tourism accommodation businesses which are compliant with existing regulation and legislation. The accommodation industry is advocating for a level-playing field.
39. The starkest example of tourism accommodation businesses in direct competition with each other, but operating under different regimes is a quasi-hotel.
40. For consumers, quasi-hotels could appear to be very similar to apartment hotels, but the quasi-hotels meet very few, if any, of the standards which traditional tourism accommodation are required to. Such standards include planning laws, building fire safety requirements, having adequate insurance in place and ensuring access for people with a disability.
41. The Accommodation Association is aware of several quasi-hotels which are operating in NSW, notably in the northern suburbs of Sydney.
42. Quasi-hotels are having a direct negative impact on hotel room-rates in the Sydney market and the level of investment in the accommodation industry in NSW.
43. Therefore, the Accommodation Association refutes the point in the Options Paper there is little or no evidence of adverse impacts from virtual hotels in NSW – and, indeed, across Australia.

## **SHARING ECONOMY COSTS JOBS**

44. The recent rapid emergence of sharing economy providers of tourism accommodation has resulted in job losses in the accommodation industry in NSW.
45. This is because sharing economy providers have eaten into the market share of traditional accommodation businesses, including hotels, motels and serviced apartments, and traditional accommodation businesses are far more labour-intensive than the likes of Airbnb-type (residential) properties.
46. Specifically, while the accommodation industry in Australia employs more than 80,000 people, sharing economy providers employ very few, if any, people directly at properties where they advertise rooms.
47. Despite now having a strong foothold in many key Australian markets, Airbnb has been unable to state how many people in Australia it employs – or how much payroll tax it pays in Australia.



48. Airbnb has said publicly that in 2015/16, its guests supported over 14,000 jobs in Australia. Not only is this figure vastly inferior to employment in the traditional accommodation industry, “jobs supported” are not actual jobs.

## **DIRECT LINK WITH RENTAL/HOUSING AFFORDABILITY**

49. The recent rapid emergence of sharing economy accommodation providers is having a significant detrimental impact on the level of rental and housing affordability, notably in Sydney.
50. In the City of Sydney council area, the number of entire homes available on Airbnb for 90 or more days per year was greater than the number of vacant rental homes, 1268 to 876.<sup>12</sup>
51. In the Waverley Council area, which includes Bondi, the corresponding figures are 821 entire homes available on Airbnb to 232 vacant rental homes.<sup>13</sup>
52. Clearly, in a growing number of Sydney suburbs, the returns for landlords from short-term letting are greater than offering their properties for rent for terms of six or 12 months.
53. Real Estate agents in, among other places, suburban Sydney are taking advantage of this, freely advertising the fact they are listing properties on Airbnb.
54. The negative impact of the likes of Airbnb on rental and housing affordability has been compounded by the growth of such platforms. For example, in the period from January 2017 to September 2017, Newcastle doubled its capacity for Airbnb guests.<sup>14</sup>
55. Given this, the Accommodation Association strongly refutes the assertion in the Options Paper the impact of short-term holiday letting on rental availability is negligible.
56. Further evidence of this is action taken by other countries to better regulate sharing economy accommodation providers, such as Airbnb.
57. From mid-2016, any resident of the German city of Berlin who lets more than 50 per cent of their apartment on a short-term basis without an appropriate permit risks a fine equivalent to about \$A150,000 and one of the major reasons for introducing this measure was to keep housing affordable for locals.
58. In New York in the USA, renting out residential apartments for less than 30 days is against the law.

## **SHARING ECONOMY IS HURTING REGIONAL ACCOMMODATION OPERATORS**

59. By far the parts of NSW where sharing economy accommodation platforms, such as Airbnb, are hurting the local economy the most are regional and rural towns.

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<sup>12</sup> “Airbnb popularity with landlords puts squeeze on rental market”, Australian Financial Review, 28 November 2016

<sup>13</sup> Ibid

<sup>14</sup> “Newcastle Airbnb listings double in eight months, figures show”, Newcastle Herald, 30 September 2017

60. This is because there are fewer guests seeking accommodation in these locations than, for example, in Sydney, so even a minor drop in the number of guests staying at traditional hotels or motels results in job losses.

61. So concerned is the Accommodation Association about the negative impact of sharing economy accommodation platforms in non-metropolitan areas that it has said:

“Sharing economy platforms are sucking the life out of hotels, motels and other compliant tourism accommodation businesses outside of our major cities. Operators of compliant tourism accommodation businesses in regional areas are, in many instances, hard-working family or ‘Mum-and-Dad’ outfits who have been barely making ends meet. They struggle to recruit and retain staff, they have had to contend with high penalty rates on weekends and public holidays and now Airbnb seems determined to try to put them out of business. Our industry isn’t frightened of competition, but compliant operators of regional tourism accommodation businesses are directly competing with Airbnb, yet Airbnb properties are subject to little or no regulation, unlike traditional hotels and motels.”<sup>15</sup>

## **AIRBNB AVOIDS PAYING TAX IN AUSTRALIA**

62. Unlike hotels, serviced apartments, resorts, motels and other compliant forms of tourism accommodation, companies which operate online platforms for Australian residential properties to be used for tourism accommodation are avoiding payment of taxes in Australia.

63. For example, from April 2014, Airbnb, which extracts a commission in the vicinity of 12 per cent of the cost of a consumer “booking” a room in a residential property for the purposes of tourism accommodation via its website, channelled revenue from Australian-based consumers to an Irish subsidiary.<sup>16</sup>

64. Despite having an estimated worth of \$10 billion, Airbnb requested an exemption from corporate rules in Australia which require companies to disclose their earnings in a financial report.<sup>17</sup>

65. By operating on this basis, Airbnb is clearly attempting to avoid paying its fair share of tax in Australia.

66. Airbnb’s position on bed taxes in the accommodation industry represents hypocrisy in the extreme.

67. It has stated that it supports bed taxes being imposed, as long as they also apply to traditional hotels, motels and serviced apartments.<sup>18</sup> This fails to take into account that operators of hotels, motels and serviced apartments already pay land tax, payroll tax and higher council rates than owners of residential properties used for short-term accommodation through sharing economy platforms.

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<sup>15</sup> Media Release, Accommodation Association of Australia, 12 July 2017

<sup>16</sup> “Airbnb pays tax on Australian profit offshore”, Australian Financial Review, 9 September 2014, <http://www.afr.com/business/tourism/airbnb-pays-tax-on-australian-profit-offshore-20140909-jeg0t>, retrieved 18 May 2016

<sup>17</sup> Ibid

<sup>18</sup> The Project, Network Ten, 19 June 2017

68. Simply, Airbnb is satisfied with its properties having a lower level of regulation than traditional accommodation businesses, yet supports traditional accommodation businesses paying another tax.

## **OTHER REGULATORY ISSUES**

69. Companies which operate an online platform for residential properties to be used for tourism accommodation, as well as the owners and occupiers of the properties, should be the subject of a much stronger compliance regime.
70. The accommodation industry's position is that every local government authority in NSW should formally establish a regime to ensure compliance with planning laws and building fire safety requirements.
71. Each regime should be funded by significant fines for non-compliance of not less than \$1 million per property.
72. Having fines of this quantum in place would assist with ensuring that:
- The compliance regimes could be self-sufficient from a financial perspective; and
  - They would act as a deterrent to such illegal activity.
73. On the issue of land tax, the Accommodation Association has concerns that there are very low levels of compliance with the regime for this levy among people who list their properties on sharing economy accommodation platforms.
74. In NSW, properties that are not occupied or owned by a company or a trust are generally liable for land tax. This is likely to include any property offered for short-term letting through Airbnb which is not occupied by the owner as their residence.
75. In relation to defining tourism accommodation, the Australian Taxation Office (ATO) has determined that commercial residential premises are liable for Australia's Goods and Services Tax (GST) under a range of definitions. The common thread within each of these definitions is a guest stay of 28 days.
76. The ATO's current definitions are as follows:
- Short-term accommodation – When a guest stays for less than 28 continuous days.
  - Long-term accommodation – When a guest stays for 28 or more continuous days.
  - Predominantly long-term accommodation – If at least 70 per cent of individuals in an accommodation establishment stay for 28 or more continuous days.<sup>19</sup>

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<sup>19</sup> <https://www.ato.gov.au/General/Property/Property-used-in-running-a-business/Commercial-residential-premises-and-GST/>, retrieved 25 October 2017

## CASE STUDY 1 – APARTMENTS OF MELBOURNE, MELBOURNE

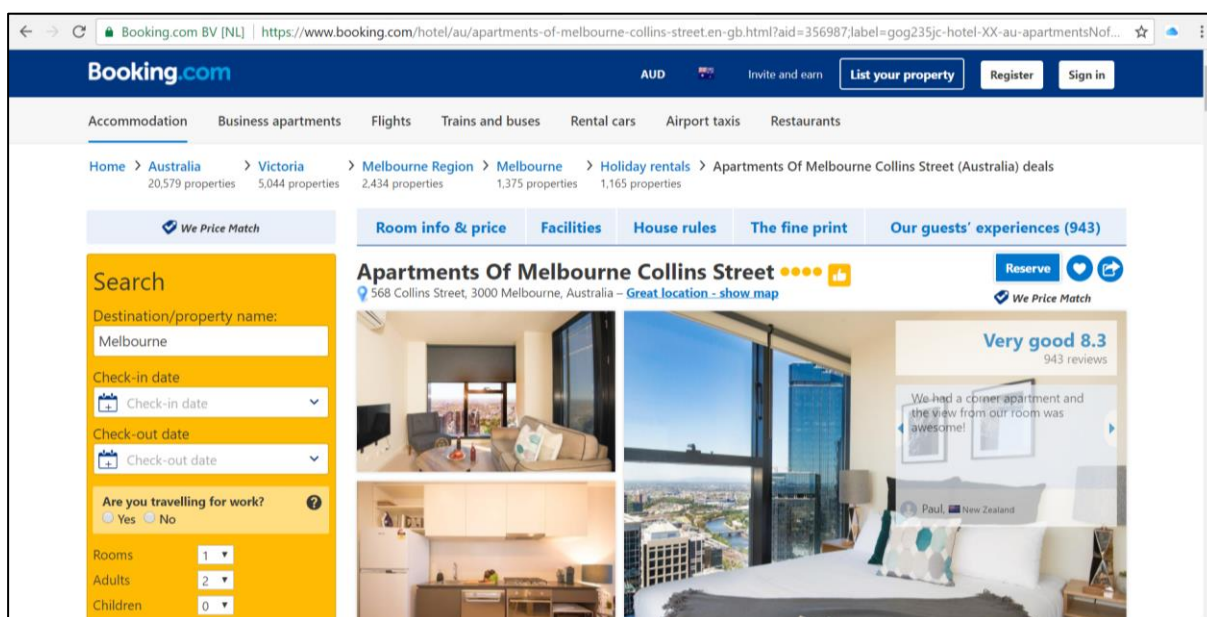
In addition to widely-publicised examples in Sydney, Apartments of Melbourne ([www.apartmentsofmelbourne.com.au](http://www.apartmentsofmelbourne.com.au)) is offering short-stay accommodation in a number of different apartment buildings in and around the central business district of Melbourne which appear to be residential buildings.

Locations of apartments include 568 Collins Street, Melbourne and Flinders Street (Northbank Place), Melbourne.

The operation is overseen by The Restassured Group, which appears to be a marketing vehicle for owners of inner-city apartments who wish to rent their properties to short-stay guests.

Apartments of Melbourne specifically markets itself as a direct alternative to hotels, stating “our team have (sic) handpicked our one and two-bedroom self-contained apartments in Melbourne’s favourite CBD locations”.<sup>20</sup>

In relation to the property at 568 Collins Street, it is being marketed in direct competition with traditional hotels:



(accessed 25 October 2017)

Yet pictures of the site indicate it is a residential building:

<sup>20</sup> [www.apartmentsofmelbourne.com.au](http://www.apartmentsofmelbourne.com.au), accessed 25 October 2017



It is almost certain that apartments in this property are not covered by the same level of insurance as traditional hotels, do not meet the same building fire safety requirements as traditional hotels and have limited access for people with a disability.

It appears that Apartments of Melbourne is taking advantage of loopholes in the law which permit them to offer short-stay accommodation in apartments which are zoned as residential.

## CASE STUDY 2 – EQ TOWER, MELBOURNE

The EQ Tower, which is located at 127-141 A'Beckett Street, Melbourne, is another example of what appears to be a residential apartment block which is being used for short-term (or tourism) accommodation.

The property has 63 floors and it's almost certain its building fire safety standards, the insurance it has in place and disability access are not at the same level as major hotels in the Melbourne central business district that this apartment building is directly competing with for tourism accommodation.

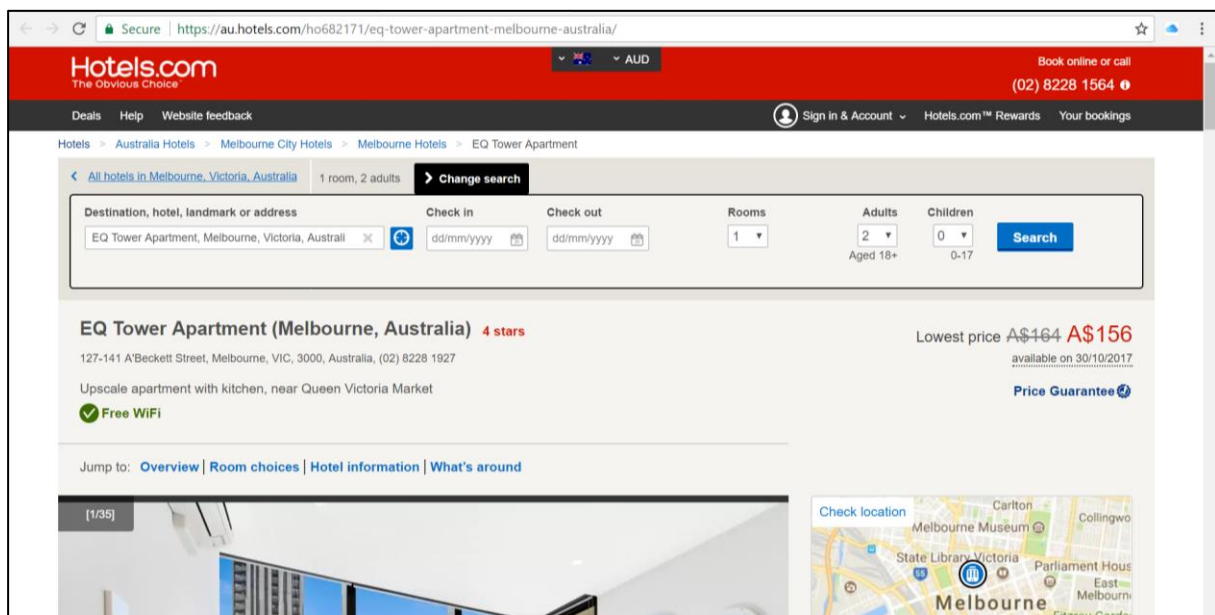


The entrance to EQ Tower indicates it is a residential apartment building, as opposed to a building which is zoned for short-stay (tourism) accommodation.





Apartments in EQ Tower have been marketed on major accommodation booking websites:



(accessed 25 October 2017)

## **CONCLUSION**

77. The Accommodation Association would be pleased to provide Ministers and/or the Department of Planning and Environment with further information in relation to our submission through a meeting or another appropriate form of engagement.

Date: 31 October 2017