

# Tourism Industry Division (NSW Business Chamber)

Submission to the Short-term Holiday Letting in NSW Options Paper

October 2017

## Overview

The NSW Business Chamber (“the Chamber”) welcomes the opportunity to make a submission to the Short-term Holiday Letting in NSW Options Paper (“the Options Paper”).

As you may be aware, the NSW Business Chamber (“the Chamber”) is one of Australia’s largest business support groups, with a direct membership of more than 20,000 businesses, providing services to over 30,000 businesses each year and supported by a dedicated Tourism Industry Division (“the Division”).

Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Division helps businesses operating in the Visitor Economy maximise their potential to ensure New South Wales remains the number one tourism destination in Australia.

With over 90,875 tourism businesses in New South Wales generating more than 272,000 jobs and \$34.9 Billion in consumption, tourism is a vital sector of the New South Wales economy.

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## Note

While the Division recognises the role short-term letting can have in meeting holiday accommodation demand, we have used the term Short-term Rental (STR) throughout this submission to capture the other types of short-term accommodation that might be supported through letting of this nature. The submission also refers to those that provide a property on a short-term basis as STR operators.

## Introduction

STR has always been a feature of Australia’s and NSW’s tourism industry. In addition, STR is a common phenomenon around the world – whether it entails renting a couch, billeting a sports team member, undertaking a homestay or letting a bedroom or entire home.

The greater use of mobile technology has however facilitated the exponential and rapid growth of STR both in Australia and globally by allowing greater direct engagement in the letting of property by private individuals.

In recent years, the emergence of online booking services and the growing confidence of consumers in the sharing economy has seen STR through platforms such as Airbnb, Stayz, Home & Away, Expedia, Booking.com and Wotif increase significantly.

Australia wide, STR is estimated to be worth \$31.3 billion. STR can provide an important income stream for property owners as well as essential additional accommodation capacity during periods of peak tourism demand.

NSW accounts for approximately half the national total of STR and around a quarter of total visitor nights. STR is widespread in both regional and metropolitan areas. It is expected that STR in NSW will continue to increase its share of visitor night demand over the next ten years.

While STR provides many benefits, the rapid growth of the sector has, in places, undoubtedly had amenity impacts on the community. These include impacts in terms of noise, waste, traffic, parking, safety and security. At a macro level, there are concerns of the impact of STR on housing affordability and the broader tourism/accommodation industry in general.

The rapid growth in STR has called into question whether the current regulatory frameworks that exist to manage STR and accommodation providers more generally in NSW are fit for purpose.

A number of Australian and global jurisdictions have implemented new regulations to address issues arising from STR which range from restrictions on the number of days a property may be made available, the location of properties capable of being listed or applying new taxes on lessors.

In NSW however, regulatory frameworks have remained largely static in response to a changing STR market. Regulatory changes have largely been driven by individual local councils which has meant that new regulations have been ad hoc and driven by local circumstance.

While there have been calls for significant increases to the regulation of STR in NSW by some sections of the community, an evidence base is needed to guide how any changes to the regulatory framework, if needed at all, might be best designed.

Timely, accessible and detailed data is not sufficiently available to inform insights on the nature of perceived concerns with STR or the effectiveness of potential policy options in addressing those concerns<sup>1</sup>. Similarly, it is also hard to currently gather data specifically for STR in NSW to feed into the National & International Visitor Survey reports conducted by Tourism Research Australia without a mechanism to identify participants. Occupancy and expenditure data for STR is important to guide the NSW Visitor Economy.

The Division believes that STR should be recognised as an opportunity to help grow and diversify NSW's tourism offering and provide visitors with a unique experience in the homes of local residents. In addition, STR provides an important mechanism to meet excess demand during peak visitation periods where traditional accommodation providers have constrained capacity. Despite these benefits, it's clear that un-hosted STR can have amenity impacts on residents and the wider community.

Caution is therefore required, including by utilising robust data on the use and impact of STR, to formulate a regulatory framework that encourages STR's further growth while managing its impacts.

In addition, with the rapidly changing nature of STR, any new regulatory framework should look to also support the emergence of new offerings.

## Creating an evidence base to guide policy

Despite its current pervasiveness, information about any negative economic and social impact of STR is limited. At a localised level, most evidence is anecdotal.

Website *InsideAirbnb*<sup>ii</sup> is one of the most significant sources of information on Airbnb specifically. It demonstrates that Airbnb is concentrated in particular neighbourhoods and that at an aggregate level most listings are for entire homes.

Recently released research (commissioned by Airbnb) by Deloitte Access Economics suggests Airbnb contributes \$512.5m billion to NSW Gross State Product and accounts for 4,452 jobs. It also indicates that the top 4 destinations for listings (outside of Sydney) are Byron Bay, Nowra, Newcastle and Wollongong<sup>iii</sup>.

However it is difficult from this data to confirm to what degree it is impacting on other accommodation operators or on the community at large.

At the Parliamentary Inquiry<sup>iv</sup>, a number of councils suggested that despite official statistics indicating that tourist numbers were declining in a particular area, anecdotal evidence was suggesting the opposite. With official statistics guiding tourism investment decisions, this lack of data is highly concerning in terms of developing and supporting future growth of tourism. To further confuse things, the trend of recent National Visitor Survey results in NSW have shown strong overnight growth. A more robust data set that better captures all visitation will help ensure both policy development and further investment can occur in a structured manner.

Calls have also been made in relation to the impact of STR on housing affordability and availability (by removing properties which might otherwise be rented to long-term tenants).

The Grattan Institute investigated this issue as part of the Institute's 2016 ***Peer to peer pressure: Policy for the Sharing Economy*** report<sup>v</sup>. The Institute reported that the impact on rents were being overblown and that Airbnb listings amounted to half of one per cent of Sydney bedrooms or two per cent of Sydney's rental capacity. The Institute concluded that any impact on rents is small and localised.

There have been significant claims of community impacts in specific areas of regional NSW (Byron Bay in particular)<sup>vi</sup>. However with limited data collection on these impacts there is little evidence to justify some of the regulatory responses that have been put forward by sections of the community.

In any event, any impact on housing affordability when seen in a long run context is more a reflection on impediments that restrict the capacity of the property sector to meet both housing and accommodation demand.

## A new platform agnostic, statewide, registration process for STR Operators

The absence of an evidence base is not in itself a reason to maintain the status quo. It is incumbent on policy makers to gather evidence on the nature of the market, including the nature, scope and magnitude of any market failures occurring in the STR market. This is reinforced by the balance of anecdotal evidence suggesting that current arrangements may not be fit for purpose.

A mechanism to establish full transparency of STR participation is the key element which is currently missing in NSW and needs to be addressed.

This submission has pointed to the lack of robust data relating to the STR market. However, that is not to suggest that this data does not exist or could not be easily prepared for consideration by policy makers. It is logical to assume that STR platforms are capable of providing much of the data that would be beneficial to inform policy development. That said, in many cases other data sources may also be needed to cross-referenced to data collected by STR platforms.<sup>vii</sup>

The Division proposes that a new data sharing platform be developed in order to support the policy development process. Such a platform is intended to facilitate a period of formal monitoring prior to considering the need for more interventionist approaches.

Unlike the approach taken in other jurisdictions (such as Western Australia where local councils have been empowered to require registration of STR) a new data sharing platform would apply statewide with a single, open source framework developed with platform holders to ensure data collection is as seamless and frictionless as possible for users. The platform should leverage existing data collected so as to minimise any new requirements (and administrative burden) imposed on STR market participants. At first instance it would appear logical to share details such as an address, frequency of rental, and lessor's activities (for example where they have multiple properties).

The Division accepts that such a platform presents a range of practical implications, including a need to ensure privacy for users as well as questions as to how such a platform could be established (e.g. how it is paid for and how to ensure STR platform participation). That said, a data sharing platform is proposed in the spirit that sharing useful information with policy makers may be preferable to more intrusive requirements that would ultimately produce a poorer outcome for the community. It would also provide policy makers with a clear and consistent picture of how STR contributes to the tourism economy in terms of visitation and how policy initiatives might be aligned to promote it further.

In addition, to ensure that both STR operators and guests are properly informed of their responsibilities, the development of the new platform could also provide a new mechanism for STR platforms to communicate in relation to issues pertaining to fire safety, insurance coverage, use of property agents, noise and other potential amenity impacts of STR. This could be in form of a quick diagnostic check for STR operators with links to relevant information. Once again this should be developed in consultation with platforms to ensure it is as seamless as possible for end users.

## STR in Strata Properties

The Division supports retaining current NSW strata laws which allow owners' corporations to manage the impact of STR on common property, waste services and insurance.

The Division does not support allowing owners' corporations the ability to prohibit or unduly restrict STR in their strata schemes. The information sharing process outlined above would more readily allow problematic STR operators to be blocked from these platforms in circumstances where there has been illegal activity, significant noise or other amenity impacts.

While the Division is aware of recently introduced rules in Victoria which allow owners corporations to make application to the Victorian Civil and Administrative Tribunal (VCAT) to ban landlords from STR platforms for poor guest behaviour<sup>viii</sup>, the Division believes that clearer rules for STR operators developed with platforms will allow for quicker resolution where there are consistent behavioural issues associated with a premise utilised for STR. There are clear examples where platforms have banned STR operators for inappropriate behaviour<sup>x</sup> so as a first step the development of an industry wide code to specify circumstances where an STR operator (or guest) may be banned from platforms would be appropriate. As noted above, the proposed registration process above could assist in this work by ensuring that a STR operator banned from one platform is banned from others.

The Division supports the development by state government of model regulations for councils to better manage amenity impacts. The party house legislation developed in Queensland<sup>x</sup> to address noise and poor behaviour of guests should be examined as a potential model for NSW.

## Regulation through the Planning System

While there are suggestions within the Options Paper of the potential of regulating STR through the planning system, the Division believes that a sufficient evidence base to justify such a change is yet to be made. Accordingly, in the Division's view STR should be identified as exempt development through the Standard LEP for all NSW councils.

We believe STR impacts are best managed, as outlined above, via strata as well as model council enforcement regulations (such as those that have been developed in Queensland).

The Division remains significantly concerned about the ad-hoc approach of councils towards regulation of STR. Model regulations (which councils can then adopt) developed in consultation with the community, platform holders and tourism businesses are a strongly supported alternative approach.

## Licensing Concerns

Concerns have been raised with the Division regarding STR users with multiple properties running STR as a commercial enterprise. Linked to this are concerns that some of these users are utilising unlicensed individuals as property management agents.

While there have been calls for a new licensing framework for these agents (or for the current license framework to be expanded), no evidence base currently exists on how widespread this practice is, and whether it is a source of detriment to STR market participants. The Division also holds concerns that an expansion of the application of these licences may have unintended consequences and does not support expanding the

scope of existing licensing arrangements (creating agency relationships beyond the scope of STR).

As an alternative measure, the Division suggests that existing licensing requirements should be more comprehensively enforced to the extent that failure to comply with those arrangements is a source of detriment for participants in the STR market<sup>xi</sup>.

In addition, under the registration process identified above, data could be sought on the extent that “agents” are being utilised for listings as well as provide warnings to users on the risks of utilising unlicensed agents. The collection of this data could help support a further review of these issues in the future.

## Reducing Regulatory Burden faced by other accommodation providers

A key concern of STR held by many traditional accommodation providers is that the emergence and growth of new accommodation platforms have created an uneven regulatory playing field. Hosted accommodation providers in particular (such as B&B’s, farmstays, guesthouse, youth hostels and self-catered accommodation) are rightly frustrated that while they face significant levels of regulation to operate, STR operators are able to run with limited regulatory oversight.

The Division notes that the NSW Government’s response to Recommendation 5<sup>xii</sup> from the Parliamentary review indicated that:

*The principles for regulating traditional accommodation operators and short-term holiday letting should be aligned, fit for purpose and focused on consumer and community safety and amenity. The issues will be investigated further.*

*The NSW Government will continue to work closely with all stakeholders to identify opportunities for regulatory reform.*

The Division encourages Government to task the Independent Pricing And Regulatory Tribunal (IPART) as part of its regulatory review function, to undertake both a detailed review on the levels of regulatory burden faced by accommodation providers and make recommendations on practical changes to reduce this burden.

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<sup>i</sup> This observation was explored further in principles the Division identified in its 2015 thought leadership report titled [The Sharing Economy: Issues, Impacts and Regulatory Responses on the context of the NSW Visitor Economy](#) .

While that report examined the wider “sharing economy” it did explore in detail the current state of the accommodation sector in NSW, and the impact on the sector of online platforms. The report did not put forward specific recommendations to address these impacts. Instead, it proposed five principles to which regulators and legislators should refer when considering regulatory options in response to the sharing economy:

- Regulation should encourage the growth of commercial activity, not restrict it;
- The opportunity should be taken to reduce overall regulation across the visitor economy;
- Self-regulation should be encouraged before government intervenes;
- A cross-governmental approach is required to develop an efficient regulatory framework; and
- Regulatory responses should be designed based on strong empirical evidence.

<sup>ii</sup> <http://insideairbnb.com/>

<sup>iii</sup> See: <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-airbnb-economic-effects-in-australia-new-south-wales-010517.pdf>

<sup>iv</sup> At 1.69: <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6080/Final%20Report%20-%20Adequacy%20of%20the%20Regulation%20of%20Short-Term%20Holiday%20Letting%20in%20New%20South%20Wales.pdf>

<sup>v</sup> See <https://grattan.edu.au/wp-content/uploads/2016/04/871-Peer-to-peer-pressure.pdf>

<sup>vi</sup> <https://www.byronnews.com.au/news/residents-powerless-stop-airbnb-party-houses/3192741/>

<sup>vii</sup> For example, if a contention is that STR is associated with increased noise or other negative impacts affecting neighbours, then other data sources (such as complaints made to the police or strata managers) may also be useful.

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viii <http://www.afr.com/real-estate/melbourne-landlord-wins-landmark-airbnb-case-20160609-gpfa3g>

ix <http://mashable.com/2017/04/07/asian-airbnb-racism/#NVqvYMQngOq5>

x <http://www.abc.net.au/news/2014-06-03/new-laws-could-stop-party-houses-on-queenslands-gold-coast/5496588>

xi A maximum penalty of \$22,000 currently applies for unlicensed trading by a corporation and \$11,000 for an individual.

xii Recommendation 5 called on “*The NSW Government investigates, in consultation with advocates for traditional accommodation operators, the impact of the growth of short-term rental accommodation on their industry, and identifies opportunities to reform current regulations.*” See:

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/GovernmentResponse/6080/Government%20Response%20-%20Inquiry%20into%20the%20adequacy%20of%20short-term%20holiday%20letting%20in%20NSW.pdf>