



Australian Hotels Association
WESTERN AUSTRALIA

Regulating Short-Stay Accommodation in WA

April 2019

This document is a supplementary submission into Short-Stay Accommodation by the Australian Hotels Association (WA), in response to the Department of Planning Heritage and Lands Options Paper



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Australian Hotel Association WA (AHA)

The Australian Hotels Association WA (AHA) is the peak tourism, accommodation hotel and hospitality industry body in Western Australia, representing the interests of law-abiding business owners and operators of licensed commercial hotel accommodation. These businesses range from world recognised brand hotels, eco-resorts, boutique hotels, and serviced apartments, through to traditional pub-style family run hotels across metropolitan and regional areas of the state.

We welcome the opportunity to make a supplementary submission to the WA Parliamentary Economics and Industry Committee's Inquiry into Short-Stay Accommodation.

Introduction

The AHA's previous submission provided evidence of a rapidly expanding black market in commercial-residential or quasi-hotel accommodation, facilitated by online accommodation 'sharing' platforms.

Technology has facilitated peer-to-peer platforms, intended to enable people to share their homes. However, this has morphed into platforms that facilitate hosts to list premises for commercial purposes without approval from local government. The lack of consistent regulation has contributed to an unfair playing field which has lowered the threshold for entry to the commercial short-stay accommodation market and penalised genuine accommodation businesses owners. The adverse impacts arising from this inequity are felt widely, filtering through to the economy, employment, investment, and the community.

In support of these observations, the AHA focused on the best known platform, Airbnb, utilising publicly available data and analysed case studies from around the world to highlight the adverse impacts associated with allowing short-stay accommodation to operate unchecked.

The AHA has recommended the Committee adopt a regulatory framework for short-stay with the following 5 key elements:

1. Mandatory Registration
2. One Host, One Home policy
3. Appropriate fire and safety standards
4. Data sharing requirements
5. Protecting community amenity

This submission seeks to apply the AHA's 5 key elements within the context of planning options outlined by the Department of Planning, Lands and Heritage (DoPLH) in their draft Options Paper for regulating sharing economy short-term accommodation in WA.

In determining the best regulatory option, the AHA reflected on the adequacy and effectiveness of existing planning controls, as well as the capacity of local government as regulators with responsibility for compliance and enforcement.

Short-Stay, Tourism and the Responsibility of Local Governments

Local governments have a key strategic role in supporting the State Government's commitment to tourism through the development of complementary Tourism Strategies. Through Local Planning Schemes, they are responsible for the development of key infrastructure including the designation of tourism and visitor accommodation. Incompatible policies, particularly in key tourism areas can act as a barrier to future growth.

Under state planning legislation, local governments are delegated responsibility for managing short-stay rentals. However, beyond the Local Planning Scheme Regulations, there is no State Planning Policy or Development Control Policy that sets out controls or provides strategic advice on the management of short-term rental accommodation. Instead, local governments refer to Planning Bulletin 99, Holiday Homes Guidelines (the Bulletin), when developing short-stay accommodation policies. This Bulletin is outdated and largely irrelevant to modern Short-stay accommodation as it explicitly excludes hosted residential accommodation.¹

With the last review of short-stay planning policies occurring over a decade ago, local governments have been left to determine how to manage accommodation that is generally classed as a 'use not listed'. The result has been the development of inconsistent and predominantly unenforced policies that are ill-equipped to respond to the growth of unregulated commercial residential short-stay, particularly in key areas which government is actively promoting through state campaigns.

The City of Perth attracts over 1.7 million visitors a year² and supports the highest concentration of commercial accommodation businesses in WA. Despite state government incentives to boost hotel investment to attract visitors, there are over 730 short-stay listings of which 515 are entire homes.³ Although the City has a Short-Term Accommodation Policy, it is not being actively enforced. This abdication of responsibility for regulation is creating considerable tension between commercial hotel ratepayers and undermines the more than \$4.5 billion in private hotel investment to the state since 2012.

The City of Fremantle, attracting over 250,000 visitors a year,⁴ introduced a short-stay accommodation local law in 2008. The law limits regulation to a simple registration process that does not require the applicant to meet any standards other than provision of adequate parking. Despite the low entry to approval, at least 40% remain unregistered.⁵

In contrast, the Shire of Augusta-Margaret-River, attracting 1.5 million visitors,⁶ has taken a more rigorous approach, requiring development approvals for all holiday homes which is intended to capture all short-stay properties. The policy provides guidance on application fees, appropriate location, scale, use and imposes specific requirements for plans or exclusions in bushfire prone areas.⁷

Online sharing platforms have contributed to high levels of non-compliance amongst short-stay providers within local planning schemes. Prospective hosts are not required to provide evidence appropriate approvals have been secured. One listed, the host is able to mask

¹ Planning Bulletin 99, Holiday Homes Guidelines (September 2009).

² [Tourism WA City of Perth Visitor Factsheet - Three Year Average 2015/2016/2017](#)

³ Inside Airbnb Data, December 2018.

⁴ [Tourism WA City of Fremantle Visitor Factsheet - Three Year Average 2015/2016/2017](#)

⁵ City of Fremantle [evidence to the Committee, InsideAirbnb data as at December 2018.](#)

⁶ [Tourism WA Shire of Augusta-Margaret River Visitor Factsheet - Three Year Average 2015/2016/2017](#)

⁷ [Shire of Augusta-Margaret River Local Planning Policy 7 - Short-stay Accommodation \(September 2018\).](#)

their location, facilitated by online platforms who typically refuse to share data that would assist in compliance efforts, citing privacy considerations.⁸

Table 1: Short-Stay Compliance in Key Tourism LGAs

Local Government	Perth	Fremantle	Augusta-Margaret River ⁹	Busselton
Total Number of Entire Home Listings¹⁰	515	541	734	1107
Disclosed Number of Approved Premises (where available)	n/a	222 ¹¹	314 ¹²	700 ¹³

Without co-operation from platforms allowing for data sharing and transparency, governments have found it difficult to enforce compliance with local planning laws. This lack of transparency has contributed to the large number of short-stay accommodation properties continuing to evade necessary approvals, as evident in popular tourist destinations as indicated in Table 1. Consequently, it has been difficult for local governments to apply penalties under their policies and issue fines or prosecute unapproved short-stay operators.

There is evidence that recurring problems which have driven countries around the world to regulate short-stay accommodation are emerging locally in Western Australia. These impacts include:

- Transient populations replacing permanent communities¹⁴
- Erosion of a sense of community¹⁵
- Stunting the development of communities and local infrastructure due to housing shortages for permanent residents¹⁶
- Workforce shortages due to inability to source long-term housing¹⁷
- Undermining the sense of safety in neighbourhoods¹⁸
- Rising inequity between licensed, regulated accommodation providers and unregulated short-stay accommodation providers¹⁹
- Inability to attract investment in commercial tourism and hotel accommodation.²⁰

These pressures will only exacerbate, if the issue of regulation is not resolved.

⁸ [Airbnb sued New York City over Local Law No. 146 of 2018 which requires online platforms to provide details of the host to the City's enforcement agency](#)

⁹ [Shire of Augusta-Margaret River Local Planning Policy 7 - Short-stay Accommodation \(September 2018\).](#)

¹⁰ Inside Airbnb Data, December 2018.

¹¹ City of Fremantle evidence to the WA Short-Stay Inquiry, 13 March 2019.

¹² Shire of Augusta-Margaret River, Submission 143.

¹³ City of Busselton Submission 75.

¹⁴ 'City of Belmont, Submission 36, p.3.

¹⁵ City of Busselton, Submission 75, p.8.

¹⁶ Shelter WA, Submission 186, p.2.

¹⁷ 'A significant decrease in available long-term rental properties and increased long term rental prices is making it difficult for our staff to stay in the town.' Mandalay Holiday Resort and Tourist Park, Submission 40, p.1.

¹⁸ Name withheld, Submission 253.

¹⁹ Shire of Toodyay, Submission 18.

²⁰ City of Busselton, Submission 75; City of Belmont' City of Belmont, Submission 36, p.4.

Local Governments have stated they are supportive of state government leadership in regulating short-stay accommodation, and would be willing to work with State Government provided flexibility be retained at some level.²¹²²

Department of Planning, Lands and Heritage - Draft Options Paper

The AHA supports the adoption of Option 5.5 which proposes full regulatory measures to establish a modern framework that will be resilient and flexible allowing state and local government to respond strategically to the challenges posed by short-stay accommodation.

The AHA specifically endorses the following features of the proposed options:

- Contemporary short-stay definitions for hosted and commercial holiday home accommodation
- Deemed provisions into Local Planning Schemes
- Model local law

It is critical that the regulation allow for a swift and uniform approach to achieving minimum standards for short-stay through the state planning system.

Sufficient flexibility exists within this structure to allow state and local government to scale up regulatory controls depending on strategic priorities.

Recommendation 1

The AHA supports the adoption of Option 5.5 – Fully Regulate

²¹ City of Busselton, Submission 75.

²² Shire of Augusta-Margaret River, Submission 143.

Option 5.5: Fully Regulate

Short-Stay Definitions

The AHA supports the development of new and consistent short-stay definitions through deemed provisions in the Local Planning Regulations into all local planning schemes to provide clarity around the type of short-stay accommodation types operating in WA.

In our previous submission, the AHA offered a definition for ‘hosted’ accommodation which clearly identified two types of use where the home is the host’s primary residence – a) where part of the home is let and b) the entire home is let.

The distinction between partially and wholly let homes and recognition of the primary use of the property must be reflected in the new definition of ‘hosted accommodation’. Genuine shared accommodation, where the host shared a room or a bed in their homes, is supported and exempt from more stringent planning controls, subject to meeting certain conditions. Such conditions include holding adequate insurance and appropriate fire, health and safety provisions. This would allow genuine shared short-stay to be permitted; consistent with their location in residential homes and areas.

In circumstances where the entire home is to be let, specific conditions must be met to ensure the use does not unfairly compete against commercial providers. Conditions include:

- The property is the host’s primary residence;
- A maximum cap of 30 days on the number of nights for short-stay let in each calendar year; and
- The property is registered and has met the required minimum standards relating to insurance, fire, health and safety.

Hosts looking to rent out homes over 30 days can utilise provisions under the Rental Tenancies Act 1987.

All Short-stay accommodation platforms must be required to only list properties that have a valid registration number. Penalties should apply for each listing that is advertised without this number.

Where the home is not the primary residence and is proposed to be let unhosted, the property must apply to local government authority for approval as a registered Holiday Home

The introduction of a new short-stay ‘hosted accommodation’ definition and regulatory framework would allow for local governments to more clearly distinguish between genuine and commercial holiday homes. It is the AHA’s position that short-stay accommodation where the owner or host is not present should be considered a commercial development and triggers a development application requiring planning approval. There are several existing planning frameworks already available for operators to comply with, including but not limited to hotels, motels, B&B, serviced apartments and hostels.

Recommendation 2

Definition of ‘hosted accommodation’ to reflect two types of hosted accommodation: shared and un-hosted with circumstances where the host is not home attracting a maximum cap of 30 days on the number of nights let each year.

Recommendation 3

Short-stay accommodation such as holiday homes where the host is not present should be a commercial use and trigger a 'change of use' application.

Mandatory Registration

Submissions from local government and registered accommodation providers²³ have endorsed mandatory registration as a mechanism to ensure compliance with local government requirements, promote greater transparency and to facilitate enforcement. In addition to supporting long-term strategic state planning objectives to assess tourism accommodation

Internationally, state legislation has regulated the requirement for mandatory registration through state and with enforcement delegated to the City. Model legislation should establish reasonable minimum standards and include registration fees to support enforcement activities, penalties to incentivise compliance and reporting requirements.

Model local laws provide the best vehicle for introducing minimum requirements through legislation. Data to be collected should be specified in local laws:

- Details of the property owner or managing agent
- Address of the property
- Declaration of primary residence
- Designated contact person(s) and details
- Postal address for correspondence
- Payment of a prescribed fee by local government
- Adherence with requirements under local government policies

A prescribed registration fee is an effective means of contributing to the cost of administration and data collection, local government administration, compliance and enforcement. Local governments could be able to determine how costs associated with short-stay should be recovered and ensure appropriate council rates are levied based on the type of use of the property. Other jurisdictions have introduced a variable range of options that allow fees to be scaled according to risk. For example Boston has introduced different registration fees across short-stay use classes – hosted-shared (\$25), hosted-un-hosted (\$200).²⁵

Regular reporting by hosts is a further tool to promote compliance. Various approaches have been taken in international jurisdictions that require periodic reports to be submitted to demonstrate compliance by hosts, and should be included in legislation.

²³ 'Mandatory registration will support the enforcement of planning control by causing LGAs to maintain a register of accommodation from which they can cross check whether planning requirements have been met.' Registered Accommodation Providers of the Margaret River Region (RAPMRR), Submission 130.

²⁶ [San Francisco Administrative Code, Chapter 41A: Residential Unit Conversion And Demolition](#)

Table 2: International Reporting Requirement

Jurisdiction	Reporting Requirements
San Francisco	Hosts are required to submit a quarterly report to the Department beginning on January 1, 2016, and on January 1, April 1, July 1, and October 1 of each year thereafter, regarding the number of days the Residential Unit or any portion thereof has been rented as a Short Term Residential Rental since either initial registration or the last report, whichever is more recent, and any additional information the Department may require to demonstrate compliance with Chapter 41A. ²⁶
Japan	Operators are required to report to the relevant authority of the previous 2 months for each notified housing by the 15 th day of February, April, June, August, October and December each year with: <ul style="list-style-type: none"> • The number of days having lodgers at the notified housing; • The number of lodgers; • The total number of lodgers; and • A breakdown of the number of lodgers per nationality.²⁷

Penalties on Hosts and Platforms

One thing that has been clear from enforcement measures worldwide is that platforms resist any meaningful self-regulation of short term accommodation. To minimise the burden on local governments, legislation should impute penalties on online sharing platforms that list noncompliant properties, as well as on hosts to ensure the listing of registered properties. Additional obligations could be introduced through state legislation and include requirements for online accommodation providers to display the licensing number in listings.

In developing robust regulatory frameworks, international jurisdictions have demonstrated that registration and codes of conduct are not enough and subsequently attempted to implement penalties to curb non-compliance. These efforts have been strongly opposed by online platforms with Airbnb launching legal action against the government in San Francisco and New York City, with the company expected to challenge penalties issued last year in Paris.

The City of San Francisco clearly demonstrates the effectiveness of penalties against platforms in incentivising compliance. When mandatory registration was legislated in 2015, the platform only removed 92 listings that year, as opposed to swiftly delisting around 2,000 hosts the night a new law penalising the platform for taking fees from unregistered listings came into effect. (See Table 3)

Table 3: International Penalties

Jurisdiction	Fines for non-compliance
New York City	Up to \$7,500USD
Amsterdam	Up to €20,500
Paris	Up to €20,000
Miami	\$20,000
Charleston	\$1087
Paris	Up to €25,000
Vancouver	Up to \$1,000
Montreal	Up to \$100,000
Portugal	Up to €4,000
Berlin	Up to €5,000
Reykjavik	10,000 ISK – 1 Million ISK

²⁶ [San Francisco Administrative Code, Chapter 41A: Residential Unit Conversion And Demolition](#)

²⁷ [Japan Tourism Agency, Minpaku](#)

It is noted that there has been strong opposition by online platforms to introduce regulations. Yet, when compelled to sharing platforms have demonstrated they are able to introduce systems to support registration and compliance efforts when required.

San Francisco is a valuable example of how online accommodation providers can work collaboratively with online platforms to realistically achieve this goal, when threatened by the prospect of penalties. (See Appendix 1)

Airbnb's head of global public policy in America, Chris Lehane, stated that Airbnb wants to "work with cities as partners." A welcome signal that a collaborative framework for registration can be achieved and would be supported if introduced by state government by online accommodation platforms.³⁰

Data Sharing

Imposing requirements on online accommodation providers to share data will help promote better voluntary compliance of short-term rental income.

In countries where there has been no data sharing such as Berlin, inspectors have typically been reliant on neighbours tip offs regarding unregistered properties which is resource-intensive and unreliable.³¹

Mandatory registration and requirements for reporting by hosts and data sharing by platforms should be supported by state legislation to introduce obligations on online accommodation providers. The effect will be to a significantly reduced regulatory burden on local governments.

Recommendation 4

The development of a simple online State administered online registration system.

Recommendation 5

Requirements for mandatory registration of all short-stay accommodation, data collection, reporting and minimum standards to be introduced through state legislation.

AHA recommends that based on international experience, penalties be applied to the hosts and online platforms who do not comply with the requirement to share data.

Recommendation 6

Online accommodation platforms may only advertise / list properties that have a valid registration number. Penalties should apply for each listing that is advertised without this number to incentivise compliance.

Recommendation 7

Monitor the outcome of Federal Treasury's consultation on the development of "A Sharing Economy Reporting Regime" to ensure the development of a streamlined state and federal registration scheme for short-stay accommodation.

³⁰ [Kate Benner, 'Airbnb settles Law Suit with Hometown, San Francisco', 2017](#)

³¹ [Luisa Beck, Berlin had some of the world's most restrictive rules for Airbnb rentals. Now it's loosening up,' May 2018, The Washington Post](#)

Taxation

Data collection under this framework also has scope to ensure compliance with taxation obligations and to minimise the potential liability on hosts. From this year, online sharing platforms are now required to collect and pass data to the Australian Taxation Organisation to identify individuals who have provided accommodation services. The data matching program has been announced from 2016-17 to 2019-20.³⁵ Despite this arrangement, there is no current pathway for states to identify individuals providing this service in order to enforce state taxes.

France introduced a law requiring online platforms to transmit user data to the French tax authorities on a yearly basis, including gross income and number of transactions. The law comes into effect in January 2020 for revenues from 2019, so any transaction from 2019 onwards is to be transmitted to the tax authorities.³⁶

As capital gains tax is determined by the percentage of time a portion of property was used to generate assessable income, it is necessary for authorities to have this information. As such, it is necessary to have a mechanism of identifying all properties offering short-stay accommodation, how many rooms they offered, as well as the number of times those properties were booked for short term accommodation.³⁷

A state short-stay registration scheme should align with the development of a federal registration scheme to streamline the collection of host data from online platforms to ensure taxation obligations are met by hosts.

Minimum Standards

Minimum standards for Short-stay accommodation are required to ensure the safety of guests and to minimise the potential liability on hosts. Hosts should adhere to necessary minimum standards for fire and emergency, evacuation, health, insurance and building as enforced by local governments.

Online accommodation providers have generally contended the peer review systems that allow guests to rate their stay have acted as an adequate check-balance on the quality, service, cleanliness and safety standards of properties, with these ratings used as a guide by future guests. However, guests and hosts alike may not leave a review, there is no way to verify the review and the content is subjective. Most importantly peer reviews do not ensure adequate health, fire, safety standards are in place.

Although commercial accommodation providers are also subject to consumer reviews, they are also required to adhere to standards enshrined in legislation that ensures adequate early warning and escape in the event of fire and emergency, equipment including fire extinguisher and smoke alarms, as well as relevant health inspections.

Online platform Airbnb automatically provides Australian hosts with host protection insurance of up to \$1 million; however it does not cover damage to shared or common property³⁸ and has a reputation for being notoriously difficult to seek reimbursement from.³⁹ Typically

³⁵Tourism Accommodation Australia, 'Tackling the Black Economy: A Sharing Economy Reporting Regime', Consultation paper for the Black Economy Taskforce Final Report' 2019.

³⁶ Ibid.

³⁷ Ibid.

³⁸ [Property and Financial Services, 'what you should know before hosting on Airbnb.' PICA](#)

³⁹ [Aly J Yale, 'Putting Your House On Airbnb? What To Know Before Hosting As A Homeowner,' May 2018, Forbes](#)

landlord insurance is only covered for 90 days or more.⁴⁰ Insurance for Short-stay accommodation should be comprehensive and appropriate to ensure the safety of guests, just as traditional accommodation operators provide.

Local laws already mandate minimum fire safety requirements for commercial accommodation. Short-stay accommodation should be aligned with necessary local requirements. International evidence shows that states who require permits are more likely to adhere to fire safety standards.⁴¹

Australian Case Study

In 2018, a Wollongong man's tenants sub-let his bedrooms on Airbnb, allowing 10 people to live in the four-bedroom house. He stated that they "They ripped off the gate, there was a fridge in the front yard, lit fires in the ornamental fireplaces that were blocked up and smoked out the house."⁴² The blocked fireplaces presented a serious risk, resulting in damage to the property.

Recommendation 8

The AHA recommends the following minimum requirements for be adopted for short-stay residential properties:

- Acceptable fire safety measures consistent with the operation of short term rental accommodation for commercial purposes;
- Minimum insurance coverage of \$20 million for public liability; and
- Clearly articulated emergency contacts and procedures.

Implementation of One Host, One Home

Cities including New York City and San Francisco have implemented a One Host, One Home policy where residents may only list their primary residences on short-stay platforms.

This has helped to ensure that genuine accommodation is supported and does not unfairly compete with commercial residential, restrict the long-term residential rental market or conflicts with strategic tourism priorities.

In San Francisco, the Planning Commission noted that limiting Short-stay accommodation to 30 days in the primary residence was reasonable, particularly as it protected 'the liveability of neighbourhoods.'⁴³

A NY Attorney General Report that analysed Airbnb bookings in New York from January 1, 2010 to June 2, 2014 found that unregulated commercial short-stay accommodation providers were dominating revenue whilst skirting regulations compared to traditional, regulated operators.⁴⁴

AHA supports state government introducing a One Host, One Home Policy through deemed provisions in strategic tourism areas where there is already existing and available commercial accommodation. Governments should be permitted to implement zones in their

⁴⁰ [Property & Financial Services, 'Can I list my apartment on Airbnb?' PICA.](#)

⁴¹ Kennedy HR, Jones VC, Gielen A Reported fire safety and first-aid amenities in Airbnb venues in 16 American cities, *Injury Prevention*, Published Online First: 07 May 2018. doi: 10.1136/injuryprev-2018-042740.

⁴² [Clarissa Bye 'Airbnb reform: The worst NSW horror stories', News.com.au, June 2018](#)

⁴³ [San Francisco Planning Department, 'Amendments Relating to Short-Term Rentals', Executive Summary; Administrative Code Text Change](#)

⁴⁴ Ibid.

local planning schemes so that they can subsequently identify where one-host one home will operate. As Airbnb offers a different experience for tourists, allowing accommodation in zones that are further away from touristic areas supports and maintains diversity in the tourism accommodation offering.

Barcelona provides a model for introducing One Host, One Home restrictions on short-stay accommodation through zoning in legislation, identifying specific locations where the policy can be applied.⁴⁵

Recommendation 9

Introduce One Host, One Home Policies in areas of strategic state and tourism priority through deemed provisions – for example in the Perth Metropolitan area and Regions including Augusta-Margaret River and Busselton.

Ensure the planning scheme allows for sufficient flexibility for local governments to introduce more restrictive measures, as the need arises.

Community Amenity

Local Governments have been reserved in their support for full regulatory options. To ensure the amenity of residential neighbourhoods are preserved, all local planning schemes should identify permitted zones for commercial Short-stay accommodation.

Deemed provisions could make commercial Short-stay accommodation considered a 'D' use which would necessitate planning approval and give rise to community consultation.

Local governments may also dictate the number of nights a short-stay provider can operate, no more than the state-legislated 30 unhosted nights per year.

Further, a complaints system should be set up to ensure surrounding residents have sufficient recourse should problems arise. In Japan, hosts are required to provide an explanation to guests and respond appropriately to complaints from neighbours.⁴⁶

An issue of obvious concern regarding the current status of Short-stay accommodation in WA is the impact that these properties are having on affected neighbours and the community amenity. In many cases, neighbouring residents of Short-stay properties have no say on whether such activity should take place, nor do they have access to timely and effective recourse in the event of a problem such as noise, breaches of by-laws or anti-social behaviour. Requiring potential Short-stay hosts to engage with neighbours a consultation provision when seeking planning approval from local government authorities will empower communities.

⁴⁵M. Chaves, P. Ypma, P. McNally, M. Dominguez Gaitan, K. Kazmierska, 'Study on the assessment of the regulatory aspects affecting the collaborative economy in the tourism accommodation sector in the 28 Member States (580/PP/GRO/15/15111J), *European Commission* ET-04-18-356-EN-N, doi 10.2873/78753.

⁴⁶[Japan Tourism Agency, Minpaku](#)

Conclusion

Western Australia has a unique opportunity to implement appropriate, fair and most importantly, effective regulations that will stand the test of time. It is interesting to note that the Bulletin 99 Planning Guideline (referred to in this submission) was drafted in 2009, with the justification for these guidelines being the “growing number of holiday homes (that) have been made commercially available.”

Airbnb did not launch in Australia until 2012, three years after the drafting of this guideline. Since Bulletin 99 was drafted, we have seen nothing short of an explosion of unregulated Short-stay accommodation properties throughout WA, necessitating a robust and urgent response from policy makers to protect industry jobs, guest safety and the state’s strategic tourism objectives.

It is clear from evidence gathered internationally that a rigorous regulatory approach is required to address the rise of unregulated Short-stay accommodation, with jurisdictions within Australia such as NSW and Tasmania that their light-touch approaches have proven to be inadequate.

It is also clear that peer-to-peer platforms will publicly claim to welcome regulation yet when confronted with appropriate reforms will obfuscate, delay and commence legal action against those who attempt to alter their unfettered business model. Local, state and federal authorities across the world have been targeted with sustained and expensive litigation that aims to intimidate governments into ceding to their demands.

The Department of Planning’s Option Paper includes the opportunity to fully regulate Short-stay accommodation and it is the AHA’s strong belief that this is the only appropriate course of action to ensure platforms comply, enforcement is possible, guest safety is maintained and local jobs are protected. Industries throughout WA face a raft of regulatory measures and for good reason. The same must apply to those that wish to compete against those established businesses and enterprises who have always obediently complied with the burdens imposed on them by regulators.

Appendix 1: Penalties for platforms - San Francisco Case Study

In 2015, San Francisco introduced mandatory registration for short-stay accommodation providers via Ordinance No. 218-14.⁴⁷

Following Ordinance 218-14, online platform Airbnb only removed around 92 listings in June 2015 and 26 in September 2015 by hosts who had multiple listings or represented commercial activity and not genuine home-sharing.⁴⁸ By March 2016, there were only 1,647 properties registered with the city out of 7,046 listed on Airbnb alone, a registration rate of approximately 25%.⁴⁹

Due to limited compliance, San Francisco City introduced Ordinance 104-16 in Chapter 41A of the San Francisco Administrative Code which penalised online sharing platforms \$1,000 per day that a non-compliant listing is advertised.⁵⁰ Airbnb filed lawsuit with the City, seeking a preliminary injunction, with HomeAway joining as a Plaintiff. Shortly thereafter, the proceedings were stayed while the City amended the Ordinance.

In August 2016, the City amended the Ordinance to make it a misdemeanour to collect a fee for providing the booking service for the rental of an unregistered property.⁵¹ Airbnb and HomeAway proceeded with legal action, challenging the revised ordinance S41A5(g)(4)(c) on the grounds that it violated the First Amendment, notably Section 230 of the Communications Decency Act 1996 that protects those who republish or provide an online platform for information or speech.⁵²

- S41A5(g)(4)(c) requires platforms not to collect a fee for a booking service in connection with short-term rentals only when the Hosting Platform exercises reasonable care to confirm that those Residential Units are lawfully registered on the Short-Term Residential Rental Registry at the time the Residential Unit is rented for short-term rental.⁵³
- S41A5(g)(4)(d) requires hosting platforms to sign a monthly affidavit to the city verifying compliance.
- S41A.5(g)(4)(e) requires platforms to collect and keep the following information to present to the city if lawfully directed to do so:
 - The name of the Owner or Business Entity who offered a Residential Unit for Tourist or Transient Use;
 - The address of the Residential Unit;
 - The dates for which the tourist or transient user procured use of the Residential Unit using the Booking Service provided by the Hosting Platform;
 - The registration number for the Residential Unit; and
 - The affidavit required in subsection (g)(4)(D).

U.S. District Judge James Donato rejected Airbnb and HomeAway's argument, saying the law does not prohibit Airbnb from publishing the listings – only collecting fees from

⁴⁷ <http://insideairbnb.com/san-francisco/#>. Retrieved March 2019.

⁴⁸ [Airbnb Citizen \(2016\) 'Airbnb in San Francisco: By The Numbers](#)

⁴⁹ [Airbnb, INC et al. v City and County of San Francisco \(2016\) San Francisco](#)

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² [Maria Dinzeo, 'San Francisco, Airbnb Settle Dispute Over Short-Term Rental Law,' May 2017, Courthouse News Service](#)

⁵³ [San Francisco Administrative Code, Chapter 41A: Residential Unit Conversion And Demolition](#)



unregistered rental bookings:

“As the text and plain meaning of the ordinance demonstrate, it in no way treats plaintiffs as the publishers or speakers of the rental listings provided by hosts. It does not regulate what can or cannot be said or posted in the listings. It creates no obligation on plaintiffs’ part to monitor, edit, withdraw or block the content supplied by hosts,” Donato wrote. “The ordinance holds plaintiffs liable only for their own conduct, namely for providing, and collecting a fee for, booking services in connection with an unregistered unit.”⁵⁴

A settlement was reached and the law came into effect in 2018. From the time of the ordinance, Airbnb listings dropped by half, with around 2,000 the night before the law came into effect;⁵⁵ a clear demonstration that penalties on platforms is the most reliable way of ensuring compliance with mandatory registration.

As a part of the settlement, Airbnb and HomeAway agreed to give the city a monthly list of all short-term rentals in San Francisco so the city can verify the hosts’ registration numbers, and the companies will remove any listings and cancel future stays at unregistered rentals.

Following registration, hosts are required to display their registration number at all times.⁵⁶ As a result, Airbnb decided to put a pathway to registration on its website.⁵⁷

⁵⁴ [Maria Dinzeo, ‘San Francisco, Airbnb Settle Dispute Over Short-Term Rental Law,’ May 2017, Courthouse News Service](#)

⁵⁵ [Carolyn Said, ‘A leaner vacation rental market,’ February 2018, San Francisco Chronicle;](#) [Ruth Reader, ‘This is how regulation affects Airbnb in San Francisco,’ February 2018, Fast Company](#)

⁵⁶ [Airbnb, Help article on San Francisco, CA](#)

⁵⁷ [Airbnb Citizen, San Francisco Settlement agreement: frequently asked questions](#)

Appendix 2: International Examples of Minimum Standards

Jurisdiction	Requirements
Japan	<p>Houses that conduct private lodgings must have a kitchen, bathroom, toilet, and washstand facility. Further, hosts are required to:</p> <ul style="list-style-type: none"> ➤ Secure 3.3 metres squared or wider of floor space per lodging room; ➤ Ensure cleaning and ventilation (guidelines provided); ➤ Install emergency lighting equipment; ➤ Display the evacuation route; and ➤ Take other measures to ensure safety for the lodgers in case of fire or other disasters.⁵⁸ <p>The structure equipment of the facility needs to meet the standard upon obtaining permission. In addition, applications are required to the prefectural (including the city that establishes a health center and special zone) health centre, where the housing is located.</p>
Portugal	<p><u>Health and Safety</u></p> <p>The sanitary facilities of local accommodation establishments must have a security system that guarantees privacy and should always meet hygiene and cleaning conditions.⁵⁹</p> <p>Local accommodation establishments (not apartments) must comply with the following requirements:</p> <ul style="list-style-type: none"> ➤ To present adequate conditions of conservation and operation of the facilities and equipment; ➤ be connected to the public water supply network or have a private water supply system with a duly controlled source; ➤ be connected to the public sewage system or equipped with septic tanks sized to the maximum capacity of the establishment; and ➤ Have hot and cold running water. <p>The accommodation units of local accommodation establishments (apartments) must comply with the following:</p> <ul style="list-style-type: none"> ➤ Have a window or balcony with direct communication to the outside that ensures adequate ventilation and aeration conditions; ➤ Be equipped with adequate furniture, equipment and utensils; ➤ To have a system that allows to signal the entrance of external light; <p>Have doors equipped with a security system that guaranteed the privacy of users.</p> <p><u>Fire and Emergency</u></p> <p>Local accommodation establishments must comply with the fire safety rules in accordance with the provisions of the relevant law.⁶⁰ More specifically, establishments of local accommodation with a capacity equal to or less than 10 users shall have:</p> <ul style="list-style-type: none"> ➤ fire extinguisher and blanket accessible to users; ➤ first-aid equipment accessible to users; and ➤ Indication of the national emergency number (112) in a place visible to users.⁶¹

⁵⁸ [Japan Tourism Agency, Minpaku](#)

⁵⁹ [Decree-Law No. 128/2014 - Diário da República no. 166/2014, Series I of 2014-08-29, Legal status of the operation of local accommodation establishments](#)

⁶⁰ [Decree-Law no. 220/2008 of 12 November and the technical regulations established in Administrative Rule no. 1532/2008, of December 29; Decree-Law No. 128/2014 - Diário da República no. 166/2014, Series I of 2014-08-29, Legal status of the operation of local accommodation establishments](#)

⁶¹ Ibid.

