



Airbnb Discussion Paper

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Introduction

The Local Government Association of Tasmania (LGAT) is the representative body of Local Government in Tasmania. Established in 1911, the LGAT is incorporated under the *Local Government Act 1993* with membership comprising all 29 Tasmanian councils.

The objectives of the Association are:-

- To promote the efficient administration and operation of Local Government in the State of Tasmania;
- To watch over and protect the interests, rights and privileges of municipal councils in the State of Tasmania;
- To foster and promote relationships between Local Government in the State of Tasmania with both the Government of Tasmania and the Government of the Commonwealth of Australia;
- To represent the interests of the members of the Association generally, and in such particular matters as may be referred to the Association by its members; and
- To provide such support services to the members of the Association as the Association may by resolution in meeting determine.

Scope of this Paper

This discussion paper has been prepared by the Local Government Association of Tasmania for endorsement by its members, Tasmania's 29 Councils. Until formally endorsed, the following does not represent the official view of the Association or its members and has been provided for discussion purposes only.

What is Airbnb?

Airbnb is a website for people to list, find and rent holiday/temporary accommodation. It has over 1,500,000 listings in 34,000 cities and 190 countries. The company is privately owned and operated and has its headquarters in San Francisco, California.

Essentially the way Airbnb operates is that it is a peer-to-peer accommodation market place that connects (via its website) users with property to rent. Airbnb provides a source of supply in accommodation markets. Security and safety for the accommodation is not vetted by Airbnb and is left to travellers to assess based on published reviews.

The two parties to an Airbnb exchange, hosts and travellers, must register on the Airbnb website. Hosts list their available space, whether it is an entire apartment, a room in a house, a castle, or even an igloo. Travellers can then browse and book these listings. Airbnb takes a six to fourteen per cent guest service fee every time a reservation is booked.

Airbnb does not own any of the 'spaces', they act as a facilitator, matching hosts with travellers.

The Airbnb platform has a number of safety-related advantages built in, including:

- no handling of cash – payment is transferred through Airbnb itself
- a 24/7 helpline manned by customer service agents
- profiles are attached to a reputational mechanism

Guests and hosts both verify their identity by:

- connecting to social networks
- scanning their official ID (hosts may require guests to have this verified ID before requesting the space)
- confirming personal details

Hosts also have the option of requiring a security deposit and are covered by up to \$900,000 AUD in damages to their property through the Airbnb Host Guarantee.

Where did it start?

Airbnb started in 2007 when Joe Gebbia and Brian Chesky, both 27, were struggling to pay their rent. There was a design conference coming to San Francisco and the city's hotels were fully booked, so they came up with the idea of renting out three air beds on their living room floor and cooking their guests' breakfast. They charged \$80 per person per night.

The next day they created a website, www.airbedandbreakfast.com. Six days later they had a 30 year old Indian man, a 35 year old woman from Boston and a 45 year old father of four from Utah sleeping on their floor.

Why did it start?

The intent was to make better use of something that was already in existence and to share what people already had (part of the sharing economy, otherwise known as collaborative consumption). The focus was on idle space or excess capacity of resources.

These old market behaviours were reinvented with the assistance of technology i.e. an information technology based sharing platform.

Where is it at now?

There has been a shift from letting a private room in a home where the host resides.

In many communities around the world, where Airbnb exists, there is little left of the platform's original concept, that is "sharing" unused spaces (usually a private bedroom) with visitors and possibly establishing a (temporary) personal connection with them (like a bed and breakfast, without the regulated infrastructure).

While private rooms are still offered in residents' homes, what is also on offer now includes a substantial number of entire homes and apartments. It is now not uncommon in larger cities around the world to have the majority of listings being made up of entire homes/apartments that are routinely available for over 90 days per year (for example, this type of listing accounts for 60% of Berlin, 53% of London and 85% of Paris listings).

Entire homes/apartments that are highly available and rented frequently year round to tourists/temporary residents probably don't have an owner present. Where present in high numbers in a particular location, this type of accommodation is increasingly seen by some as displacing locals and contributing to changing the local communities in a negative way.

Number of hosts with multiple listings is increasing

A host may list separate rooms in the same apartment or house, or multiple apartments or homes on the Airbnb website. Available data shows that for the greater Melbourne area in February 2016 (similar data is not currently readily available for Tasmania), there were 8,633 places advertised, of which 31% of the hosts had multiple listings (i.e. more than one property). While the majority of multiple listings were between two and three listings, one host had 74 listings on the website.

Hosts with multiple listings are more likely to be running a business and are unlikely to be living in the property.

Number of guests admitted per listing

Roughly 46% of hosts advertising accommodation on Airbnb in the greater Melbourne area in February 2016 were offering to accommodate no more than two guests per letting and there were a few that offered more than ten places in a single letting.

Sharing economy vs. commercial gain

One of the biggest issues that is occurring now with Airbnb is the tension between those people committed to the true sharing economy and supplementing their income in a small way (they are principally interested in sharing their primary residence and meeting new people) and those who are interested in listing properties primarily for commercial gain.

The sharing economy is increasingly being seen as contributing significantly to economic development in communities' worldwide. While the two interests can exist side by side, the different drivers tend to have variable impact and are likely to require different regulatory responses.

Issues associated with Airbnb operation

As well as understanding some of the data regarding Airbnb in Tasmania, it is also necessary to provide other information that serves as context for any policy and regulatory response in the future.

General context

There are three main ways that people temporarily share (short term) housing in exchange for money. They are:

1. A host rents out a space in their home (primary residence) while they remain in the property.
2. A host rents out most or all of their home (primary residence) while they stay elsewhere temporarily.
3. A home is not occupied by a permanent resident, but is rented for many short term stays all year long.

Planning treatment

One issue that warrants further attention in Australia is the planning treatment of short term stay accommodation, particularly as it applies to private residences.

There is generally a lack of clarity on whether the provision of accommodation for short term stays within a residential property is a permitted use, resulting in ambiguity for hosts, users and residents.

There is a view that any accommodation offered by Airbnb should be classified as tourist or visitor accommodation (a view promoted by other operators in the market place such as hotel and bed and breakfast businesses to provide a level playing field). But classification in this way brings with it a range of required standards and monitoring processes that appear to be overly onerous, costly and unnecessary given the potential risk profile. These requirements potentially include obtaining land use planning approval, complying with health, building and safety laws and even a requirement to pay taxes associated with tourist ventures.

In Tasmania, Planning Minister Peter Gutwein has said new rules for Airbnb users would ease the shortage of accommodation in some parts of the state during peak times while protecting the interests of existing hotels and bed and breakfasts.

"It will provide clarity for Airbnb and other short-term accommodation options by enabling residential buildings to operate for up to six weeks (42 days) a year before permits are required," he said.

Some Airbnb and Stayz hosts in Tasmania have been threatened with large fines from councils for advertising their properties on the website. Under existing City of Hobart regulations, for example homeowners have to apply for approval before leasing a room.

A reasonable way forward in terms of planning legislation that could be considered in the State, is for short term stay hosts (where the property is their primary residence) to not be required to apply for a business licence of the same type and nature that commercial operators need to access.

Perhaps the activity be included in planning schemes as an ancillary use of a residence, or identified as an allowable home business.

In addition it may be reasonable for hosts to be required to register their homes with the council (for a minimal fee) that could be renewed periodically, such as every three years, so that information can be kept regarding number of properties available in a location, but not for regulatory purposes.

Sharing economy or commercial gain

A clarification that short term rental of one's primary residence (a single room in a home or the entire property) is not a commercial use and is therefore an allowable use, would permit residents who want to participate in the sharing economy, to do so without fear of punitive action.

This approach would also allow regulators to focus attention where it really matters, those operators who are focussed primarily on running a business for commercial gain.

Scale e.g. number of bedrooms

Typically people operating in the sharing economy operate in a small scale way often offering accommodation for only two to three people. Hosts that offer accommodation for in excess of six to eight people might be considered, if other data supports the notion, offering accommodation on a business/commercial basis.

Level playing field

Many in the hotel industry claim that Airbnb operators should not be given preferential treatment and should operate on a level playing field with hotels and bed and breakfast accommodation.

The fact is, the intent for many Airbnb hosts is not to operate solely for commercial gain (although some do fall into this category) and therefore the regulation that applies to larger operators should not apply.

What should be promoted is a diversity of accommodation options to meet a broad range of interest and needs, some options reasonably requiring different regulatory processes than others. Many people prefer renting a place with a local family in a community when travelling, rather than staying in larger hotel chains and this should be effectively provided for in the State.

Building Code of Australia (BCA)

Under the BCA, class three buildings (hotel or motel buildings) are required to have fire-safety, energy efficiency and disability access features that are not required in class one (single residential) and two (a building containing two or more sole occupancy units each in a separate dwelling) buildings. It would be inappropriate to expect residential properties (that are leased by the primary resident short term) to meet the increased accommodation standards.

Access to housing

In some cities concerns have been expressed that allowing short term rental leads to a reduction in the supply of housing as property owners choose to convert housing units into short term vacation homes.

Of the three ways people rent spaces for money, identified above it is really only where a home is not occupied by a permanent resident, but is rented for many short term stays all year long that has the potential to remove housing from the market.

In a sense when a host rents out a space in their home (primary residence) while they remain in the property and/or when a host rents out most or all of their home (primary residence) while they stay elsewhere temporarily this may be seen as contributing to increasing the affordability of housing, by helping residents offset rent or mortgage payments.

Disruption to neighbourhood amenity

Some see that the influx of travellers associated with people displacing local residents (when secondary properties are offered for rent, without the host living in the dwelling), will transform quiet residential neighbourhoods into revolving visitor districts, leading to a loss of the cultural identity of the areas.

There have been complaints from neighbours living next to Airbnb (where entire homes/apartments are leased out, and they are not the primary residence of the host) associated with safety, amenity or noise regarding users in individual properties. This has led to a push to stop the accommodation and put pressure on the local councils to take action.

Taxation treatment

In Australia users of sharing economy services such as Airbnb are not required to pay GST. This is because renting out a room in a house is “an input taxed supply of residential rent”.

With respect to income tax however, Airbnb hosts do need to declare any income from the service they provide in their annual tax return.

In some countries, initial earnings through Airbnb up to an identified level are waived in income tax assessment with a view to encouraging participation in the sharing economy and supporting people who may be asset rich but income poor. Recent data show that the average Airbnb host in Australia earns roughly \$7,100 per year.

Consumer protection

There is a perception, often led by the hotel industry, that accommodation that is offered through Airbnb may not meet appropriate standards and will reflect badly for the tourism industry in the State. This is an argument that seems to carry little weight.

There is a diversity of accommodation styles offered through the site ranging from very basic through to luxury.

Profiles for the host and user are linked via the site along with details of the properties availability and users can make an informed choice about what they are accessing.

Damage to property

There have been some high profile stories about property being damaged by users, but relative to the proportion of properties leased this is not considered a significant issue.

The Airbnb Host Guarantee provides protection for up to \$900,000 AUD to a host for damages to covered property in the rare event of guest damages above the security deposit, or if no security deposit is in place.

Recordkeeping

In order to ensure compliance with the rules and limitations an area adopts for short term stays, it may be reasonable that an authority require that hosts keep records (subject to privacy laws) of guest names, guest contact information, dates of stay and fees paid. These records may be required to be maintained for a prescribed number of years and be available for inspection upon request.

Some data

Value of data to inform policy setting and regulation

Data about letting type, availability and occupancy rate regarding Airbnb listings is necessary because it provides insight into how Airbnb is really being used in a particular location and how it might be affecting housing supply and affordability, businesses, neighbours and communities.

Data that may be used to guide development of a regulatory response to Airbnb includes:

- whether the host is present in the dwelling at the time of letting or not
- how many rooms are being rented in a building – whether it is an entire apartment/home a private room or a shared room
- the number of nights a dwelling is available to rent per year
- the number of nights a dwelling is rented per year
- minimum nights stay
- the number of occupants that can be accommodated in a rental
- whether the listing is licensed
- the number of listings per host

This sort of information can allow differentiation of whether or not hosts are principally interested in promoting the sharing economy or are operating for commercial interests alone.

What happens elsewhere?

Specific regulations around letting and subletting properties through platforms such as Airbnb are complex (or in many cases undefined) and vary from State to State and council to council across Australia.

New South Wales

In NSW short term accommodation rentals are overseen by councils. Generally whether a property may be used for short term accommodation depends on the zoning of the land and the permissible uses within that zone designated by the local councils planning instruments. Councils have the power to set their own rules about short term letting in their Local Environment Plans. Letting of the type offered by Airbnb can occur (if authorised by a council) under the planning scheme without the need to apply for development consent.

However, there are instances where short term letting is not permissible as a result of the development consent conditions that apply to a particular purpose.

For example the City of Sydney does not permit mixing permanent residential use with tourist and visitor accommodation models in the same building. Also many metropolitan councils demand planning permission for short term accommodation.

In Waverly, short term rental is not allowed without prior approval from the council along with a construction certificate showing compliance with the BCA.

Coastal NSW councils have relaxed their planning controls on short term rentals to allow people to rent out their homes through Airbnb.

Gosford, Pittwater, Shoalhaven and Kiama, all holiday rental hotspots, have given short term rentals the go ahead.

Barcelona

Fines against Airbnb (24,000 euros) for “serious” breaches of local laws were levied in 2015. Violations stemmed from hosts allegedly failing to register rental units with the Tourism Registry of Catalonia (as they are required to do) and also attempting to circumvent regional laws that prohibit renting out rooms in private residences.

Paris

Paris is currently Airbnb's most popular vacation destination, with an estimated 40,000 listings. Earlier this year, the government began to fine people who were renting secondary apartments as short term accommodation. Per night levies on person to person housing transactions are also being considered.

Various reasons have been cited for these restrictions:

- protecting the amenity of full time residents
- protecting the appeal of local communities for visitors
- freeing up rental accommodation for local residents and driving down rents
- stopping hotel tax avoidance and
- supporting the local hotel industry

Berlin

German officials, placing some blame on Airbnb for Berlin's increasing rents and housing shortages, passed a law banning the short-term let of entire apartments to tourists without a city permit. The laws (Zweckentfremdungsverbot) are meant to address housing affordability in the city, and also limit housing vacancy, demolition of apartments or conversion into commercial premises.

Furthermore, in February 2015, Berlin's state court reinforced earlier rulings against subletting, granting landlords the power to evict tenants they catch subletting their apartments to Airbnb users.

People in Berlin can still rent out rooms in their own homes, but no more than fifty per cent of the floor space. And landlords can still apply for an official permit to rent out an entire apartment, but if approved cannot charge more than the average local rent.

Hundreds of Berlin properties remain advertised on Airbnb despite a new government ban on entire-apartment listings.

Amsterdam and London

These two cities have worked to support operators like Airbnb.

In February 2015, Amsterdam announced a cooperative effort with Airbnb in which the city will levy a tourist tax on rentals, while Airbnb will work to ensure potential hosts are aware of all pertinent rules and regulations.

Londoners interested in renting out their properties on Airbnb are likely to benefit from a new amendment to the city's housing legislation (which passed Parliament in March 2015), which will allow homeowners to rent out their house, flat or spare rooms for up to three months a year.

New York

New York has over 16,000 listings. Hosts must register with the city council. Hotel taxes apply and current NYC law only allows a permanent resident to sublet their property for less than thirty days and only if they are still residing in the dwelling.

A recent report showed that over 75% of the city's rentals over a four year period were illegal, with property owners evading millions of dollars in annual hotel taxes and reducing the availability and affordability of long term housing options for NYC residents. Legislation has recently been introduced to increase fines for violators.

San Francisco

San Francisco passed a law effective 1 February 2015, providing for an exception to its law banning apartment rentals for less than thirty days but only for a maximum of three such lettings in any twelve month period. The apartment owner must register with the city and pay the 'transient occupancy tax' levied on hotels for any such letting and must be a full time resident in the property.

Santa Monica

Santa Monica has implemented stringent regulations (June 2015) to limit short term rentals as a result of increases in housing prices and dwindling housing supply.

The new regulations require anyone putting a listing on Airbnb in Santa Monica to live on the property during the renter's stay, register for a business license and collect a fourteen per cent occupancy tax from users that will be payable to the city.

The future in Tasmania

There is little doubt that Airbnb type accommodation models will continue to exist in Tasmania. In all likelihood the interest in the model from a host and user perspective will continue to increase rapidly, as it has done in all other countries.

There is significant potential for councils and communities to gain positive benefits from the changing accommodation landscape.

Clear and sound regulation does not currently exist in the Tasmania for the type of accommodation that sites like Airbnb offers. In order that Airbnb plays a valuable role in the Tasmanian Visitor economy now and into the future a clear and defensible approach to managing the opportunities and challenges it presents is required.

The strategy and regulatory response for dealing with the accommodation options presented by Airbnb in the State needs to be carefully nuanced so that it recognises the diversity of needs of hosts, users, business and communities; so that the system is regulated but not overregulated unnecessarily; so that risk is managed appropriately and so that effective monitoring is only directed where necessary and most valuable.

There is considerable scope for further research. The area is complex and solutions need to be well thought through. Issues such as planning, licensing, employment conditions, taxation, consumer welfare, housing availability and neighbourhood amenity all need to be considered.

While uniformity across councils may not be possible or the preferred way forward, because consideration of local conditions is essential when developing an appropriate response, a state-wide regulatory framework that encourages participation in the market place, ensures barriers to participation are low, provides for a range of accommodation options that benefit consumers, while proportionately managing apparent risks, seems essential given that platforms like Airbnb appear here to stay.

Regulation needs to respond to changes in technology while allowing for economic stability for local residents, a greater variety of tourism and travel options and stronger local economies. However, regulations are only effective if they are enforced. Information is necessary to be able to enforce regulations and identify offenders. Regulations are best focussed on the hosts providing accommodation in the commercial gain category rather than the sharing economy category.