

**SUBMISSION TO THE ECONOMICS AND INDUSTRY STANDING COMMITTEE
THE LEGISLATIVE ASSEMBLY
PARLIAMENT OF WESTERN AUSTRALIA**

INQUIRY INTO SHORT-STAY ACCOMMODATION

Introduction

“Unregulated competition is a naïve metaphor for anarchy”

This issue is as much as it is about unregulated non-compliant and illegal short stay accommodation providers, as it is about Airbnb.

Airbnb has shown itself to be a deceptive, secretive corporation that has no respect for a countries laws and rules and exploits people, whilst hiding behind the façade of the shared economy. It takes people in on the promise of ‘easy money’.

All its accommodation is advertised without an address. The address is only provided to its guests after the booking is made, together with the additional fees for commission and cleaning.

The premises are also not identified in any way by signage, often with absent landlords, with the result that some guests are found trying to break into ‘the wrong property’.

It is in many ways this phenomena or disease has flourished as a result of the failure of local government in Western Australia.

A failure to administer and ensure compliance with legislative requirements of;

- The Local Government Act
- The Planning and Development Act
- The Health Act
- The Food Act

As is the case with all such matters in Western Australia some local authorities are more proactive and diligent than others.

This submission deals with our experiences as registered short stay accommodation providers.

The Anchorage Guest House

*The Anchorage Guest House Boutique Bed & Breakfast (The Anchorage)
2 Smythe Street, Rockingham, WA.*

The Anchorage has been an iconic bed and breakfast at Rockingham Beach for almost 25 years.

Designed and purpose built as a boutique Bed & Breakfast in 1996 it comprises of 4 en-suited double rooms with all modern facilities. It also has a fully self-contained 2 bedroom apartment on site.

A four star rated business it has an outstanding reputation. It is rated number 2 in Rockingham, rated 9.9 by Hotels Combined in 2018 and Booking.com 9.6.

We are the fourth owners and have been operating the business since 2013.

Over the last 12 to 15 months we have watched our business income drop some 35% almost \$80,000 per year.

As a result of this Sylvia has had to return to full time work and our staff reduced by 50% to stave off bankruptcy.

The real sadness is that we are not the only ones suffering.

Term of Reference

- 1. The forms and regulatory status of short-stay accommodation providers in regional and metropolitan Western Australia, including existing powers available to local government authorities.**

Under current legislation as outlined above local governments are responsible for the control and good management of short stay accommodation.

All registered and approved short stay accommodation providers are required to comply with the following;

Planning Approval

Location, including lodging a development application, which in the City of Rockingham requires a non-refundable fee of \$147.

The purpose of this requirement is to ensure suitability, including consultation with affected neighbours and ensure that small residential streets will not be adversely impacted by increased traffic generation that will affect the amenity of existing residents.

Scale of operation

This requirement is essential to ensure that the building and the size of rooms can cater for the number of guests that will occupy the dwelling.

Parking

This again is an essential element to ensure the amenity of existing residents is not impacted and strict guidelines are in place to ensure onsite parking.

Advertising signs

Rules and regulations are in place to ensure that signage does not exceed the permitted size.

In the City of Rockingham pursuant to provisions of TPS2 signs, hoardings and bill posting local law is in place to ensure compliance.

Health Requirements

All short stay accommodation providers must comply with the Health Act 1911 and if any food is served or provided, the Food Act 2008 and the Food Safety Standards.

In addition separate shower, WC and hand basins must be provided and room sizes in accordance with the Health Act 1911 (14 cubic meters per person). Hygiene standard of premises must be inspected and acceptable before approval is given to operate and regular inspections are conducted. In the City of Rockingham health service fees apply.

Fire Control and Lighting

A smoke alarm system, hard wired and lighting to assist evacuation must be installed so as to comply with the Building Code of Australia. Approved fire extinguishers and fire blankets must also be provided together with a clearly visible evacuation plan.

Refuse Collection and Recycling

The City's Engineering Services must be satisfied that measures are sufficient to cope with any additional waste generated so that a nuisance and health hazard is not created by overloaded bins. Recycling is also strongly promoted.

Amenity

Clear house rules must be in place for all guests that take into consideration the amenity of adjoining and nearby properties particularly in relation to noise and disturbance.

Building Approval

Any new building or alterations must comply with the Building Code of Australia (NCC BCA). Disability access must also be provided in accordance with the 2010 standards and the relevant provisions of AS1428-Design for Access and Mobility.

Consultation

All applications for development approval are subject to a process of community consultation in accordance with clause 64 of the deemed provisions of TPS2 and planning procedure 1.3 Community Consultation City of Rockingham.

Despite all the powers, policies and guidelines outlined above most local governments are failing to take any action against illegal non-compliant non-registered short stay accommodation premises.

By not complying, the illegal short stay accommodation, providers pay no fees and are 'defrauding' local governments of tens of thousands of dollars.

Additionally not being registered they also slip under the radar of the Department of Finance- State Revenue and pay no land tax which they would

be subject to if they were registered. This time defrauding the State Government.

The City of Rockingham for example is aware that there are some 230 + unauthorised short stay accommodation providers that may not have approvals and are aware of the economic impact on legitimate short stay providers.

We first raised our concerns in writing with our local Ward Councillor, who is the Mayor, in September 2017. Despite numerous discussions and meetings the City has done nothing.

More recently Council's formal view was received in writing from their Manager of Statutory Planning, Mr Mike Ross is as follows,

“ The City is complaint driven which ensures its limited Compliance Staff resources are being effectively used. While I note the approach being taken by other local governments at yesterday's Forum, the City does not have the resources to undertake the investigation you are seeking; it does not have enough compliance staff to do this.” (9th November 2019)

This view was further reinforced on the 6th December by Mr Ross as follows;

“ it would be unreasonable to submit a list of over 230 alleged unauthorised operators discussed at the Industry Forum and expect that the City would be able to investigate all of these, at the same time and in the same way. By comparison, the City's Compliance Officer's investigate on average 400 complaints annually and at any time action 60 complaints. When the City has receive formal complaints regarding alleged unauthorised short stay accommodation providers and other types of businesses within the district they have been investigated and the appropriate action taken. The City has limited resources and as such is complaint driven.”

It is difficult reconcile that whilst the City acknowledges that some 230 + businesses in the City may be operating illegally that they use the lack of resources excuse to take no action, whilst the action would result in the compensating income, of some tens of thousands of dollars, and the City would be meeting its compliance and regulatory obligations to the community.

In contrast, the much smaller Shire of Augusta Margaret River has recently appointed a Compliance Officer specifically to deal with unauthorised illegal non-compliant short stay accommodation providers and is conducting an audit. It has also placed a full page advertisement in the local community newspaper advising the community of this action.

The advertisement advises that,

“The Shire will be issuing \$500 infringements wherever it finds evidence of an unauthorised holiday house. Owners of unauthorised holiday homes that continue to operate without approval after an infringement will be prosecuted under Section 218

of the Planning and Development Act 2005, which provided for penalties up to \$250,000 and daily penalties of \$25,000.”

This matter was clearly expressed by Ms McGowan, Director General of Planning when she addressed the Standing Committee on Wednesday 31st October 2018 at page 3.

“It is certainly a really vexed issue. It depends to a degree – if you talk about local government, for instance, that will depend in a large part on the sophistication and capacity of a local government, Enforcement, no matter what we do, will always be an issue, and has been an issue in many cases.”

Given the contrast and comparisons between local governments it is far more than just sophistication and capacity. It is attitude, commitment and the tenacity to comply and carry out the obligations of the Local Government and other complementary Acts.

Suffice to say that all law abiding and compliant business operators are at the mercy and the whim of our Local Councils.

Terms of Reference

- 2. The changing market and social dynamics in the short-stay accommodation sector.**
- 3. Issues in the short-stay accommodation sector, particularly associated with emerging business models utilising online booking platforms.**

Technology and the speed at which it advances continues to have a significant impact on all facets of our daily lives including business. And accommodation providers are no exception.

Only five years ago the Australian travel market was dominated by individual suppliers, with 82% of on line bookings made direct. At the time it was predicted that on line travel agents (OTA's) would outpace supplier websites by 2015.

This has more than come to fruition, with Expedia and Booking Holdings a virtual duopoly, with their stable of brands controlling around 80 % of the online travel agency market in Australia. These businesses are US based meaning that money that once stayed in the country is now going off shore.

It is estimated that OTA's are roughly earning more than \$5billion per annum here in Australia and at an average of 15%, that \$750million which is funnelled overseas and is not registered as Australian income.

A recent survey of independent accommodation providers carried out by the Accommodation Association of Australia (AAoA) found that global online travel agencies are doing material damage to accommodation business in Australia, mostly small business who are major employers in local communities. According to Chief Executive Officer, Richard Munroe this distinctly contrasts with the likes of off shore giants Booking.Com (owned by Booking Holdings) and Expedia which are making millions of dollars each year, yet they employ very few staff in Australia. What's more,

most – if not all – of the profits these global giants are making flow straight overseas and they pay little or no tax in Australia, unlike local accommodation businesses.

Even Australian owned Wotif was acquired by Expedia in 2014.

Dick Smith recently published his anger at the situation arguing that local hotels and providers are being forced to sign up to these international sites as they simply cannot compete for bookings, and likening the situation to 'extortion'.

Smaller operators simply cannot compete on things like SEO when aggregators are bidding on terms, to the point that when a consumer searches for a specific hotel or accommodation in a certain area they will first be served options from an OTA like Booking.Com or Trivago as opposed to the hotel directly.

There is growing concern about these OTA's so much so that the ACCC has confirmed it would investigate whether to take action in the industry, with persistent concerns that independent hotel and motel operators are being 'ripped off' by OTA's.

Another disturbing trend with Airbnb is illegal subletting. Recent statistics revealed that 35% of Airbnb listings are by people who do not even own the property, and do so without the knowledge of the property owner.

In Sydney it is estimated that over 200,000 properties sit vacant due to landlords not renting them to locals. This is now having a negative impact on the long term rental market by causing rents to sky rocket. This is neither fair nor ethical on the locals trying to get by.

It is also becoming apparent that many Airbnb hosts are treating their rentals as businesses. Padlocks or combination pad locks on doors, rather than keys, instructions stuck around the properties together with other do and don't signs are a clear sign that the property is being treated as a holiday rental with an absent landlord.

Terms of Reference

4. Approaches within Australian and international jurisdictions to ensure the appropriate regulation of short-stay accommodation.

The issue of illegal short stay accommodation providers aka Airbnb is an international phenomena or as some commentators prefer to call it an international disease. Destroying the very fabric of the accommodation market.

New York City – United States

In 2014 it was estimated that 72% of accommodation reservations made in New York City were illegal.

Local laws in New York make it illegal to rent an entire apartment on Airbnb for less than 30 days as this helps to keep the long term supply of property available to locals, despite this New York City is one of Airbnbs biggest markets where listings under 30 days are available for tourists.

“Airbnb consistently undermines the City’s efforts to preserve affordable housing and regularly attempts to thwart regulations put in place to protect New York City residents” – statement from NYC Council Members, Helen Rosenthal and Jumaane Williams.

Barcelona – Spain

Almost half of the holiday rentals in Spain’s second largest city are unlicensed according to the Council, which makes them illegal.

Last year Barcelona fined Airbnb 600,000 euros for refusing to adhere to local laws by continuing to advertise unlicensed properties. As a result Barcelona now has a team of inspectors who seek out illegal rentals using designated apps that cross reference licenses with advertised properties. This helps to identify illegal properties and gives authorities the power to close down the premises, evict the occupants and fine the owner 600,000 euros.

Paris – France

In 2015 44 % of advertised properties on Airbnb were permanently available for holiday rental, despite laws in Paris stating that holiday rentals are capped and can only be available for 120 days of the year.

This triggered raids across Paris and fines of up to 25,000 euros per host.

Authorities are now looking to increase this fine to 100,000 euros like Berlin.

It is now a requirement for hosts to obtain a registration number so authorities can monitor that the 120 day cap is not exceeded.

Berlin – Germany

Berlin got so fed up with Airbnb creating a rental property shortage for locals that they passed a new law entitled “ZWECKENTFREMDUNGSVERBOT” roughly translating to ‘*Anti Airbnb*’.

This law bans short term leasing of properties without a city permit, to tourists.

Hosts in Berlin can be fined up to 100,000 euros for non- compliance with this law.

Toronto – Canada

Toronto City Council has passed new rules to crack down on short stay rental services such as Airbnb that will restrict listings to principal residences only.

Airbnb Canada spokeswoman, Alex Dagg said that the company could live with the new rules and would help to educate its hosts about the City’s new regulations.

The new rules require short term rental companies to obtain a license and short term rental operators to register with the City and pay an municipal accommodation tax of

4% however this regulation has been appealed and will now come into force until after the appeal decision is made. Which is expected to be later this year.

Japan

A new law in Japan requires Air BnB hosts to register their listing, meet strict licensing conditions and display a license number on their listing page.

Japan legalised home sharing in 2017 as part of an amendment to the 1947 Japanese Hotels and Inns Act.

The Japanese Government issued an announcement stating that any host without a license number must cancel any reservations made before June 15th 2017.

As of March 2017 Air BnB had over 62,000 properties in Japan, that number has now dropped to 13,800 as operators get ready for the new law, a drop of almost 80 %. Many properties listed on Air BnB prior to the new law were suspected of operating illegally.

Home owners will only be allowed to rent out their rooms for a maximum of 180 days per year and must keep a guest register, illegal operators will face a fine of up to 1million yen (\$12,000 Au) if caught, the previous fine was not more than 30,000 yen.

Individual local governments control and place their own restrictions on operators.

Conclusion and Recommendations

It is more than obvious from the information provided above that here in Rockingham the short term accommodation providers market is far from a level playing field.

The multi-national and multi-million dollar Airbnb business is nothing more than an immoral, aggressive bully, concerned only with profit, ' no matter what it takes'.

It has exploited the decency of Western Australians who by and large live in a harmonious society and comply with the laws and rules that make it so.

The reality is that many of these operators have been taken in and manipulated and may not be aware that they are breaking the law and that penalties apply.

This situation has been exacerbated by a local government system which is either incapable or not interested in properly administering the laws provided to it by the State Government.

The remedy is neither complicated nor difficult. It requires a determination and a system that clearly sets out what must be done and has to be done, be regulated, inspected and severe penalties applied for non-compliance.

The seriousness with which the State takes non-compliance of planning and statutory obligations is clearly evidenced in the penalties under the Planning and Development Act. \$250,000 fines and \$25,000 a day penalties for continuous non-compliance.

But as Ms McGowan pointed out at the Hearing, the key to any law is 'Enforcement'.

As is clearly evidenced, despite all the legislation in the world, this is where Local Government has fallen down and fallen down badly.

From overseas experience it is evident that a system of registration is required and premises that are not registered cannot be advertised and that OTA's that break the law are heavily penalised by substantial fines together with the hosts.

The first step in all this is to take the community with you, quite simply

Advertise
Explain
Educate

This is 80% of the battle.

Ignorance may be bliss but can cause much harm to others.