

# **ECONOMICS AND INDUSTRY STANDING COMMITTEE**

**INQUIRY INTO SHORT-STAY ACCOMMODATION**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
FRIDAY, 24 MAY 2019**

**SESSION ONE**

## **Members**

**Ms J.J. Shaw (Chair)  
Mr S.K. L'Estrange (Deputy Chair)  
Mr Y. Mubarakai  
Mr S.J. Price  
Mr D.T. Redman**

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**Hearing commenced at 10.25 am****Mr MICHAEL LEAKE****Manager, Habitat Resort Broome; Secretary–Treasurer, Broome Tourism Leadership Group Inc, examined:**

**The CHAIR:** Thank you, Michael. Sorry for the delay this morning. On behalf of the committee, I would like to thank you for agreeing to appear today for our inquiry into short-stay accommodation. My name is Jessica Shaw and I am Chair of the Economics and Industry Standing Committee. I would like to introduce the other members of the committee—to my left, Terry Redman, member for Warren–Blackwood; Stephen Price, member for Forrestfield; and Yaz Mubarakai, member for Jandakot. Sean L’Estrange, the member for Churchlands, is an apology for today’s hearing.

I advise that the proceedings of the committee’s hearing will be broadcast live within Parliament House and via the internet. This broadcast may include documentation provided by you to assist the committee in its investigations. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything you might say outside of today’s proceedings.

Before we begin with our questions, do you have any questions about your attendance here today?

**Mr LEAKE:** No; everything is fine, thank you.

**The CHAIR:** Great. Would you like to make an opening statement?

**Mr LEAKE:** Yes, I would, thank you. Thank you to all of you for the time and effort you are putting into this inquiry. I know you all had a heavy workload under the airfare inquiry, and then, again, with the short-stay accommodation inquiry. They are challenging inquiries and very difficult for people who are not involved in the industry to try to get their heads around. I have also taken a bit of time to look at some of the other presentations, submissions and video submissions that have been made, and some of the written submissions that have been made to the committee as well.

I think there are a lot of issues that need to be dealt with here. One of the hard things with the tourism industry and with this issue of short-stay accommodation is trying to work out who the real stakeholders are in this issue—who are trying to freeload on the system and who are actually trying to work within the system and the rules and regulations that are currently in place. A lot of this has been brought out by online platforms, such as Airbnb and Expedia, who have given presentations to you. These online platforms are basically just content aggregators. They like to call themselves part of the sharing economy, but really what they are is disruptors. When you say “disruptors”, they disrupt the rules that are in place, they disrupt the processes that are in place and they try to use the weight of almost mass disobedience—and when I say that, I mean in a gentle way—to try to get around rules.

Looking at short-stay accommodation and the effects of Airbnb, I believe the effects of Airbnb, especially in Broome—and most of my comments are referenced to the short-stay accommodation and tourism industry in Broome—I believe it has had a reasonably significant effect, and we can discuss some of the data and the information that is very easily and very freely available from the Airbnb website.

The underlying issue that we need to look at here—these are some of the things in the terms of reference—is: what are the forms and regulatory status of short-stay accommodation providers in regional WA? There are already significant rules and regulations and policies in place. The main

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contention that I would put forward is that in this scenario, especially in Broome, there are very, very specific rules—I referred to them in my submission—and they are very, very clearly outlined in the bed-and-breakfast information sheet about what are permitted and not permitted activities.

The Shire of Broome has the authority, the resources and the policies, through its enforcement and compliance policy, and also responsibilities under the *Local Government Act*, to go through and enforce their policies. For some reason, unbeknownst to most people in the industry, the Shire has consciously chosen not to pursue these noncompliances with the town planning scheme. It is quite interesting that they chose this area not to pursue because they will choose multiple other areas. I personally have received a noncompliance notice for signs that actually did not affect anyone, but I did receive that and they chose to follow-up in those areas.

So, the main contention that I put forward is that, especially in Broome, the rules and regulations and processes are in place. The planning was done for a purpose in that if people wish to live in a residential area, they should have the right to enjoy being in a residential area without it converting into some other sort of commercial or non-residential activity. I believe that whilst companies like Airbnb, Expedia, Stayz and others are quite large organisations, they have actually potentially discreetly encouraged people to not comply with rules and regulations and break the laws by asking them to list on their websites without requiring them to also provide information that they are actually compliant and legally able to offer the services they are providing.

For example, companies like Airbnb—I am one of those listed on Airbnb, so I am aware of how they operate—do have a mandatory requirement that you indicate whether you have smoke detectors or carbon monoxide detectors in your premises. That is a requirement to list there—that you actually provide an indication one way or the other. There is no reason why they could not require people who are listing on their website to also provide information that says they have the appropriate permits, regulations and permissions in place so that they can conduct short-term letting activities.

That is probably a brief summary of most of my notes.

**The CHAIR:** Sorry; I am just asking my colleagues for clarification. One of the online platforms does require people who list with it to tick a box to say that they do comply with local laws and local planning requirements. I am pretty sure that was Airbnb. I was just asking my colleagues whether my recollection of that was accurate. Please continue, Mr Leake.

**Mr LEAKE:** In that area, with places like the Broome Visitor Centre, for example, if you want to list on the Broome Visitor Centre website, you have to provide copies of compliance documents. There is a duty of care. If a company wants the right to operate in Australia, they have a responsibility to operate in accordance with the various regulations and rules relevant to the regions. Airbnb, actively and willingly, know that many of their listing properties are noncompliant with the local planning laws or regulations. So, the issue here is, in my view, they partly promote the discreet process or people discreetly breaking the law by not enforcing and not asking people to comply with the law that they are totally aware of.

There are quite a lot of other issues, and I do not know whether Dave has had a chance to print some notes off; I did have some notes that I compiled before —

**The CHAIR:** We just received them. They have just been put down in front of us, so we have not had an opportunity to review them as yet.

**Mr LEAKE:** That is all right. Thanks for doing that, David.

Just very briefly, I spent some time on the Airbnb website yesterday. I am on the bottom of page 1 and the top of page 2. Last year, there were up to 268 properties listed as available on the Airbnb

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site. As of yesterday, there were 189 listings on Airbnb. Using Airbnb's own classification, 140 of them are classified as "entire place" where you could rent the entire place. Now, Airbnb does suggest many times that this is the minor component of their listings rather than the major component. You can go on Airbnb right now and check those statistics; they are all available. About 70 to 80 per cent of their listings in Broome are entire properties; 95 of those properties could take four or more guests.

The reason I did a search on that, and that is 67% of the total listings, is because Expedia and Airbnb and other companies have often stated that their listings provide services or amenities that are not available; that is, apartments for cooking and able to cater for families. That figure shows some 70% of listings in Broome are able to cater for four or more people and the whole house, so they provide, basically, self-contained facilities, which is what I provide at my resort, as well as numerous other resorts in Broome. Self-contained accommodation is quite abundant here. They say there is a market need for it, which is quite misleading.

If you go through and break those numbers down, of the 95 entire place listings that are listed on Airbnb right now—we are listed there, as well as a couple of other resorts—if we take, say, about 15 listings off there to allow for resorts like ourselves, it suggests that there are about 80 listings on there that are not approved short-stay developments. If there are 80 listings there that can provide for up to four people and provide the whole property, that is the equivalent, from my notes, of adding four extra resorts to the Broome market—adding a Seashells, a Habitat Resort, a Broome Beach Resort and a Cable Beachside Villas. If we want to contextualise that, that is quite a significant addition into the accommodation market, and that does have a significant impact on the market.

The next point I make is I then put in to see what rooms were available over the next five days. Of those 95 listings, only 19 were available. That means some 70 to 80% of those listings were booked out for the next five days. We were not one of them, as in we still have listings available there—we still have properties available. We are compliant and registered as a short-term stay apartment. These rooms that have been booked out, in the market, they have actually taken the opportunity to book through Airbnb, through unregistered, unlicensed premises, and they are impacting on us, a licensed, registered and approved development. That is quite significant.

The other major point is of the 189 listings, if you use the filter, 144 are identified as having pools available as well. That is quite a significant number. Again, in the bed-and-breakfast information sheet from the Shire, it says on the second page that if you have a bed and breakfast, the swimming pool has to be registered with the Shire. I can guarantee you that they are not. That is the main detail, and they are the facts and figures, without talking about the emotive arguments. They are the facts and figures about Airbnb listings as of here and today.

**The CHAIR:** Thank you very much for that. It is great to get an overview from Broome, because we have heard a lot from the south west, and we have heard about what is going on in metropolitan Perth. It is really interesting for us to hear what is going on in other parts of the state. Do you think Broome has any specific features that might differentiate it from what is going on in other markets, given that you have had an opportunity to review, as you say, the evidence that has been before this committee?

**Mr LEAKE:** In what regard?

**The CHAIR:** One of the things that has been put to us from traditional accommodation providers in particular is that there is a need for some form of state government intervention, but that a lot of things need to be left to local government to allow local jurisdictions to tailor their responses to local conditions. Is there anything particularly special about Broome that this committee should be

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aware of when we are thinking about the recommendations we make for potential regulatory frameworks?

**Mr LEAKE:** I think that a lot of the issues that have been raised previously hold true for Broome. Local governments do need to make the decisions based on what they have to offer and what their actual requirements are. Broome has a very large number of self-contained accommodation. Part of that is the financial reasons for the development. In order to get it off the ground, they strata title it; they do it that way. I believe Broome has a significantly higher number of self-contained accommodation than, say, down in Margaret River. I believe what is required is that the responsibility still needs to fall to the local government to meet its own local and specific needs, because they do vary quite significantly.

Broome has gone through quite a lot of iterations of planning policy based on the needs and so on specific to us. Ten years ago, they looked at the planning regulations and allowed 60–40 split developments, where 60% could be short-term stay and the other 40% could be residential. That was to enable the financial viability of some of these developments. Broome chose to go down that path because that was a need we had at the time. I think the interesting thing here is whilst this is all raised, and I think it is a legal responsibility under the *Local Government Act* of the Shire of Broome, it has failed to act on what it should be acting upon. It has made a submission acknowledging the problem exists but still has failed to adopt any procedures under its own enforcement and compliance policy, which allows for things such as education, advertisement, informal discussions, notifications and infringement notices—the whole lot. The Shire has done nothing in that regard.

**Mr D.T. REDMAN:** Michael, great to have you on, and thank you for taking the time to present to us. You have put a strong focus in your presentation this morning on the sort of whole-of-facility, whole-of-house accommodation, and the fact that a significant proportion of those listings are for extended families and the like. Can you give us some commentary around your views about the houses that have hosted accommodation? That is, are they short-term stays for a back room in the house, or a detached part of their household, and are they actually hosted? Do you have a view about that component of the short-stay accommodation market?

**Mr LEAKE:** Yes, that is a very valid point. You will find that somewhere in my notes I have referred to it. In Broome 10 years ago, there were something like 55 B&Bs registered. The systems were already in place, the need was identified, and people responded accordingly and got the permits. If people want to go down that path, it is a totally legal activity with processes and systems in place that people can follow through and get approval to go and do that. There is no reason people should not be following the processes.

The notes that I have presented to you, I actually emailed out to 25 other parties in Broome, mainly accommodation providers, and one of the strongest responses I got back was from a registered B&B owner. She said, “Why am I doing all these things, why am I ensuring that I am complying with the Shire, why am I ensuring that my pool is compliant, why do I have to check my fire alarms and safety systems et cetera, and why do I have to lower my prices so that I am barely justifiable, when these other people can get away without these compliance issues?” There are rules there for orderly conduct.

In the Shire, a bed and breakfast is a permissible activity, and I think it is actually a reasonable complement to the existing industry, but it needs to follow the rules and regulations. You have the bed-and-breakfast information there from the Shire; you just get a development application approval, and you can go ahead and do it. I think it is a valid thing.

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**Mr D.T. REDMAN:** I guess you are confirming that the sensitising is to sort of whole accommodation, and it seems to me, from what you are telling us, that the bed and breakfast-type market or the hosted accommodation market is perhaps more compliant with the local rules than the other. That is the first point. I guess, by extension, is your main point that you are simply seeking anyone who is offering short-stay accommodation to be registered through local government? If they met all their registration requirements, which would include a bunch of rules they had to comply with, would you be satisfied with that position as a landing point?

**Mr LEAKE:** Yes. With the current rules and regulations we have in place, I believe it provides a very good framework to move forward. The issue does occur with whole-of-house letting, absentee landlords and those issues. They are the issues which we all have to deal with. I got a call two nights ago; someone had a car stolen. I was out here, dealing with it, helping them to address the issues. They were not local; they did not know what to do. That was here in the resort, in a complex set up for short-term stay. In a residential environment where no landlord is available—and many times the landlord is not available—it does actually impact on the residential aspects of the area. I do not want a whole house beside my house being let. I bought a house in a residential area. I did have the option of buying a house right next to a resort, but I chose not to.

**Mr D.T. REDMAN:** Within the local government rules, you said that currently the rules in the Shire of Broome are that you are not allowed to offer your whole house up as short-term accommodation in a residential area.

**Mr LEAKE:** Correct.

**Mr D.T. REDMAN:** What about hosted accommodation for back rooms? Is that allowed in a residential area in Broome, provided it is registered?

**Mr LEAKE:** Yes. If you can see on the last two pages, I actually have a copy of the information sheet for bed-and-breakfast and residential buildings. It is very explicit in there.

**The CHAIR:** Yes. Okay.

**Mr LEAKE:** On the first page, the bottom two paragraphs of the first column, if you intend to rent out your house for short-stay accommodation without a permanent resident, it becomes a holiday home, and that is not permitted. They are the rules for reasons.

**Mr D.T. REDMAN:** We have not had a chance to read that, but thank you. I am seeing it in front of me now.

Can you give us an appreciation of what has happened in recent history? A lot of our presentations have signalled the emergence of this as an issue in the last couple of years, partly because of the rollout of Airbnb technology into Western Australia as distinct from other parts of the world, but maybe one of the contributing factors might be where we are in the economic cycle. Broome is one of those locations that when the oil and gas sector was running hard, pretty much every house was taken up. I am sure there would not have been too much free space in Broome. You are at a different part of the cycle now. There are things happening which means that there is product available that people can otherwise utilise through an Airbnb-type market. Can you give us some commentary about the shift and where we are in the economic cycle now, and, I guess, what it might look like if we go back into the peak market periods where the resources sector, in particular offshore gas, was triggering high levels of occupancy in those houses in Broome?

**Mr LEAKE:** The number of whole properties available for rent is quite significant. In rough figures—do not quote me on this—generally on realestate.com, I think I have been seeing numbers of 200 to 250 houses for rent at any given time, oscillating around those figures. We are talking about 140-odd properties available on Airbnb. The actual economic conditions, in the recent oil and gas boom,

the tourism industry and the industry as a whole never reached the levels of occupancy that we did before the boom. Back in 2009–10, the industry was operating on annual occupancy levels of approximately 70 to 75%, according to ABS statistics. Now, we are operating closer to 60 to 65%—probably closer to 60%—annualised across all the major accommodation providers. There has been a significant drop in the market.

If it did pick up again, we were operating up until just recently through the oil and gas boom. Places like the Oaks and the Mercure and those single-stay hotel-style rooms were quite able to accommodate the demand that came through, so I do not actually see that there is any real need in the market at the moment to have a big influx. It was quite a significant influx of what the Airbnb platform puts on the market.

**Mr S.J. PRICE:** Mr Leake, I want to talk about holiday homes. In a lot of the south west locations, there have always been holiday homes down in Dunsborough, Margaret River, Busselton, places like that, which are now coming into this Airbnb space and being offered for short-term accommodation. In that document that you provided to us, there is a reference to when a property becomes a holiday home, but just in the general term “holiday home”, is that something that there were a number of previously in Broome? For the last 15 years that you have been operating your place, has there been people just having holiday homes in Broome per se?

**Mr LEAKE:** No, and that is a very good question, because the profile of the accommodation is significantly different from Margaret River. You have the drive market, where people can easily drive down from Perth for a weekend or a week and go on holiday down there. Up until the year before last, I had a holiday house down in Margaret River, but we rented it out in accordance with the Shire policy, and it was an approved short-term-stay property. In Broome, the number of holiday homes is much, much less. There are not so many people who actually own a house up here and then come and visit for a period of time.

We actually have a number of owners who own properties here, and they use their property here as their holiday home. I have an owner coming up in six weeks, she will stay here for two months over the season, and then we rent it out on her behalf. Over this year, I will have half a dozen owners come up, and they will come up for two weeks, four weeks or whatever, and their holiday homes are basically the resort-style accommodation. The difference is mainly—again, a comparison between Margaret River and here—we have a lot more established larger-style short-stay properties, where Margaret River does not have a significant number like we do here. We have something like 1,700 accommodation rooms, I think, in the 25 or so registered or approved short-term-stay developments here, so we have quite a significant number.

**Mr Y. MUBARAKAI:** Michael, firstly, I appreciate you being here with us today and sharing your views. We have looked at your submissions. Obviously, you have quite clearly laid out how local government or the Shire of Broome has failed in their compliance or implementing of the local laws with short-term accommodation. The question I want to ask is whether you, as a collective of traditional short-stay accommodation providers, have engaged with the city at all with regard to the shift in how the market is shaped with short-term accommodation. Can you provide us with any other feedback where, as a collective or individually yourself, you have engaged with the city regarding this black market, if you like to call it?

**Mr LEAKE:** Yes. We have not lodged a formal application or a formal objection or whatever with the Shire as a group or an entity, but it is being discussed openly and transparently at many forums. I have raised the issue. We get our pools inspected by Shire officers once a month. I have raised it with them many times and asked how many pools they were inspecting, and whether they were doing all the Airbnbs. They said, “No, we just don’t have the resources.”

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So we have actually raised it quite a lot of times, in different forums. We had a forum where we were talking about caravan and camping rules. I spoke to one of the Shire officers afterwards and I said, “Once we sort out some of these issues with the caravan and camping sector, Airbnb and noncompliant properties are next on the agenda”, and the comment was, “Bring it on, but we don’t have the resources to do anything about it.” I then raised a comment, and I said, “But that’s your choice of where you focus your resources”, and they just said that they did not have the resources to do it. They said we could lodge a formal letter or request, and I had that comment last year pretty much about the time that this inquiry was announced. We are not alone. It has been openly discussed many, many times in informal meetings.

We have accommodation sector meetings in the Broome Tourism Leadership Group. We have had Shire representatives there. We have raised the issue, and we keep getting told the same thing again and again: “We don’t have the resources”, or they say that it is too difficult. I find that rather disingenuous, because we can find resources to do all sorts of weird and wonderful things, but when it comes to the basic role and function of the Shire, which is basically ensuring compliance with the town planning scheme and land management processes, they cannot find the resources to govern and manage their main remit. We have brought it up informally.

We are basically being told it is too difficult. This is one of the reasons why you received a huge number of submissions, and quite a number from property owners in Broome—because we saw this as a way to actually motivate the Shire. The Shire tends to often respond in the way that it wants to, unless there is a big stick behind it.

**Mr Y. MUBARAKAI:** Michael, my following question is again about your informal approach to council. As a Shire or council ratepayer and as a resident, you have the ability to make deputations. Whenever council sits to discuss agenda items for the month with regard to governing the city, residents have an opportunity to make formal grievances in the form of deputations. I wonder, to formalise your grievance, have you ever thought about, as a collective, approaching council in a deputation and putting them on notice with regard to their noncompliance in this matter?

**Mr LEAKE:** To go back a little bit, we have had a number of deputations with the Shire about different issues. There is a real intransigence with the Shire to actually act on these issues. There were quite a lot of issues. Terry, you may be aware of the proposal to hand the lease back for the racecourse to the state government and then reissue it as three or four separate leases so that the RAC could actually develop a glamping facility there. We arranged and had deputations with the Shire about various things about processes that were followed, about noncompliance, and there is a wall that goes up. They fight what you are saying instead of working with you.

There was a proposal to put a new caravan park into Broome that Discovery Parks was going to facilitate. We had deputations with the Shire regarding that. We had meetings with Tourism WA and quite a lot of other properties. We actually responded in writing to reports the Shire had commissioned and they just ignored us. They do not give us the courtesy of replying. They do not give us the courtesy of actually taking on board our actions. Once they have got the bit between their teeth, they just run with it and we are constantly fighting—well, not fighting, but we do not get much traction on many of these issues.

There is a real paucity of knowledge and experience in the Shire about how these things operate. We formed the Broome Tourism Leadership Group to try to get traction with the Shire and the Shire partly funded us. But at the same time, they turn their back on the group as well. There is a real intransigence in the Shire to deal with the day-to-day issues. They want the glamour issues. They will put \$100,000 into supporting the flights to Singapore without a business case and without tendering, without following due process as outlined under the *Local Government Act*. There are

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lots of things that go on. As an industry, we are sort of just buffeted from side to side as they hit us about the head. We are the day-to-day operators, but they want the glamour projects. They want to build a new marina; they want to build a casino. They want all these things that have no relevance to the day-to-day operation, but want to be seen to be doing something.

So in this particular issue; no, we have not yet. But we are hopeful that from this inquiry bringing something out, and putting this fairly stern submission in about the Shire and also having the Shire follow this presentation, I am hoping there might be some motivation come out of it. Because this is on the public record, and I am hoping the Shire will respond accordingly, because it is their policies and procedures there. It is not up to us, as the ratepayers, to remind them what their policies and procedures are.

**The CHAIR:** Thank you very much, Mr Leake. Unfortunately, we are out of time. If we had time, I was going to slip a quick question in the back about regional airfares, given that your organisation provided a submission and were incredibly hospitable to us whilst we were up in Broome, but, unfortunately, we do not have time today. But we may come back to you at some point in the future to see how things are shaping up, up there, after our previous inquiry.

I proceed to close today's hearing and thank you for your evidence before the committee today. A transcript of this hearing will be emailed to you for the correction of minor errors. Any such corrections must be made and the transcript returned within seven days of the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you very much.

**Mr LEAKE:** Thank you all very much for your time; it is greatly appreciated.

**Hearing concluded at 11.00 am**

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