

**Submission
No 171**

ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY LETTING IN NEW SOUTH WALES

Organisation: Insurance Australia Group
Name: Mr Ron Arnold
Position: Group General Manager Venturing
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David Hale
Committee on Environment and Planning
Parliament House
Macquarie Street
Sydney NSW 2000

environmentplanning@parliament.nsw.gov.au

Insurance Australia Group (IAG) welcomes the opportunity to make a submission to the Environment and Planning Committee Inquiry into the adequacy of the regulation of short term holiday letting in New South Wales.

Executive Summary

- IAG recognises that the shared economy is transforming the way people use their assets, including their homes;
- Established industries and governments need to adapt to these changes in consumer behaviour;
- The shared economy has the opportunity to deliver wide-ranging economic benefits including spurring innovation, empowering consumers and activating under-utilised resources;
- IAG has developed the ShareCover product to fill a gap in the insurance market by protecting customers who choose to use home-sharing platforms; and
- Greater clarity and consistency of regulation will enable consumers to make more informed choices and support innovation.

Insurance Australia Group

IAG is the parent company of a general insurance group with controlled operations in Australia, New Zealand, Thailand, Vietnam and Indonesia, employing more than 15,000 people. Its businesses underwrite over \$11.4 billion of premium per annum, selling insurance under many leading brands, including: NRMA Insurance, CGU, SGIO, SGIC, Swann Insurance and WFI (Australia); NZI, State, AMI and Lumley Insurance (New Zealand); Safety and NZI (Thailand); AAA Assurance (Vietnam); and Asuransi Parolamas (Indonesia). IAG also has interests in general insurance joint ventures in Malaysia, India and China.

As one of the largest home building and commercial insurers in Australia, this topic is of relevance to IAG's Australian businesses and the insurance industry more generally. IAG views the developments in the short-term holiday accommodation sector to be an indication of consumer preference. There is a need for industries and governments to evolve and adjust to the changing business environment. IAG has attempted to do so by addressing gaps in insurance cover that have arisen from increased use of online platforms for holiday renting. In a world first, IAG has

Insurance Australia
Group Limited
ABN 60 090 739 923

388 George Street
Sydney NSW 2000
Australia

T +61 (0)2 9292 9222
www.iag.com.au

produced an insurance product to protect homeowners who choose to engage in the shared economy.

Clarity and consistency is required in the regulatory treatment of emerging alternative business models to provide certainty for businesses and their customers. This in turn will encourage adaptive innovation, ensure sustainability of insurance schemes and improve consumer outcomes.

The economic impacts of short-term letting on the local and state economy

Recent advances in technology and the emergence of innovative new business models are disrupting established industries. Governments and businesses need to adapt to this rapidly changing landscape. IAG's approach to disruption is to ensure that it stays relevant and customer-centric in a fast-changing and increasingly competitive environment.

The opportunities presented by the sharing economy are wide-ranging and have the potential to deliver great dividends to the NSW economy across a variety of sectors. One of the strongest features of the shared economy is its capacity to use online platforms to empower consumers and better utilise latent resources that are otherwise under-utilised.

Home-sharing is the juncture between the shared economy and the short-term holiday letting sector. Typically, online platforms such as Airbnb, Stayz and others allow consumers to advertise their properties (either a room or the entire property) for short-term rent and facilitate the '*booking*' and financial exchange. Rather than own properties themselves, these platforms connect users and receive a fee for each booking transaction. There are currently over 16,000 listings in NSW, about two-thirds of which are in Sydney, on the Airbnb platform alone representing an 89% increase over the prior year¹. IAG views the proliferation of home-sharing and its almost exponential increase in popularity as indicative of consumer preferences.

An e-brief published by the NSW Parliamentary Research Service noted that Airbnb was used to generate additional income, averaging \$4,505 from August 2012 to July 2013², for homeowners and ease the financial burdens of the rising cost of living.

There is also an opportunity to increase economic activity in local areas, as The Real Estate Institute of New South Wales indicated that 98% of hosts who rent rooms on Airbnb suggest local attractions, restaurants and shops to their guests³. As 80% of Airbnb listed properties are located outside main hotel areas, it could be the case that the economic benefits of tourism could be diffused over a wider area than is traditionally the case⁴.

The degree to which home-sharing platforms compete with existing businesses, or alternatively, the extent to which they expand the size of the market, is unclear and the government should consider these issues when reviewing regulation.

¹ Andrew Haylen, 'Uber and Airbnb: the legal and policy debate in NSW', NSW Parliamentary Research Service, July 2015, p.7

² *ibid* p.7

³ The Real Estate Institute of NSW, REINSW Real Estate Journal, September 2014

⁴ Andrew Haylen, 'Uber and Airbnb: the legal and policy debate in NSW', NSW Parliamentary Research Service, July 2015, p.7

The current situation in NSW

IAG's purpose is to help make your world a safer place. By insuring 2.9 million homes, it is our role to help people manage their personal risk, so that their financial loss is mitigated should the worst occur.

IAG has recognised that there are gaps in coverage provided by home and contents insurance policies for policy holders who chose to rent out their homes for short-term holiday seekers using online platforms. For example, theft, damage or liability caused by paying guests may not be covered under traditional policies. Likewise, some policies may not provide cover if a loss is sustained while the property is used for a commercial purpose.

Existing policies that cover commercial renting of property, such as landlord insurance policies, are typically unsuited for home-sharing situations, as they tend to insure stays for longer periods and often require documented tenancy agreements. Likewise, from an insurance underwriting perspective, it may be the case that home-sharing rentals have a different risk profile.

Research conducted by IAG Labs (IAG's digital hub for innovation) shows that 61% of hosts who use home-sharing platforms fear property damage and loss of belongings. Moreover, 54% of those surveyed incorrectly believe (or are unsure if) they are covered by their current home insurance policies.

Airbnb offers a non-insurance remedy for property damage protection for its users; namely, a 'Host Guarantee' for up to \$1 million of limited protection for damages caused by a guest that are '*not resolved directly with the guest*', with exclusions for personal liability and damages to common areas. Airbnb itself stresses that;

'The Host Guarantee is not insurance and should not be considered as a replacement or stand-in for homeowners or renters insurance'⁵.

Having recognised this gap in protection for consumers and the ambiguity that surrounds the issue, IAG Labs launched the ShareCover product in September 2015. ShareCover is an insurance product that can be taken in conjunction with standard home policy that is designed to cover this gap and eliminate ambiguity to help homeowners mitigate risks and have peace of mind when engaging with the shared economy. Home-sharing hosts are able to purchase a policy for the specific days in which they are hosting a guest, covering them for those aforementioned events that are excluded by standard home and landlord insurance policies (See the table below for a comparison between policies). ShareCover also provides up to \$10 million of liability cover.

In October, Airbnb expanded its '*Host Protection Insurance*' programme in Australia to run concurrently with its Host Guarantee. Unlike the Host Guarantee, Airbnb considers this to be insurance.




'The Host Protection Insurance programme provides primary liability coverage for up to \$1 million per occurrence in the event of third party claims of bodily injury or property damage. This coverage is also subject to a \$1 million cap per listing location and certain conditions, limitations, and exclusions may apply'⁶.

It should be noted this is cover for *liability* so hosts would continue to rely on the non-insurance 'guarantee' for damages caused by guests to their own property.

⁵ <https://www.airbnb.com.au/guarantee>

⁶ <https://www.airbnb.com.au/host-protection-insurance>

While innovative products such as ShareCover can fill gaps and empower consumers to engage in the shared economy with peace of mind, there is a necessity for government to eliminate ambiguity by improving clarity and consistency of regulation. It is anticipated that greater regulatory certainty will encourage additional companies to follow IAG's lead and offer suitable and innovative financial products to meet the unique needs of the shared economy.

Comparison between NRMA products and ShareCover			
	NRMA Home & Contents Insurance	NRMA Landlord Insurance	ShareCover
Coverage			
Theft or attempted theft by an invited guest / tenant	Not Covered	Covered	Covered
Malicious damage caused by an invited guest	Not Covered	Covered	Covered
Accidental damaged caused by an invited guest	Not covered by default. Automatically covered under a 'Home Plus' policy.	Not covered	Covered
Identity Theft	Not covered by default. Automatically covered under a 'Home Plus' policy.	Not covered	Covered
*For illustrative use only. Conditions & Exclusions apply. Refer to the product disclosure statement for each policy. More information about ShareCover can be found at www.sharecover.com			

Regulatory issues posed by short-term letting

a) Clarity and Transparency

Regulation of residential property use in NSW currently falls under the jurisdiction of local councils. While this has allowed for a degree of flexibility that enables local councils to determine the degree to which home-sharing benefits their constituents, the varying responses have resulted in legal inconsistency across the state.

Some councils have clear positions regarding ratepayers' use of home-sharing platforms, whether that be permitting or prohibiting home-sharing, whereas others are ambiguous. Perhaps due to its recent rapid growth, home-sharing through online platforms is often not accommodated within some council's existing definitions relating to property use. Categorisation of home-sharing within an existing but inaccurate definition has the potential to subject short-term holiday rentals to unnecessarily burdensome compliance requirements and subject rate-payers to unintended legal consequences.

For example, one council's decision to interpret home-sharing through an online-platform such as Airbnb or Stayz as the provision of 'bed and breakfast' accommodation places a requirement on the host to provide breakfast for guests. The provision of food is not typically a standard feature associated with home-sharing. IAG does not view this as an ideal situation; people who aspire to abide by the law should not have to contend with such ambiguity.

The problems associated with ambiguity surrounding the status of home-sharing were cited in *Dobrohotoff v Bennic* [2013] NSWLEC61. Justice Pepper noted that it is the responsibility of councils to '*determine, having regard to the words of the instrument and existing case law, whether the present use of [a] property is prohibited under the council's current zoning laws*'. By failing to update its definitions (specifically of the term 'dwelling' in this case) to dispel ambiguity, a reasonably simple issue had to be determined by the Land and Environment Court at great financial and emotional cost.

Indeed, Local Government NSW noted that;

'This decision serves as a reminder to all councils to review the wording of their planning instruments. If there is ambiguity surrounding the definition of "dwelling house" and whether the use of a property for short term holiday rental accommodation is permissible in a particular zone, councils have a duty to amend ambiguous terms and remedy any deficiencies in their planning instruments⁷.

The situation is particularly unfortunate, given that it was actually the council's intention to allow home-sharing by its constituents. It seems, in this case, that ambiguity in local planning regulation created a conflict with the council's own strategic policy to allow home-sharing, perhaps to draw more visitors and allow its constituents to raise supplementary income. Thus, not only do consumers and homeowners stand to gain from greater clarity and transparency, but councils do as well.

Councils could benefit from greater support from the State Government to update their local zoning regulations if required and clarify their respective positions on the legality of home-sharing and the conditions hosts must meet in a transparent manner. Information workshops, for example, aimed at making local councils aware of these issues and prompting them to act could improve the situation for their constituents as well as avoid the costs incurred by unnecessary escalation of minor issues to the Land and Environment Court.

Greater transparency and clarity will empower consumers to make considered choices and enable them to better adhere to relevant laws and regulations.

⁷ Local Government Court Reporter, Issue 4, 2013, p. 6,
http://www.lgnsw.org.au/files/LE_CourtReporter_Issue_4.pdf

b) Safety

Tourism Accommodation Australia, a subsidiary of the Australian Hotels association which represents serviced apartments and hotel providers, argues that premises used for commercial short-term accommodation should meet a range of health, safety, tax and regulatory requirements. Martin Ferguson, TAA chair, has argued that;

'Under the Australian Building code requirements there is a significant investment made by accommodation providers to ensure that they meet the safety and accessibility standards. Most of the Airbnb options have very few, if any, public safety measures in place for guests that traditional operators are required to have in place⁸.'

The National Building Code mandates minimum safety requirements for all structures. However, many of the safety requirements imposed on traditional accommodation providers are related to the size of the structures (e.g. hotels) and therefore may not be applicable to typical detached personal residences offered through short-term online rentals. For example, detached houses typically do not require sprinkler systems due to smaller footprints and easier ways of exiting the building.

A better comparison to a hotel is a typical multistorey strata unit where physical safety requirements are largely uniform in relation to sprinkler systems, etc. There are few significant differences in the physical safety requirements placed on hotels compared to strata units. Rather, the key differences arise when one considers auxiliary elements of the safety framework, namely compliance control and property maintenance. Hotels (being responsible for the entire building) are able to offer a higher standard of safety compliance and property maintenance compared to strata managed premises for which management is primarily responsible for common areas only, with unit owners acting autonomously.

Alternatively, a small single storey bed and breakfast business can be compared to a domestic residence. The bed and breakfast may, for example, be considered as a 'Class 1b' building and therefore would be required to comply with minimum provision of smoke alarms in every bedroom⁹. Conversely, a detached house currently used for home-sharing would only typically require one smoke alarm per storey¹⁰.

Local Authorities or 'Authorities Having Jurisdiction' (AHJ) can also require businesses such as bed and breakfasts and hotels to register for business licenses, which may alter the existing occupancy permits. This can place additional requirements on owners and staff. These requirements may include parking provisions, balustrade heights, and trip hazard identification.

LAG supports a review of the potential safety risks and the need for guidelines or minimum standards tailored to the property type to ensure adequate protection for consumers.

⁸ Martin Ferguson, 'Airbnb needs to be seen for what it is – an unregulated operation that supports neither jobs or the economy', 18/12/2014, <http://www.tourismaccommodation.com.au/airbnb-needs-to-be-seen-for-what-it-is-an-unregulated-operation-that-supports-neither-jobs-or-the-economy/>

⁹ Environmental Planning and Assessment Regulation 2000 REG186A,

¹⁰ <http://www.fire.nsw.gov.au/page.php?id=288>

c) Flexible and equitable regulation

Established businesses have expressed concerns about the unequal obligations imposed on licensed operators in the accommodation industry compared to the newer home-sharing accommodation platforms.

IAG supports regulation that does not stifle competition and innovation while delivering greater transparency and consistency for consumers. Safety should be the cornerstone of any regulatory framework governing short-term accommodation to ensure that consumers are protected when engaging in the shared economy. Greater regulatory certainty around new digital technologies and emerging alternative business models will assist all stakeholders in assessing and responding to the challenges and opportunities that are presented.

If you wish to discuss this matter or make further enquiries please contact Gulshan Singh, Manager, Public Policy & Industry Affairs on [REDACTED]

Yours sincerely

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Ron Arnold
Group General Manager, Venturing
Insurance Australia Group