

**Submission  
No 209**

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

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# SHORT-TERM HOLIDAY LETTING

TTF submission to the NSW Parliamentary Inquiry

DECEMBER 2015



# Tourism & Transport Forum Australia (TTF)

The Tourism & Transport Forum Australia (TTF) is the peak national body for the tourism, transport and aviation sectors. We are a CEO forum representing some of the most prestigious institutions and corporations in the Australian visitor economy. Our membership spans accommodation and transport providers, restaurants and retailers, business and major events organisers, property developers and land managers, amusement and cultural attractions, and professional services.

Within the accommodation and investment sector, TTF members comprise owners and operators of hotels, motels, resorts, serviced apartments, hostels, holiday parks, caravan and camping, other visitor accommodation providers, as well as investors and developers.

TTF utilises its expertise and networks to develop and advocate public policy for the sustainable long-term growth of the visitor economy across Australia.

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# Introduction

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Tourism is a vital contributor to the New South Wales (NSW) economy. The NSW Government has set an ambitious target to double overnight visitor expenditure by 2020, which is being driven by the implementation of the NSW Visitor Economy Industry Action Plan.

Accommodation is the backbone of the visitor economy and short-term holiday letting is a key part of the accommodation sector. It has been a feature of the NSW tourism industry for more than a century. The technology-facilitated growth in short-term holiday letting and the subsequent rise of the 'sharing economy' has enabled individuals to better leverage idle resources and infrastructure through a global market.

However, the inconsistency of regulatory approaches to short-term holiday letting across NSW and the growth of an uneven playing field for traditional accommodation providers, has necessitated a review of the regulatory environment. TTF commends the NSW Government on undertaking this Inquiry.

In this submission, TTF outlines a number of recommendations that centre on the premise of the Inquiry taking the opportunity to review the regulatory environment surrounding all visitor accommodation, rather than considering short-term holiday letting regulation in isolation.

TTF recommendations are:

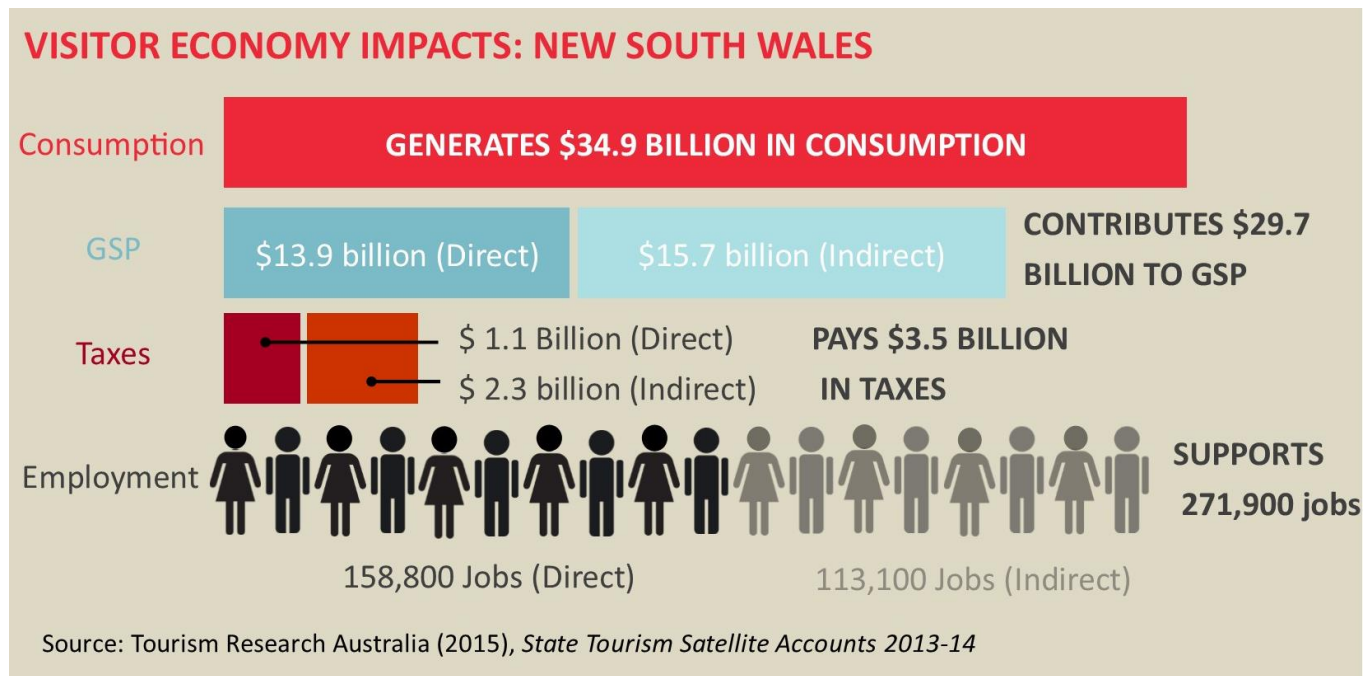
- The NSW Government should advocate to the Federal Government to better capture much-needed data to more intimately understand the sector and its impacts
- NSW Government policy should be focused on deregulating traditional accommodation in the first instance to make it more competitive
- The NSW Government should work with industry to implement an industry regulation model that dictates the minimum standard of customer protection and safety
- Land-use definitions should be reviewed and clarified to ensure consistency within the context of the NSW planning system.

Short-term holiday letting generates overnight visitor expenditure and is a valuable contributor to the growth of the visitor economy. However, its growth has also given rise to a number of issues that require government attention. TTF supports the Inquiry undertaking a holistic review of visitor accommodation regulation to ensure a more competitive environment for all tourism business operations and investment.

# NSW visitor economy

Tourism has been identified as one of five “super-growth” sectors that can drive Australia’s future economic growth and collectively add \$250 billion to the Australian economy over the next 20 years<sup>1</sup>.

Already a major contributor to the NSW economy, the visitor economy can make an even greater contribution to the state’s future prosperity.



**Figure 1: Visitor economy impacts NSW**

In 2013-14, tourism consumption in NSW was \$34.9 billion, or 30.8 per cent of national tourism consumption<sup>2</sup>. Of this, accommodation services contributed \$4.29 billion, or just over 12 per cent, of tourism consumption in NSW.

Considering Gross Value Added (GVA) in 2013-14, NSW contributed \$12.8 billion total tourism GVA, or 32.1 per cent of total tourism GVA in Australia<sup>3</sup>. Of the NSW total tourism GVA contribution, accommodation represented 18 per cent, making it a significant economic contributor to both NSW and Australia.

The tourism industry is also a large employer, with a total of 271,900 jobs<sup>4</sup> across 90,875 businesses involved in tourism across the State<sup>5</sup>. As at June 2015, there were 1,346 accommodation establishments in NSW<sup>6</sup>.

<sup>1</sup> Deloitte Access Economics (2013) – Positioning for prosperity? Catching the next wave

<sup>2</sup> State Tourism Satellite Accounts, 2013-2014, Tourism Research Australia (TRA)

<sup>3</sup> Tourism Satellite Account 2013-14, TRA 2015

<sup>4</sup> State Tourism Satellite Accounts, 2013-2014, TRA

<sup>5</sup> Tourism Businesses in Australia (June 2010-June 2013), TRA

<sup>6</sup> STR Global database, June 2015, hotels and serviced apartments with 10 rooms or more

# Visitor accommodation industry

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Accommodation provides fundamental supply to service the State's current and growing domestic and international visitor demand. It also assists in destination promotion and development, and has the potential to become a tourist attraction in its own right.

Short-term holiday letting has been a feature of Australia's and NSW's tourism industry for over a century and is a common phenomenon around the world – whether it entails renting a couch, bedroom or entire home. The greater use of mobile technology has facilitated the growth of short-term holiday letting in Australia on a global scale and greater direct engagement in letting and renting by private individuals.

As one of Australia's most visited destinations, it is paramount for NSW and Sydney to offer a variety of quality accommodation that is capable of meeting visitor demand and servicing the breadth of visitor needs, from domestic and international leisure visitors through to backpackers, students and business event delegates.

However, there are a number of barriers that threaten the ability of the accommodation industry to meet both visitor demand and also visitor needs.

## Sustainable accommodation supply

On average across Australia, the tourism industry is facing some capacity constraints due to the lack of visitor accommodation supply. Deloitte Access Economics' *Tourism and Hotel Market Outlook 2015*<sup>7</sup> outlined that while the hotel investment pipeline has expanded in terms of property count, with 75 medium-term projects identified, the number of additional rooms in expectation has declined 15 per cent to 8,400 over the three years to the end of 2017. As a share of current stock, this translates to average supply growth of 1.2 per cent per annum over the next three years – that is, less than half the pace of demand – further increasing the existing visitor accommodation shortfall.

While TTF recognises that sustainable accommodation supply is paramount, increased investment and utilisation of current capacity will be required to meet the visitation numbers associated with reaching both the lower and upper bands of the national Tourism 2020 target and the respective NSW 2020 target. It has been estimated that between 40,000 and 70,000 rooms will be needed to accommodate the growth in visitation (at occupancy rates of 75 per cent)<sup>8</sup>.

New rooms will be needed mainly in our capital cities, with improvements on quality rather than quantity the focus for regional destinations across Australia. It is important to ensure that supply continues to keep pace with demand in a sustainable manner, especially in a destination such as Sydney where occupancy levels are already quite high and demand is expected to grow.

According to Tourism Research Australia's *Tourism Investment Monitor 2015*<sup>9</sup>, investment in the Australian accommodation sector in 2014 amounted to \$8.5 billion (up \$1.1 billion in value), with a number of accommodation investment announcements in both metropolitan and regional areas.

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<sup>7</sup> *Tourism and Hotel Market Outlook*, February 2015, Deloitte Access Economics

<sup>8</sup> *Tourism Investment and Regulation Review*, Final Report, August 2011, LEK Consulting and Austrade

<sup>9</sup> *Tourism Investment Monitor 2015*, TRA

A total of 4,204 accommodation establishments provided 229,646 rooms to accommodation supply in 2013–14, down by 33 establishments (or 0.8 per cent) and 418 rooms (or 0.2 per cent) when compared to 2012–13. The majority of these declines were in regional Australia, with 29 fewer accommodation establishments delivering 761 fewer rooms in the regions.

The accommodation sector saw declines in both revenue per available room (RevPAR) and occupancies nationally in 2013–14. On average, there was muted growth in supply (room nights available, up 0.2 per cent) and falling demand (room nights occupied, down 1.6 per cent), which resulted in a lower occupancy rate nationally of 64.1 per cent.

While there were declines in most capital city occupancies, Sydney saw accommodation demand in the city outpace supply in 2013–14, which delivered marginal growth in occupancies in the city, but solid RevPAR growth through the year.

While accommodation projects were concentrated in NSW with 22 projects valued at \$2.7 billion, the total tourism investment pipeline potentially amounts to only 15,915 expected new rooms from 88 accommodation projects (net growth of 14 projects and 3,890 rooms). This is far from the estimated number of accommodation rooms needed to meet expected growth in visitation.

As found by Jones Lang LaSalle<sup>10</sup>, the focus should be on ensuring that the market delivers an appropriate level of accommodation rooms to continue to support the growth of the visitor economy. In the same vein, it is important to ensure that the type of accommodation rooms on offer, and their quality, continue to meet visitor needs.

## Barriers faced by the accommodation industry

While the current rate of growth in new activity is an indicator of strong investor appetite for accommodation projects, and hotel transactions across Australia attracted significant international interest, particularly out of Asia; there are multiple barriers facing the accommodation industry. These barriers faced by stakeholders wanting to invest in either the construction of new, or redevelopment of existing, visitor accommodation, are further contributing to the accommodation shortfall being felt nationally.

Federal and State Government regulations favour residential over tourism use. For example, residential development is favoured by taxation, transfers and planning, and is exempt from bearing many operational and development regulatory costs such as fire safety standards and the application of the disability premises standards.

Since residential and tourism use compete for the same land, residential is considered the ‘highest and best use’ of available land, and results in a higher return on investment in comparison to visitor accommodation. The majority of short-term holiday letting is of residential properties.

Concerns raised by industry are that the impact of a lower return for visitor accommodation as well as the costs associated with developing, operating and renovating traditional accommodation, may further contract investment in the sector, worsening the already present accommodation shortfall.

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<sup>10</sup> Jones Lang LaSalle, Sydney Hotels Supply & Demand Study, Executive Summary, February 2014



Australia's ability to attract international visitors is also significantly dependent on its ability to successfully compete in terms of quality with visitor accommodation offerings in other parts of Asia and around the world. Making sure that the regulatory environment and economics are such that visitor accommodation can be sustainably maintained to a standard which is competitive, is vital.

# Visitor accommodation data

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## Issues with current data sources

The quarterly International and National Visitor Surveys undertaken by Tourism Research Australia (TRA) collect information from visitors on the type of accommodation they stayed in while in Australia. However, there are a total of 14 different accommodation types that are not clearly defined and can be confusing for visitors, especially international visitors that may have a language barrier.

For example, according to the TRA definition, the accommodation category “hotels and similar accommodation” includes luxury hotels, standard hotels, motor inns and *serviced apartments*. However, there is also a category called “rented house/apartment/flat or unit”, which according to the TRA definition is accommodation not serviced on a daily basis. Visitors staying in a serviced apartment may select “rented house/apartment/flat or unit” because it more accurately describes their accommodation than “hotels and similar accommodation”, even though serviced apartments are meant to be captured in the latter category.

Further to the accommodation type confusion, the Surveys do not adequately capture the economic impact of visitors staying in short-term holiday letting accommodation. The premise that visitors staying in short-term holiday letting accommodation are still valuable contributors to the visitor economy through expenditure on non-accommodation items, and what expenditure on these items actually is, is not adequately captured through either the TRA or Australian Bureau of Statistics data collections.

Consequently, to analyse the available data and attempt to infer any conclusions from the available data sources, it is necessary to make a number of assumptions, which detracts from the validity and accuracy of the analysis and conclusions drawn. It is for this very reason that a key recommendation of TTF is for the NSW Government to advocate to the Federal Government to instil mechanisms to better capture much-needed data to understand the sector and its impacts.

## Preliminary data analysis

For the purposes of this Inquiry, TTF has undertaken some preliminary analysis of data available through the International and National Visitor Surveys conducted by TRA. Based on the accommodation type definitions from TRA and for ease of analysis, TTF has grouped certain accommodation types into a ‘traditional accommodation’ classification<sup>11</sup> and a ‘holiday letting’ classification<sup>12</sup>. The information and analysis below should be interpreted with the disclaimers and shortcomings outlined above in mind.

For the year ending June 2015, a total of 169.4 million visitor nights were spent in NSW. Of this, the majority of visitor nights were spent in the accommodation of friends or relatives (35.7 per cent), followed by traditional accommodation (28.5 per cent) and holiday letting (27.2 per cent).

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<sup>11</sup> TTF’s ‘Traditional Accommodation’ classification includes the following TRA accommodation types: hotels and similar accommodation, guest house or bed & breakfast, caravan park or commercial camping ground, and backpacker or hostel.

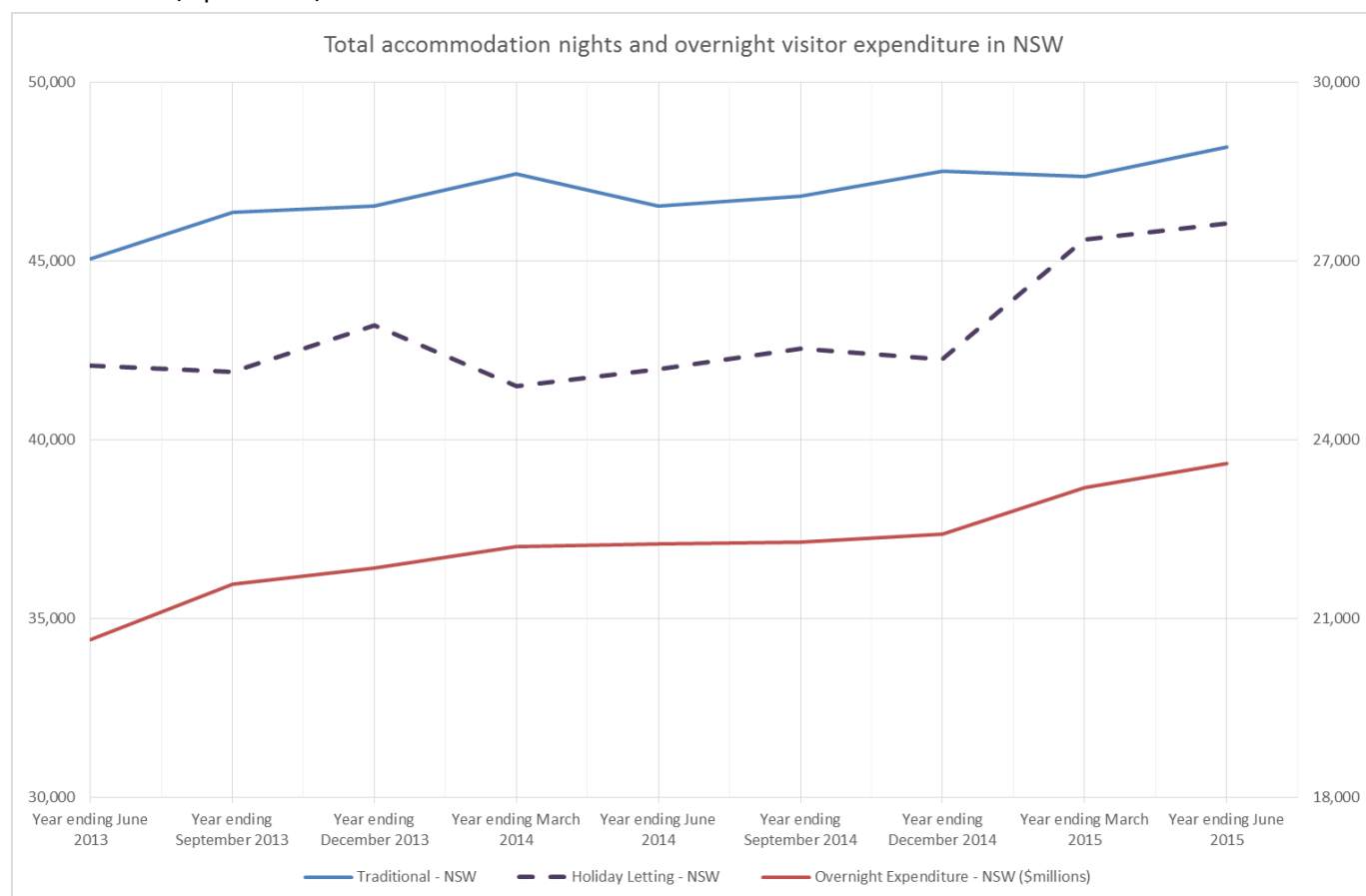
<sup>12</sup> TTF’s ‘Holiday Letting’ classification includes the following TRA accommodation types: rented house/apartment/unit or flat, homestay and private accommodation (not a friend or relative).

The number of total visitor nights spent in NSW have grown by 4.5 per cent compared to the year ending June 2014. The majority of this growth was attributable to holiday letting accommodation (2.5 per cent), followed by friends or relatives accommodation (1.3 per cent) and traditional accommodation (1 per cent). However, when considering the specific accommodation types within these groups, the majority of the growth was equally attributable to ‘hotels and similar accommodation’ and ‘rented house/apartment/flat or unit’ (1.7 per cent).

Considering the annual growth of visitor nights spent in specific accommodation types compared to the year ending June 2014, the largest growth was in ‘private accommodation’ (185.8 per cent<sup>13</sup>), followed by ‘hotels and similar accommodation’ (9.5 per cent) and ‘rented house/apartment/flat or unit’ (7.2 per cent). In turn, the largest decline occurred in ‘backpacker or hostel’ accommodation (-9 per cent), followed by ‘guest house or bed & breakfast’ (-7.1 per cent) and caravan park or commercial camping ground (-4.8 per cent).

Undertaking a domestic overnight visitor and international visitor comparison, domestic overnight visitors spent 89.7 million nights in NSW in the year ending June 2015. The majority of these visitor nights were spent in the accommodation of friends or relatives (40.6 per cent), followed by traditional accommodation (38.3 per cent) and holiday letting (9.7 per cent). Excluding friends or relatives accommodation, the majority of domestic visitor nights were spent in ‘hotels and similar accommodation’.

Conversely, international visitors to NSW spent more visitor nights in holiday letting accommodation (46.9 per cent) compared to the accommodation of friends or relatives (30.1 per cent), or traditional accommodation (17.3 per cent). The majority of international visitor nights in NSW for the year ending June 2015 were spent in a ‘rented house/apartment/flat or unit’.

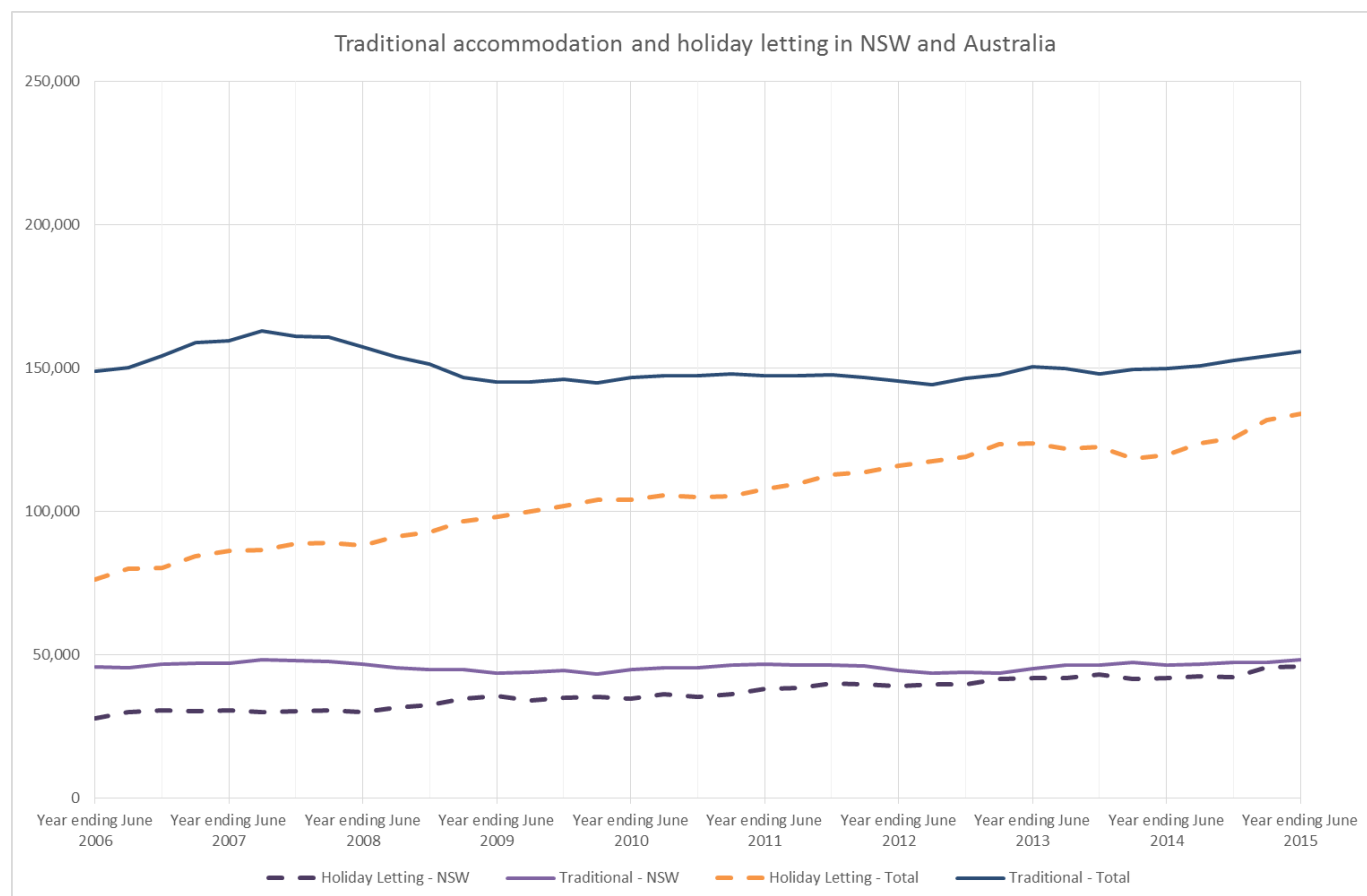


**Figure 2: Total accommodation nights and overnight visitor expenditure in NSW**

<sup>13</sup> This significant growth is attributable to the lack of historical data for ‘private accommodation’ in the International and National Visitor Surveys, and is unlikely to continue moving forward.

Figure 2 shows the total (international and domestic) visitor nights in NSW across the traditional accommodation group and holiday letting group, as well as overnight visitor expenditure in NSW over the two years between year ending June 2013 and year ending June 2015. Excluding two quarters, there appears to be a negative correlation between traditional accommodation and holiday letting accommodation – an increase in traditional accommodation corresponds with a decline in holiday letting accommodation, and vice versa.

However, as can be seen in Figure 2, declines in either traditional accommodation or holiday letting accommodation do not result in a decline in overnight visitor expenditure.

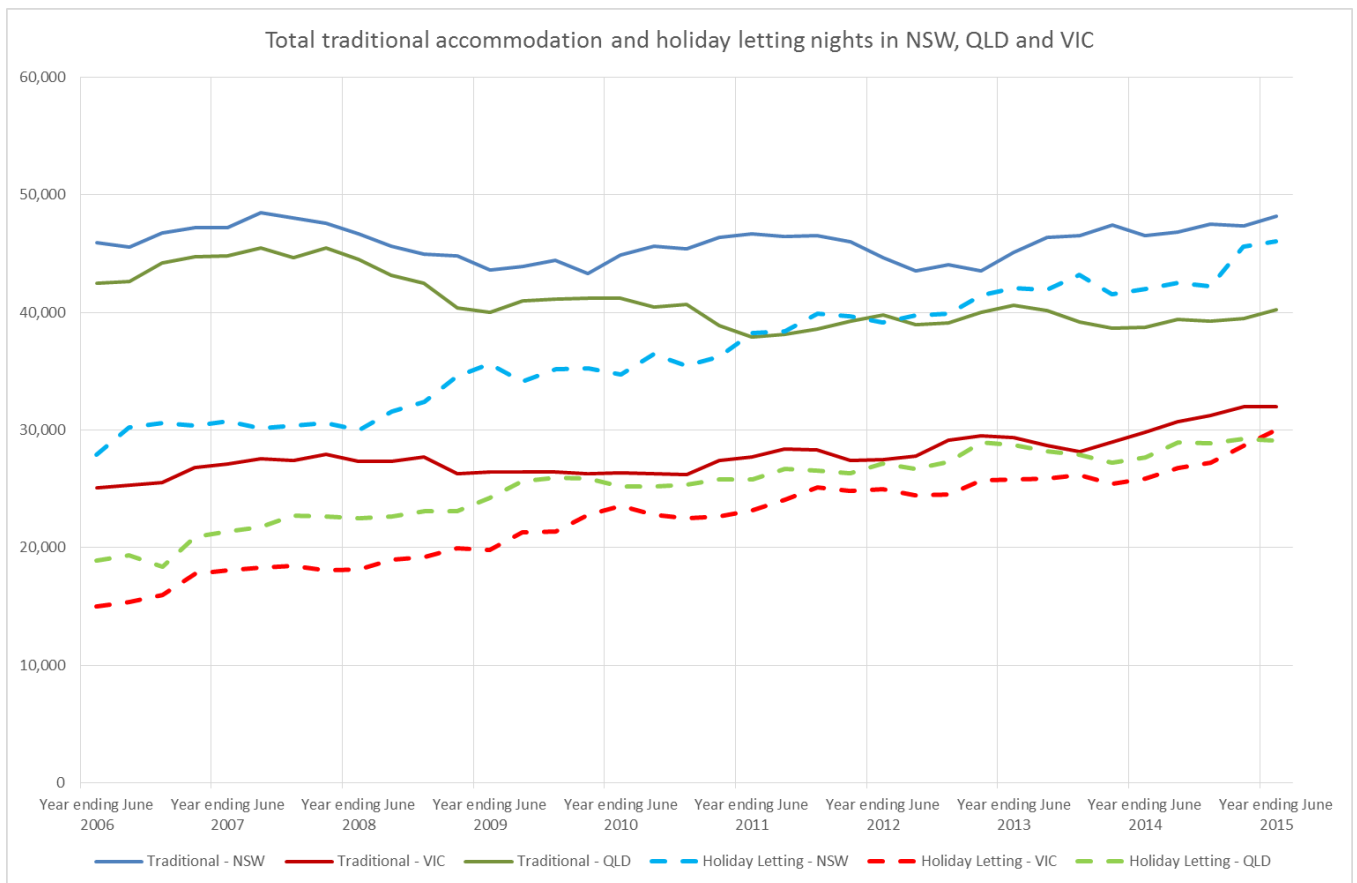


**Figure 3: Total traditional accommodation and holiday letting nights in NSW and Australia**

When comparing the total visitor nights in NSW to the total visitor nights across all of Australia for both traditional and holiday letting accommodation over the 10 years to year ending June 2015, it can be seen that on average, traditional accommodation nights have experienced relatively similar growth in both NSW and Australia. This is largely due to the fact that NSW is Australia’s largest tourism contributor.

However, growth in holiday letting nights across Australia has been greater than the growth of holiday letting nights in NSW.

Looking at the year on year growth in June 2015, traditional accommodation nights in NSW grew by 3.5 per cent compared with a 4 per cent growth rate for Australia. In terms of holiday letting accommodation nights, the growth in NSW was 9.7 per cent compared to a 12.1 per cent national growth rate.

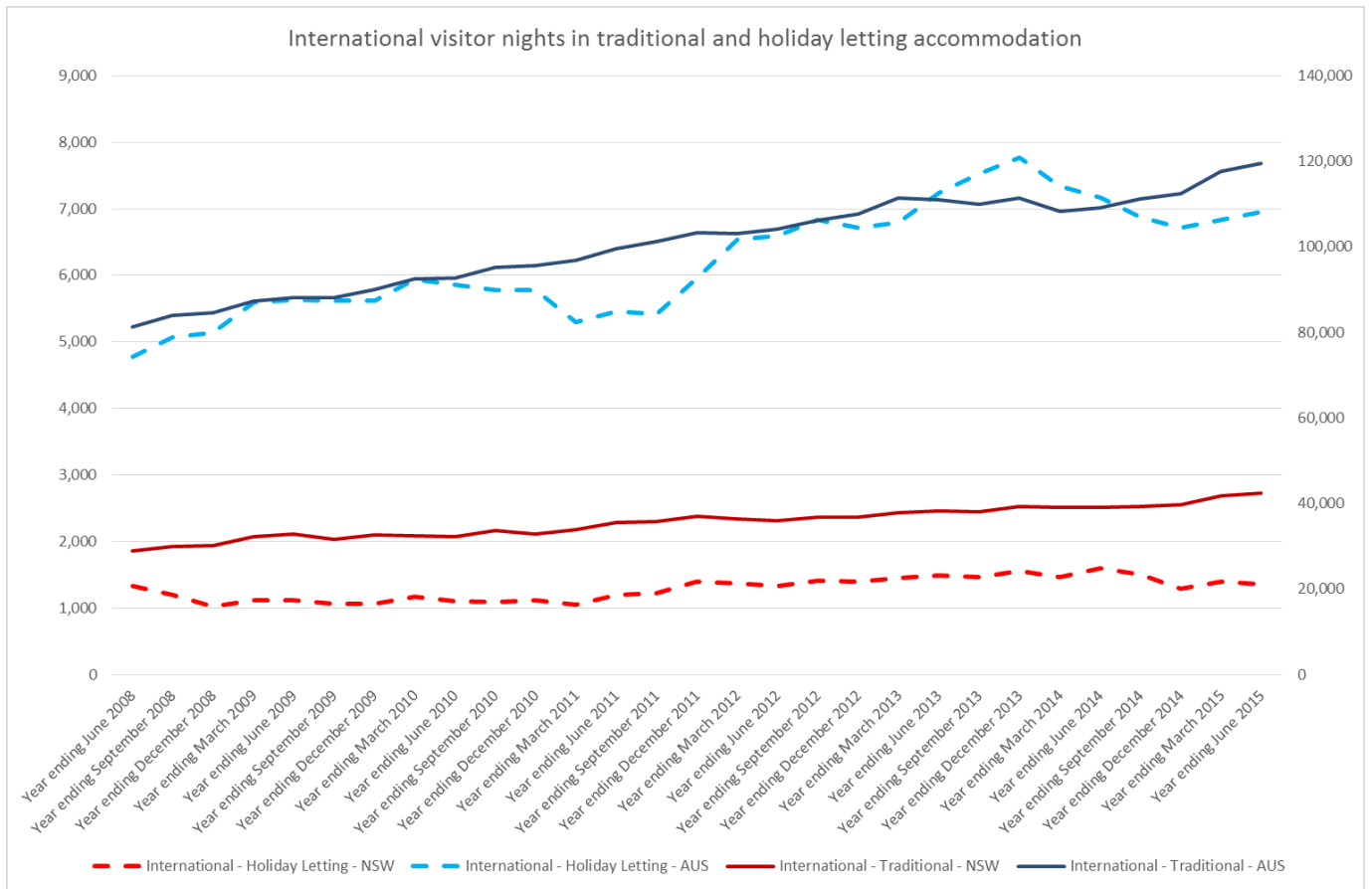


**Figure 4: Total traditional accommodation and holiday letting nights in NSW, QLD and VIC**

From the figure above, it is clear to see that the growth in holiday letting nights in NSW has been greater than the growth of holiday letting nights in both Queensland (QLD) and Victoria (VIC). However, across all three States, the growth in holiday letting has been following an upwards trend.

On the other hand, the growth of traditional accommodation nights in NSW over the 10 years from year ending June 2006 to year ending June 2015 has been relatively stable. This is compared to a slight decline in Queensland and a slight increase in Victoria.

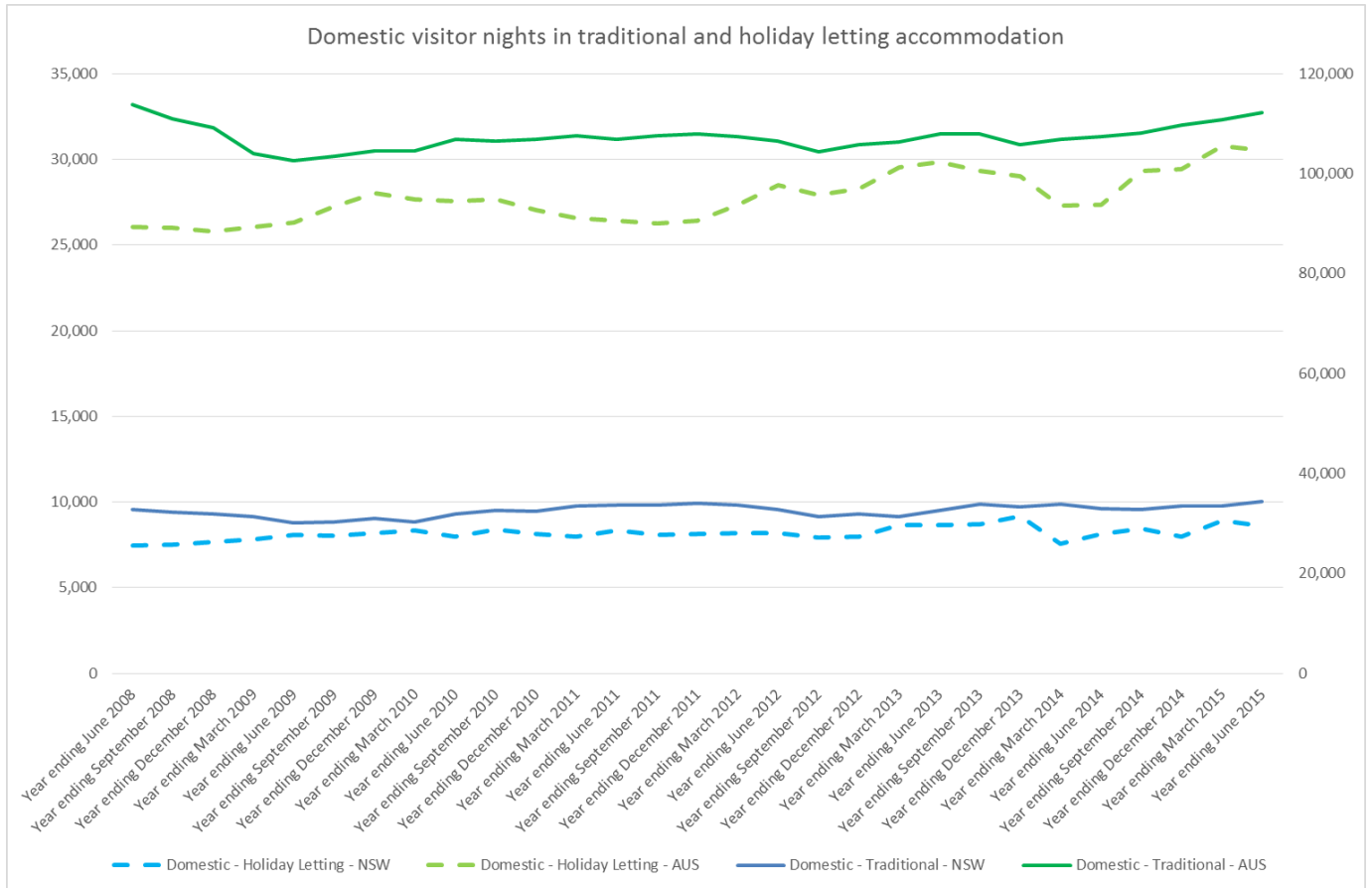
In addition, the gap in visitor nights between traditional accommodation and holiday letting in NSW and Victoria is significantly smaller than the gap currently present in Queensland.



**Figure 5: International visitor nights in traditional and holiday letting accommodation in NSW and Australia**

International visitor nights spent in traditional and holiday letting accommodation from year ending June 2008 to year ending June 2015 have grown in both NSW and Australia.

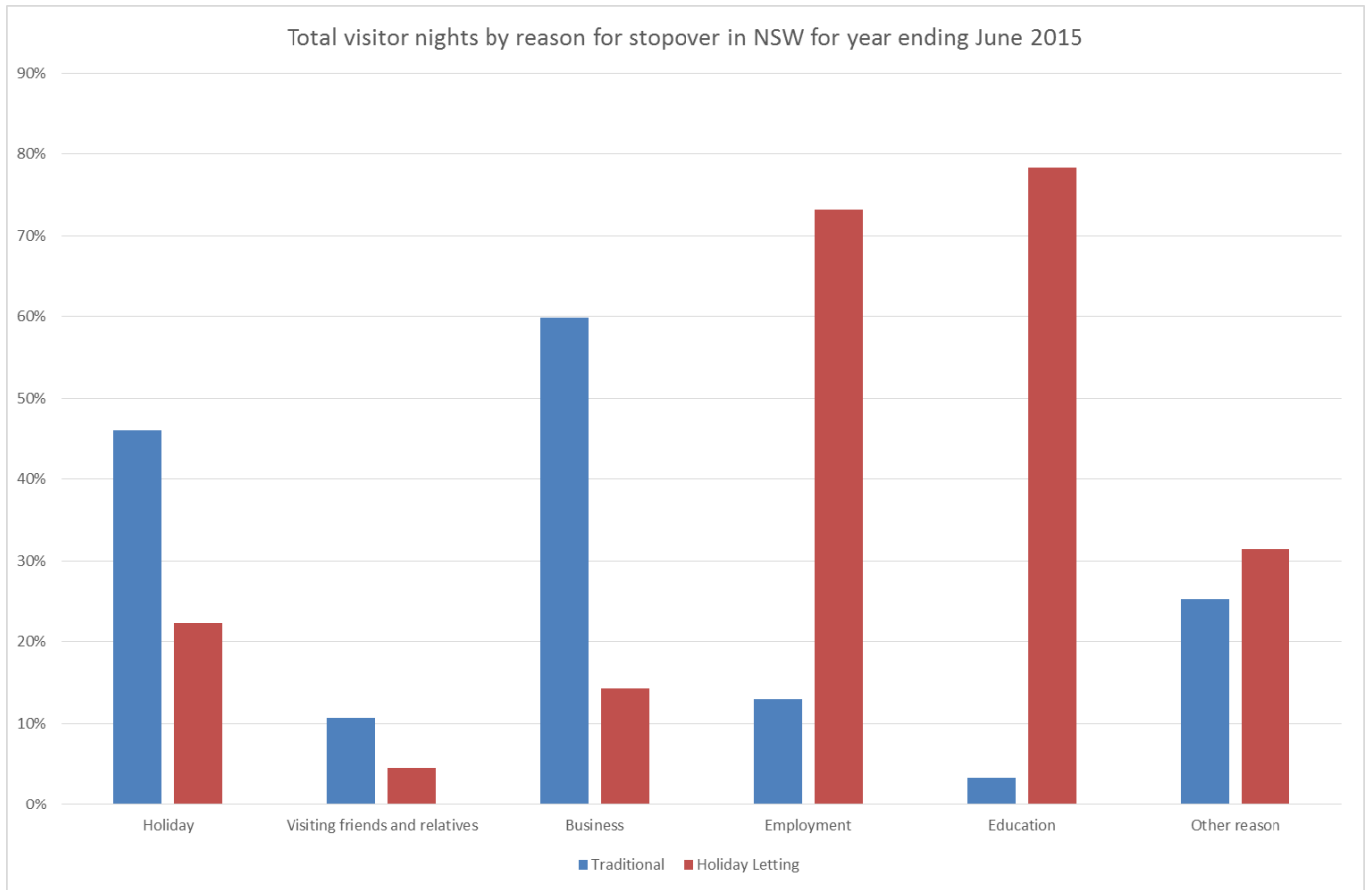
The growth rate in Australia of international visitor nights spent in both traditional and holiday letting accommodation has been greater than the growth rate in NSW. International visitor nights spent in holiday letting accommodation in NSW has remained relatively flat-lined, whereas international visitor nights spent in holiday letting in Australia has experienced growth, despite quarterly fluctuations.



**Figure 6: Domestic visitor nights in traditional and holiday letting accommodation in NSW and Australia**

Domestic visitor nights spent in traditional and holiday letting accommodation from year ending June 2008 to year ending June 2015 have remained relatively stable in both NSW and Australia. However, there has been a slight increase in the number of domestic visitor nights spent in holiday letting accommodation across Australia, compared to NSW.

Looking at the annual growth between year ending June 2014 and year ending June 2015, domestic visitor nights spent in holiday letting accommodation in Australia grew by almost double the growth of domestic visitor nights spent in holiday letting accommodation in NSW.



**Figure 7: Total visitor nights by reason for stopover in NSW for year ending June 2015**

The figure above shows the percentage difference between the use of traditional and holiday letting accommodation based on the reasons for travel. Considering total visitor nights spent in NSW for the year ending June 2015, visitors travelling for the purposes of a holiday, visiting friends and relatives and business are more likely to stay in traditional accommodation than holiday letting accommodation. The greatest difference in use is by visitors travelling for business, who are four times more likely to stay in traditional accommodation than holiday letting accommodation.

However, visitors travelling for employment and education are more likely to stay in holiday letting accommodation. The longer length of time spent in a destination and more permanent nature of these travel reasons is conducive to this conclusion.

The 'other reason' category above captures all other reason for stopover classifications from the International and National Visitor Surveys, including travel for medical reasons, personal appointment or business (excluding health), providing transport, attending a funeral, and other reasons not further defined.



# TTF recommendations

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The recommendations outlined below by TTF centre on the premise of the Inquiry taking the opportunity to review the regulatory environment surrounding all visitor accommodation in NSW to ensure a more competitive environment for all tourism business operations and investment. It is also paramount to ensure a minimum standard of customer safety and protection is maintained across all accommodation types.

While issues surrounding visitor accommodation in NSW have warranted Government attention, this Government attention does not necessarily entail a new set of regulations and legislation specifically for short-term holiday letting, nor the imposition of existing cumbersome regulations on the sector. Implementation of customer protection mechanisms should be a priority and any regulatory decisions should be made based on sound data collection and analysis.

The principles surrounding the recommendations below are also supported by industry. The University of Newcastle and the University of Technology Sydney released a Sharing Economy Report<sup>14</sup>, which was commissioned by the NSW Business Chamber. TTF was a member of the industry policy Delphi panel that assisted in informing the report.

A key conclusion drawn by the Sharing Economy Report is that there is not enough known about how the sharing economy impacts, and is reshaping, the tourism industry to conclusively identify one solution that is robust enough to address all contexts in which the sharing economy is emerging. While the Sharing Economy Report considered accommodation, transport and other forms of the 'sharing economy', for the purposes of this Inquiry and submission, its conclusion is echoed by TTF and industry. The Committee should consider a suite of solutions that aim to level the playing field between traditional accommodation and short-term holiday letting.

## Need for empirical evidence

The NSW Government should advocate to the Federal Government to have national research bodies, including the Australian Bureau of Statistics and Tourism Research Australia, better capture much-needed data to understand the short-term holiday letting sector and its direct and indirect impacts. Currently there is not enough accurate and reliable official information available. While this should not necessarily preclude the Government from making any policy and regulatory decisions, it is vital to ensure that essential data is being collected to better inform, test and validate any responses.

For example, the Australian Taxation Office decision in May 2015 declared a GST ruling for sharing economy activities. However, due to a lack of voluntary or compliance systems in place to identify who is supplying accommodation in private accommodation or through commercial use in residential buildings, the potential impacts of this ruling are unclear.

A number of academic studies and research have been undertaken domestically and internationally analysing the 'sharing economy' and its impacts, which the Committee is encouraged to review as part of its Inquiry. However, the tourism data and research currently being captured and undertaken by the ABS and TRA is not entirely accurate due to a number of data source issues.

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<sup>14</sup> The Sharing Economy: Issues, Impacts and Regulatory Responses in the Context of the NSW Visitor Economy, University of Newcastle and University of Technology Sydney, September 2015

As this research is relied upon by Federal and State Governments as part of their decision making processes, in its current form, it may not provide entirely reliable conclusions. This is something that needs to be rectified as a matter of priority to ensure accurate data is being collected and historical time series, as well as sound future projections, can be developed.

While Austrade is currently undertaking research to assess the impacts of the sharing economy, it is important to implement permanent research tools that can adequately capture the immediate and longer term impacts of short-term holiday letting.

The available sources of tourist information, including the ABS' Tourism Satellite Accounts, the TRA International and National Visitor Survey, and the Survey of Tourist Accommodation, do not provide a holistic snapshot of the visitor accommodation industry. Even the small amount of information that is currently being captured may not be of great use due to the confusion with accommodation type definitions.

The Survey of Tourist Accommodation does not include properties with less than 15 rooms, which therefore does not capture short-term holiday letting properties. The NSW Government should advocate to the Federal Government to ensure its review of the Survey of Tourist Accommodation captures all properties that are used for 'tourism purposes'. A definition of short-term holiday letting would assist in this regard. Further assistance would also be offered by moving the Survey to an online collection mechanism and implementing Government administered registration of short-term holiday letting premises (discussed further).

There is also a strong case to re-establish the Small Scale Accommodation Survey, which was undertaken by the Federal Government to capture information about accommodation properties that were below the 15 room threshold of the Survey of Tourist Accommodation. As an alternative or complement to the Survey of Tourist Accommodation, the NSW Government should advocate for the Federal Government to develop a data collection tool, such as the Small Scale Accommodation Survey, to provide reliable and accurate information on short-term holiday letting accommodation. Such a tool would also better capture smaller traditional accommodation properties, such as regional bed and breakfasts, that are a valuable contributor to the NSW visitor economy.

Further, the lack of official information is also blurring transparency in accommodation supply, which may be having investment repercussions. As outlined previously, tourist accommodation as a land-use is already struggling to compete with residential. Not understanding the true nature of the accommodation market may deter investors from developing tourist accommodation, investing in property renovations or result in traditional accommodation properties becoming unviable in areas with a high concentration of short-term holiday letting accommodation.

# Deregulating traditional accommodation

TTF and the industry is of the view that the focus of Government policy should be on deregulating traditional accommodation in the first instance to make it more competitive. This should be the focus rather than imposing the same cumbersome regulations on short-term holiday letting accommodation that would stifle the sector’s growth. This is also in-line with the principles of the Harper Review<sup>15</sup> and its Government response<sup>16</sup>, which support removing unnecessary barriers to competition.

As outlined in the Sharing Economy Report, short-term holiday letting and traditional accommodation face very different regulations, legislation and development/operational processes. The below provides a brief snapshot of the differences in regulations and processes between traditional accommodation and short-term holiday letting.

Typical short-term holiday letting process	Typical traditional accommodation process
<ul style="list-style-type: none"> <li>• Setup an account and advertise couch, spare bedroom or home on the global market</li> </ul>	<ul style="list-style-type: none"> <li>• Setup a registered business with the necessary systems to abide by privacy laws</li> <li>• Undergo environmental impact statements and submit development approvals</li> <li>• Register permits for business activity and local council permits</li> <li>• Abide by consumer laws and labour laws</li> <li>• Payment of superannuation and taxation</li> <li>• Undergo occupational health and safety reviews</li> <li>• Apply for food licensing and liquor licensing</li> <li>• Ensure premises abide by accessibility, fire and building standards</li> <li>• Ensure premises, staff and guests are covered by relevant insurance</li> </ul>

Problems of excess regulations and bureaucratic red tape, particularly in the investment and development approval processes, restricts the ability of the private sector to respond to visitor accommodation needs as well as remain competitive in the face of new and existing market entrants. As tourism is a global industry, this also restricts Australia’s ability to compete internationally.

The limited number of regulations imposed on short-term holiday letting and the excessive number of regulations imposed on traditional accommodation create an uneven playing field. The industry is supportive of a lighter regulatory touch on traditional accommodation to ensure it is better able to compete and successfully meet market demand. The Government should consult with industry in determining which regulations are the most unnecessary and cumbersome.

<sup>15</sup> Competition Policy Review, Final Report, Professor Ian Harper, March 2015

<sup>16</sup> Australian Government response to the Competition Policy Review, Treasury, November 2015

Austrade recently released an Urbis Report on Tourism Hotel Development Regulations in Australia<sup>17</sup>. The report undertook a comparative assessment of the time and cost involved in developing a 300 room four star hotel in all Australian capital cities as well as examined the regulatory requirements for two regional hotel case studies. While the Report received mixed reviews from State, Territory and Local Governments, it did outline a number of recommendations for improving planning regimes and regulatory processes across all levels of Government. TTF recommends that the Committee considers this Report as part of its Inquiry.

While Governments have red tape reduction agendas and policies, the reality is that the process of deregulation can be complex and protracted, especially around issues that are sensitive and contentious. Therefore, there need to be stronger customer protection controls over non-traditional accommodation while the process of deregulation is taking place.

Even though some short-term holiday letting accommodation providers and facilitators have guidelines and standards that are meant to be adhered to, these are often not enforced and only monitored through self-regulation and complaint reporting mechanisms. They are also not consistent across providers, which creates uncertainty for the consumer as to their rights and responsibilities. An industry regulation model that is endorsed and monitored by Government, and accompanied by registration, is one means of providing consistent and enforceable customer protection.

Customer protection and safety should also be the focus when undertaking any deregulation. A minimum standard of customer protection and safety should be maintained across all visitor accommodation types. This includes a minimum standard of fire safety, insurance, accessibility requirements, and adequate avenues for complaints and conflict resolution. Adapting the regulatory framework to allow new technologies and a more competitive environment for traditional accommodation, while ensuring there are proper controls in place, should be key in the Government's approach.

## Industry regulation model

The NSW Government should work with the industry to implement a new industry regulation model that dictates the minimum standard of customer protection and safety. This industry regulation model could take the form of a mandatory Code of Conduct, for example, and be a complement to any legislated regulation. More balanced positions, such as that taken in the Harper Review, support both government regulation and self-regulation.

The Holiday Rental Industry Association (HRIA), with the assistance of the NSW Government, developed a NSW Holiday Rental Code of Conduct for suppliers, hosts and guests, which came into effect in May 2012. The objective of the Code was to assist hosts and suppliers of short-term holiday rental accommodation to meet the residential amenity needs of all stakeholders including guests, neighbours, local communities, local councils and government.

The Code also sought to encourage acceptable standards of behaviour for holiday rental guests to ensure the sustainability of the holiday rental industry in Australia. The HRIA relaunched the NSW Code as a National Code on 24 March 2015 in conjunction with Stayz, HomeAway and Flipkey. Airbnb is a supporting organisation of the National Code.

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<sup>17</sup> Hotel Development Regulations in Australia Final Report, Urbis and Austrade, May 2015

This Code could form the basis of a new mandatory Code of Conduct endorsed by the NSW Government and administered, for example, through NSW Fair Trading as an extension to their property and rental services. NSW Fair Trading could also become the registration administrator for short-term holiday letting premises to facilitate the collection of data. This registration mechanism would also assist in policing any issues, enforcing penalties and support monitoring of short-term holiday letting operations by relevant Government departments, such as the Australian Taxation Office.

It is important to ensure that the implementation and operation of any Code of Conduct and registration mechanism remains effective and efficient, so that it does not become a complex administrative burden on Government, providers or users. The Committee should consider international examples of policy responses to short-term holiday letting, such as the case of San Francisco, to determine the industry regulation model best suited to the domestic context.

Any industry regulation initiatives also need to be accompanied by education and communication with landlords, renters and managers about their rights and responsibilities. This communication and education should be facilitated through the NSW Government and all accommodation portals. The onus of responsibility to abide by the Code of Conduct and any relevant rules should be on any users (be they landlords, renters or managers) of short-term holiday letting accommodation. Facilitators of short-term holiday letting transactions should be responsible for communicating to, and educating, all users in conjunction with the NSW Government.

## Reviewing land-use definitions

As outlined in the TTF response to the *Issues Paper for the NSW Planning System*, a review of the existing land-use definitions should be undertaken to allow for greater clarity between residential and short-term accommodation. There is a strong case to define short-term holiday letting within relevant State legislation to ensure clarity and consistency across jurisdictions. As supported in the Government Response to the Harper Review, reform of planning and zoning rules can make it easier for businesses to start up and operate in new locations.

The regulatory response of a number of destinations around the world to short-term holiday letting has been to set specific definitions and parameters around its operation. Such an approach has made it easier to regulate, administer and monitor the practice, as well as impose penalties for any breaches. For example, new rules in the United Kingdom now enable anyone to rent out their home to short term visitors up to 90 nights per year without planning consent. While definitions vary, 90 days seems to be the largely accepted definition of “short term” holiday letting.

A NSW Government definition of short-term holiday letting would also help alleviate industry concerns around short-term holiday letting accommodation operating as permanent commercial accommodation. This is the situation where residential properties are consistently let as commercial visitor accommodation throughout the year, without having gone through the necessary approvals. The registration mechanism linked to a Government-endorsed self-regulatory model would also facilitate in the monitoring of these situations.

Currently regulations pertaining to planning, development and zoning are shared by both State and Local Governments. While this results in duplication and overlap of responsibilities, within the context of short-term holiday letting it more importantly results in ambiguous accountability in terms of both regulation, policing and enforcement where issues are identified.

TTF supports the view that there is a difference between legitimate short-term holiday letting and illegal accommodation, and Government responses to each should vary accordingly. The NSW Government should continue to work with Local Governments to investigate and deal with the issues resulting from illegal accommodation and overcrowding.

Local Governments often do not have the resources necessary to adequately impose, police and enforce relevant regulations or rules, nor deal with complaints or issues arising from short-term holiday letting. While there are mechanisms currently in place for Local Governments to deal with some issues arising from short-term holiday letting such as noise, littering, safety and amenity, the exponential growth of the sector and the restricted resources of Local Governments make this a significant burden.

Moreover, Local Government responses to short-term holiday letting have been varied across NSW, which creates confusion in the marketplace for both providers and customers. This confusion is also extended to owner's corporations who essentially have the ability to set rules regarding the permissibility and parameters of short-term holiday letting in their buildings. This has the potential to create discrepancies in the approach to short-term holiday letting within individual Local Government areas. The issue is exacerbated in key tourist destinations, such as Sydney, that have a large proportion of apartment buildings, have significant visitor appeal and substantial demand for visitor accommodation.

While some suggested regulatory responses to short-term holiday letting have included better empowering owner's corporations to set their own by-laws dealing with short-term holiday letting, as with Local Governments, the issue becomes the policing and enforcement of any breaches or penalties. A further issue is the varied nature of responses not only among Local Governments, but within individual Local Government areas.

Implementing a State-based approach to land-use definitions and a State-based registration system with a Government-endorsed industry regulation model would help alleviate the burden on Local Governments and owner's corporations of regulating and policing short-term holiday letting. Such an approach would also facilitate a unified cross-governmental State position on the regulation of short-term holiday letting.

While planning is a state-based responsibility, there is also merit in considering a Federal Government approach to short-term holiday letting to remove inconsistencies across the country. This is further supported by the fact that short-term holiday letting and its growth, as well as the issues surrounding its regulation, are not unique to NSW. A Federal Government approach would make the visitor accommodation industry across Australia more competitive and innovative.

Confusion in the market is also exacerbated by the differences in State and Territory Government responses to short-term holiday letting, further creating an uneven playing field. The following page includes examples of Government responses to short-term holiday letting regulation and the regulation of the 'sharing economy' more broadly.

### **Case Study – Victoria**

- In February 2015, the Victorian Government established an independent panel to recommend ways to improve the regulation of CBD residential buildings, so property is protected from unruly 'short-stay' parties.
- The panel's considerations included the interests of stakeholders, current issues with short-stay accommodation, international experience, and possible legislative change to better regulate the sector.
- The panel reported to the Minister for Consumer Affairs and the Minister for Planning on the issues, options and recommendations to address the issues. The Report outlined 13 options for addressing the issues.
- The report recommended that owners corporations be empowered to serve a 'notice to rectify breach' on providers of short-stay accommodation (whether the owner of the apartment, or their lessee or agent) regarding breaches of the owners corporation rules by their short-stay occupants.
- The report also recommended that the order that the Victorian Civil and Administrative Tribunal can make in determining disputes based on such breach notices should include an order prohibiting the use of the relevant apartment for short-stay accommodation for a specified period or until the apartment is sold to someone unconnected to the provider.
- The above recommendations for reform were not the unanimous view of the panel but the majority position.
- The panel members also considered that the recommendations should be complemented by self-regulation by industry through implementation of the Holiday Rental Industry Association's Holiday Rental Code of Conduct, with assistance from Tourism Victoria and the City of Melbourne.
- In line with the panel's recommendation, the Victorian Government is consulting on the report with the bodies represented on the panel.

### **Case Study – Tasmania**

- The Tasmanian Government recently announced it would be introducing legislation in the first half of 2016 to legalise and regulate innovative 'sharing economy' services, such as Uber and Airbnb.
- The legislation will be guided by Foundation Principles and provide a legal framework for sharing-economy business operations. It will also include laws that aim to protect consumers by imposing standards and safeguards applicable to traditional industries, such as hotel providers and taxi services.
- The Government has stated that it believes its role is to provide a regulatory framework that's fair and that provides necessary protections – putting consumers first, in terms of the benefits and also protections.

### **Case Study – Australian Capital Territory**

- On 30 October 2015, Australia's first legal, regulated Uber launched in the Australian Capital Territory (ACT), making the ACT the only Australian Territory to have legalised and regulated the ridesharing service, UberX.
- According to the ACT Chief Minister, Canberra was the first national capital in the world to legalise ride sharing and become Uber-friendly before the service had commenced in the jurisdiction.
- The ACT's regulation and subsequent legalisation of Uber was accompanied by reform for all taxi operators and hire car owners to cut their operating costs and allow them to better compete with UberX.
- Taxi registration fees were halved as of 30 October, and will be halved again at a later date. Hire car fees were also reduced, and both taxis and hire cars are now able to offer their services through the Uber network. Taxi drivers are also no longer required to wear uniforms.
- Ride sharing vehicles and drivers will have to be accredited and registered with attention paid to criminal records, driving histories and five-year health assessments. Vehicles will have to pass safety checks and be fully insured with compulsory third-party and property insurance requirements.
- UberX drivers will not be able to pick up passengers in a street hail, nor will they be allowed to pick up from taxi ranks. They will also be banned from having any drugs or alcohol in their system while on duty.
- Rival businesses such as OnTap and GoCatch are beginning operations beside Uber in the ACT.

The case studies demonstrate a number of the key principles in developing a regulatory framework for short-term holiday letting as well as the 'sharing economy' that should be considered by the NSW Government in its own approach. These principles include:

- A focus on an industry regulation model
- The enforcement of penalties where issues, breaches and disputes arise
- Ensuring customer choice and protection is at the forefront of any actions
- A commitment to deregulating traditional industries to make them more competitive with new industries.

To provide a sound framework, it is important that all levels of Government – Federal, State/Territory and Local – continue to work together to address the regulatory environment in which the visitor accommodation industry operates.