



Interim Submission to the Economics and Industry Standing Committee

Inquiry into Short-Stay Accommodation

INTRODUCTION

The Western Australian Local Government Association (WALGA or The Association) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 138 Local Governments in Western Australia.

The Association provides an essential voice for 1,222 Elected Members and approximately 15,000 Local Government employees as well as over 2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

Due to the timing of the Inquiry's submission period, WALGA's State Council has not yet been afforded the opportunity to consider or endorse this submission, as such, this paper should be considered as an interim submission, and that the Association reserves the right to modify or withdraw the comments as directed by State Council.

In light of the length and breadth of the submission the Association is available to provide any clarification deemed necessary to aid the Committee in its work, whether that be by way of additional written correspondence or provision of verbal testimony at a hearing of the Committee.

GENERAL COMMENTS

The Association welcomes the announcement of a Parliamentary Inquiry into matters related to short-stay accommodation, and greatly appreciates the opportunity to provide a submission on the same. There is a clear need for a whole of Government view on the appropriate regulatory and legislative framework that will meet the needs of this rapidly changing sector, and Local Government as a vital stakeholder, both as a regulator and provider, must be engaged extensively through this process and any that follow.

The short-stay accommodation sector, and the tourism sector more broadly, plays an important role in local economic development, it provides: employment; training opportunities; and injections of tourist expenditure into local communities all around the state. Local Governments therefore place importance on efficient and effective regulation; management; and provision of short-stay accommodation in their local communities.

However, as alluded to in the terms of reference for the Inquiry there has been a significant shift in recent years in the form, number and manner in which short-stay accommodation is promoted and advertised; a shift that is occurring worldwide. Much of this has been attributed to the emergence and rise in the 'sharing economy', with peer to peer platforms connecting

customers and the providers of services such as ride sharing and short-term rental accommodation.

In the context of short-stay accommodation, the key distinction between peer to peer platforms and more traditional forms of tourist accommodation, is that these platforms do not own the properties listed, rather they simply connect customers and providers, facilitating the financial transaction between the two parties. As a result, many of the listings on these platforms have been located in residential buildings and neighbourhoods that have not traditionally contained short-stay accommodation.

Further, peer to peer platform's such as Airbnb and HomeAway (formerly Stayz) have introduced new forms of short-term rental accommodation with people able to book a spare bed or room within a home, commonly called 'home sharing', as well as an entire home. These new rental accommodation types have led to community concerns arising from issues such as noise, waste management, car parking and anti-social behaviour.

Over the last few years, a number of Local Governments have raised concerns over the emergence and rapid rise, in the 'sharing economy' with peer to peer platforms connecting customers and the providers of services, such as short-term rental accommodation.

Whilst the appearance and growth in these platforms and associated services has been rapid, planning legislation governing short-stay accommodation in Western Australia has not been revised since 2009. The absence of any clear guidance from the State Government about how to manage the sharing economy has been challenging for some Local Governments. Within this policy void many Local Governments have acted to regulate more proactively short-stay accommodation through the planning system and *Local Government Act 1995*.

In 2017 the Association prepared a *Short Term Rental Accommodation Discussion Paper* in response to members' concerns, which reviewed the effectiveness of current policy responses concerning short-term rental accommodation. The paper outlined policy approaches around Australia, while focusing on Local Government responsibilities governing short-stay accommodation.

Following consultation with Local Government members on this Discussion Paper, the Association presented member feedback to the WALGA State Council in December 2017. The State Council resolution was:-

1. *That WALGA request the Minister for Planning to establish, through the Department of Planning, Lands and Heritage, a Technical Working Group, with a goal to reviewing the planning framework in relation to short-term rental accommodation, that gives consideration to;*
 - a. *A review of Planning Bulletin 99 – Holiday Home Guidelines, with a particular emphasis on expanding the scope of Planning Bulletin 99 beyond 'Holiday Homes', to reflect changes in the accommodation market;*
 - b. *A review of 'Land Use' definitions within the Planning framework that relate to short-term accommodation; and*
 - c. *Establishing a 'preferred' approach for the management of 'home-sharing' within the planning framework*

These recommendations reflect the varied nature of Local Government in Western Australia, noting that there is clearly no 'one-size-fits-all' approach to short-stay accommodation. It is considered that the proposed recommendations are targeted at the establishment of a more robust and contemporary state planning framework, that will allow Local Government to make informed decisions on their local regulatory framework.

In light of the formal resolution of WALGA's State Council, the Association welcomes the nature and scope of the terms of reference for this inquiry. The detail of this submission will attempt to focus on points one (1) and three (3) of the terms of reference, providing a snapshot of the manner in which Local Governments are currently regulating short-stay accommodation in Western Australia. Further this submission will outline the various concerns of Local Government, and their communities, around the impact that changes to the short-stay accommodation market are and have had on their localities. Lastly, commentary is made on the issue of data-sharing, or lack thereof, between online listing website, holiday house providers and government authorities.

Various approaches and discussions will be provided within this submission, however WALGA State Council's formal resolution of December 2017 is WALGA's current policy provision for short-stay accommodation.

The State Tourism Strategy – Policy Setting

While this submission will largely focus on Local Government responsibilities and functions, it is important to emphasise that the goal of building Western Australia's tourism sector is a shared one. The role of governments, both state and local, in establishing an environment that enables tourism investment and development, through policy positioning, is articulated in the State's Tourism Strategy¹.

The Association is hopeful that this Inquiry will assist in proposing a clear policy agenda going forward, and ensure efficient, fair and effective frameworks can be established that allow the tourism sector to grow, without detrimentally impacting on the amenity or values of the local community.

The Short-Stay Accommodation Market – Holiday Houses

Holiday houses form a significant component of the short-stay accommodation market in Western Australia, and are essentially a residential house or unit that is utilised for the accommodation of tourists for profit, or as a private second home. Holiday houses can be found throughout the State, but are generally concentrated in traditional tourist destinations. In recent years there has been a trend for holiday houses to be leased on a commercial basis. It has been argued that this trend has been accelerated in recent years by the emergence of online peer to peer platforms.

Historically, commercially let holiday houses were promoted and managed through traditional means. Promotion was often managed by local real-estate agents or by the owner themselves with publication in newspapers. Management was also often undertaken by local real-estate agents. In more recent times the promotion of holiday houses has followed the global trend of utilising the internet to promote and lease their properties. While in the last decade platforms such as Airbnb allows greater ease for owners to rent their properties, rooms or experiences to a much broader audience both domestically and internationally.

These emerging trends, and subsequent community concerns lead to the State Government establishing a Holiday Home Working Group in 2009. The Working Group culminated in the publication of guidance documents for Local Government on how to address holiday house

¹ Tourism WA (2012) State Government Strategy for Tourism in Western Australia 2020 – Detailed Strategy

developments through the planning system. These approaches and their effectiveness to date will be discussed below.

While the number of holiday houses within Western Australia is likely to be impossible to determine, a rough assessment can be undertaken on the number of holiday houses let commercially. By utilising data sourced from the independent and non-commercial data scraping tool (Inside Airbnb) it can identify how many whole properties are let in Western Australia. While the tool is unlikely to capture all properties, the dominance of Airbnb in the market place will still allow a reasonable assessment of the number and location of holiday houses.

Inside Airbnb data from December 2018 indicates that there are a total of 11,802 listings within Western Australia on Airbnb, up from 8,133 in March 2017². Of these, some 8,159 (69.1%) are listed as an entire home or apartment. Alternatively HomeAway (formerly Stayz), at the time of writing this submission, has approximately 4,000 properties for let in Western Australia. It should be noted that a number of holiday home providers let across multiple platforms and this is likely to some properties being counted multiple times.

Considering the nature of the Inquiry's terms of reference, the role Local Government has been expected to play in regulating them, and the nature of the change occurring; this submission will largely focus on the holiday houses as a subset of the short-stay market. Traditional accommodation offerings will not be a focus of this submission; they were not raised as an area of concern in the Association's Discussion Paper, and the formalised nature of their operations reduce the likelihood of conflict with established regulatory frameworks.

The State Planning Framework

The following section outlines the current state planning framework where it relates to short-stay accommodation with a particular focus on how it manages 'holiday houses' and 'home sharing'.

Local planning schemes are governed by the *Planning and Development (Local Planning Schemes) Regulations 2015*, which contain a series of 'model provisions' that are applied to all local planning schemes when a scheme is prepared or consolidated. Amongst the model provisions is set of defined land use terms, a number of which relate to short-stay accommodation. These include:

Table 1: Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 1 model provisions for local planning schemes.

Land use terms used
If this Scheme refers to a category of land use that is listed in this provision, the meaning of that land use is as follows —
bed and breakfast means a dwelling — (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and (b) containing not more than 2 guest bedrooms;
caravan park means premises that are a caravan park as defined in the Caravan Parks and Camping Grounds Act 1995 section 5(1)
holiday accommodation means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot;

² Bankwest Curtin Economic Centre (2017) The Impact of AirBNB on WA's Tourism Industry

holiday house means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast;
hotel means premises the subject of a hotel licence other than a small bar or tavern licence granted under the Liquor Control Act 1988 including any betting agency on the premise
motel means premises, which may be licenced under the Liquor Control Act 1988 — a. used to accommodate guests in a manner similar to a hotel; and b. with specific provisions for the accommodation of guests with motor vehicles
serviced apartment means a group or units or apartments providing — a. self-contained short stay accommodation for guests; and b. any associated reception or recreational facilities;

Given the land use terms set out by the Regulations and the type of accommodation offered by peer to peer platforms, there has been some confusion about the validity of ‘home sharing’.

These definitions demonstrate that minor variances in the features of accommodation provider’s services could have a substantial impact on how the developments land use is classified. For example, in the City of Busselton, ‘bed and breakfast’ uses are permitted in the Tourist Zone whilst holiday houses are a prohibited (‘X’) use in the Tourist Zone and therefore, are not permitted within this Zone according to the City’s scheme. Consequently, the difference between providing breakfast or not will result in a vastly different planning outcome, when the difference in service provided is minimal.

Also, there is no definition of a ‘dwelling’ provided in the Regulations. However ‘dwelling’ is defined in State Planning Policy 3.1 - Residential Design Codes (R-Codes) as:

*“A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a **permanent** basis by a single person, a single family, or no more than six persons who do not comprise a single family.”³ (emphasis added)*

This definition provides clearer guidance in relation to the ‘permanent’ use of a dwelling. Including such a definition, or a cross reference to the R-Codes definition within the Regulations could add clarity as to whether or not short-stay rental accommodation, particularly where the renting of a part of a dwelling, is valid or not.

The Regulation’s deemed provisions prescribe a variety of objectives for various land use zones, and it is this range of objectives that cause further difficulty for decision makers. The Regulations state that the objectives of the residential zone are to, amongst other things, “provide for a range of non-residential uses, which are compatible with and complementary to residential development”. The question of whether or not, short-stay accommodation is appropriate (i.e. compatible or complimentary) in residential zones is therefore left to the discretion of Local Governments, leading to potential inconsistencies in the way that this is interpreted.

Beyond these Regulations, there is no State Planning Policy, or Development Control Policy in Western Australia that articulate development controls or provide strategic advice to relevant decision makers concerning the management of short-stay accommodation. The guidance that is available is provided by a number of non-statutory guidelines and bulletins (all prepared by DPLH), including:

- *Tourism Planning Guidelines 2014*
- *Guidelines – Holiday Homes – short stay use of residential dwellings 2014 (Holiday Home Guidelines)*

³ WA Planning Commission (2015) State Planning Policy 3.1 Residential Design Codes

- *Planning Bulletin 99 Holiday Homes Guidelines*
- *Planning Bulletin 49 Caravan Parks*
- *Planning Bulletin 83 Planning for Tourism*

While there is a range of documents which aim to provide advice to Local Governments, outlined above, the next section will focus on Planning Bulletin 99, which specifically relates to the letting of full residential dwellings and not the letting of rooms within dwellings. Feedback from Local Governments sourced as part of the Association's Discussion Paper, as well as recent research undertaken by the Bankwest Curtin Economic Centre⁴, shows that holiday houses (being the entire property) make up majority of properties let as part of the emerging accommodation 'sharing economy', as well being the focus of Local Government regulatory responses.

Further to this, Local Government members who responded to Association's Discussion Paper noted that they would be generally satisfied with the prospect of not requiring regulation of 'home sharing' through the planning system, where the owner/occupier was present. It was generally held that matters raised above, such as anti-social behaviour, were seen as being largely eliminated by the presence of the owner or permanent resident of the dwelling. This position is consistent with those taken by the New South Wales and Tasmanian State Governments in determining the extent of their new regulations for short-stay accommodation.

Planning Bulletin 99 - Holiday Home Guidelines and the sharing economy

Planning Bulletin 99 Holiday Home Guidelines (The Guidelines) was published in 2009 in response to community pressures around increasing numbers of holiday houses in popular tourist destinations. The Guidelines have not been updated since their original publication and therefore provide limited, to no guidance, to the contemporary practices of home sharing, given that the rise of short term stay platforms has primarily occurred since this document was published.

The Planning Bulletin effectively delegates responsibility for managing short-stay accommodation to Local Governments, referring decision makers to the provisions of local planning schemes, local planning policies, tourism strategies and any relevant standards. The Guidelines also state that *'ideally holiday homes should be within preferred areas'* which:

*"As a guide, holiday homes are most appropriate in areas of high tourism amenity and close proximity to key tourism attractions such as the beach, town centre or rural areas. Suburban locations may not be appropriate. In general, holiday homes should be residential dwellings on freehold lots and not units or apartments unless the entire complex is established for this purpose."*⁵

The Bulletin goes on to state that the use of grouped or multiple dwellings is not supported, unless all owners are in agreement.

Despite the general lack of guidance, the Bulletin also states that a holiday home management plan should be submitted as part of a planning application, or may be required as a condition of approval. Such a plan may include details of how nuisances such as noise will be managed, the nomination of a property manager and a fire and emergency response plan.

However, development does not have to conform to Planning Bulletin 99 as it purely offers guidance and is not a statutory requirement. For instance, the Local Planning Scheme

⁴ Bankwest Curtin Economic Centre (2017) The Impact of AirBNB on WA's Tourism Industry

⁵ Ibid

Regulations do not ‘require due regard’ to be given to Planning Bulletins. The document’s status has resulted in Local Governments developing their own individual responses to issues associated with short-stay accommodation and the sharing economy.

It is understood that the Department of Planning, Lands and Heritage has begun an amalgamation of its various Planning Bulletins into one Tourism Position Statement, and that this position statement will, amongst other things, provide a preferred approach for ‘home sharing’ arrangements. The Association welcomes this and looks forwards to providing comment on the document once it is advertised.

The Local Planning Framework

The following section seeks to provide an outline of the current local planning framework where it relates to short-stay accommodation with a particular focus on how it manages holiday houses and ‘home sharing’. It is hoped that this section will showcase how Local Government has adapted quickly to a rapidly changing environment through considered policy responses that seek to meet the competing needs of their communities, and assist the Committee in providing advice to Government on the regulation of short-stay accommodation going forward.

Research conducted to prepare this paper and the Association’s Discussion Paper (2017) selected for examination Local Governments which have substantial numbers of tourist accommodation according to Inside Airbnb data accessed in January 2019.

Our examination indicates that there is no cross-jurisdictional planning approach currently being implemented by Local Governments to assess and regulate the letting of residential dwellings for short stay accommodation at this time. Considering the lack of clear policy direction from the State Government, highlighted earlier in this Paper, and the varied nature of Western Australia, this inconsistency is largely to be expected. However, while there is variation in approaches, in Local Governments examined, there seems to be general consensus on the appropriate manner for regulating holiday houses. The following sections will attempt to explain this apparent consensus, as well as other relevant approaches, for the Committee’s consideration.

Land Use Definitions

While a definition for holiday house is provided in the model provisions of the Local Planning Scheme Regulations, not all Local Governments examined have incorporated this definition into their Local Planning Scheme, although the majority do seem to have adopted this definition.

The existence of land-use definitions which are inconsistent with the Regulations, may be due to a number of factors:

1. The existence in Planning Bulletin 99 – of two definitions for holiday house: Holiday House and Holiday House (large);
2. Local Planning Schemes definitions pre-dating the LPS Regulations;
3. Variations to the LPS Regulation Model Provisions approved by the Minister under Section 257(3) of the Planning and Development Act 2005;
4. Variations determined to be necessary by the Local Government, at the time, to adequately regulate short-stay accommodation in line with their communities’ expectations and local context.

Table 2 below outlines a range of land use definitions currently being applied across Western Australia. This Table demonstrates the diversity of the current definitions being applied. Despite this diversity, there seems to be a number of commonalities in the way these definitions have been formulated. This information may be useful for considering a common definition for Western Australia

The Local Governments examined generally sought to define and regulate a holiday house based on the number of persons present, with six (6) and 12 persons generally being the maximum occupants for 'standard' or 'large' Holiday Houses, respectively. Further it seems common to distinguish between the type of dwelling, with many Local Governments limiting holiday houses to 'single dwellings' only, or as in the case of the City of Busselton, providing a separate land-use definition: **holiday home (multiple/grouped dwelling)**, to allow for the consideration of additional matters in more dense residential settings.

Lastly, there is some discrepancy in the naming of the land use. While 'holiday house' is most commonly used, 'holiday home' is also used by some Local Governments. One Local Government uses the term 'Short Stay Dwelling'.

Table 2: Holiday House/Home Local Planning Scheme Land Use Definitions

Local Government	Definition/s
Albany	holiday house means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast/farmstay.
Augusta-Margaret River	holiday house means a dwelling, grouped dwelling or multiple dwelling used to provide short term accommodation for no more than six (6) people but does not include a bed and breakfast; holiday house (large) means premises conforming to the definition of "Holiday House" with the exception that the premises provide short stay accommodation for more than 6 people but not more than 12 at any one time;
Boyup Brook	holiday home means a residential building used to provide accommodation for short-stay guests, rather than permanent residency, and excluding those uses more specifically defined elsewhere;
Busselton	holiday home (multiple/grouped dwelling) means a grouped dwelling or multiple dwelling, which may also be used for short stay accommodation for hire or reward for no more than six people (but does not include a bed and breakfast, chalet, guesthouse, rural tourist accommodation or tourist accommodation). holiday home (single house) means a single house (excluding ancillary accommodation), which may also be used for short stay accommodation for hire or reward for no more than 12 people (but does not include a bed and breakfast, chalet, guesthouse, rural tourist accommodation or tourist accommodation).
Cockburn	holiday home (standard) means a single house (excluding ancillary dwelling), which may also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit). holiday home (large) means premises conforming to the definition of holiday home (standard) with the exception that the premises provide short stay accommodation for more than six people but not more than 12 at any one time.
Fremantle	short stay dwelling means an existing single house, grouped dwelling or multiple dwelling that is predominantly used for the purpose of providing short term accommodation for tourists.

Land Use Permissibility

Once a Local Government determines that the land use 'holiday house' is required under its Local Planning Scheme, the new use will generally be included in the Zoning Table. Zoning

Tables indicate, subject to the provisions of the Scheme, the uses permitted in the Scheme area in the various zones. The permissibility of any uses is determined by cross reference between the list of use classes on the left hand side of the Zoning Table and the list of zones at the top of the Zoning Table

Table 3 below outlines the permissibility for holiday house in the selected Local Governments. There is considerable variation in how Local Governments identify the permissibility of Holiday House/Home. This is to be expected, and shows the individual contexts found in each local community. Similar variations would be found for any land use.

There are a number of trends that emerge from the examination of land use permissibility. First, there is only one example where a holiday house is listed as a 'P' (permitted) use, meaning that holiday houses in all other jurisdictions would require a Development Application. Second, there is general acceptance of the 'residential zone' as a suitable location for holiday houses, although many Local Governments deem it necessary to consult with adjoining landowners before making a determination on a holiday house development application.

There is greater variation regarding permissibility in commercial or activity centre type zones. This variation ranges from holiday houses not being permitted ('X' use) in larger urban settings, to being possible in the urban centres of larger rural towns. This is may be due to the focus on tourism as a driver of economic development in rural and regional Local Governments when compared to those in the metropolitan area.

Table 3: Example Zoning Table for the Holiday House/Home

Local Government	Land Use	Use Permissibility						
		Residential	City Centre/ Regional Centre*	Local Centre/ Village Centre	Industrial	Tourist/Tourist Residential	Agriculture	
Albany	Holiday House	D	D	X	X	P	A	
Augusta-Margaret River	Holiday House	A	A	A	X	A	A	
Boyup Brook	Holiday Home	A	X		X			
Busselton	Holiday Home (Multiple/Grouped Dwelling)	D	A	A	X	X	X	
	Holiday Home (Single House)	A	D	D	X	X	D	
Cockburn	Holiday Home (standard)	A	X	X	X			
	Holiday Home (large)	X	X	X	X			
Fremantle	Short Stay Dwelling	A	A	A	X			

*The zone reflecting the highest order activity centre in the relevant Local Government

For the City of Busselton all Holiday Home (Single House)' which proposes to accommodate 9 or more people will be considered under the 'A' symbol and will require public advertising. Also Holiday Home (Single House) is a discretionary ('A') use in the Viticulture and Tourism Zone.

'P' means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme;

'D' means that the use is not permitted unless the local government has exercised its discretion by granting development approval;

'A' means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the Deemed Provisions

'X' means a use that is not permitted by the Scheme.

Where a space is blank there is no appropriate zone within the Local Governments Scheme

Local Planning Scheme Provisions

Local Planning Schemes also provide a useful source of information as to how Local Governments are regulating short-stay accommodation. While most Local Governments will place specific provisions for management within a Local Planning Policy (a non-binding document), there are a number of matters that benefit from being included within, and being given the weight, of a Local Planning Scheme. These matters generally relate to those where less discretion is warranted; matters which the Local Government wishes to ensure are consistently applied, given that consistency can be harder to achieve when provisions are included in a Local Planning Policy. Examples are provided in Table 4 below.

Table 4: Examples of Local Planning Scheme Provisions

Local Planning Scheme Provisions	
Shire of Augusta – Margaret River	<ul style="list-style-type: none"> 5.26.1 Applications for Development approval for holiday houses will be required to demonstrate to the satisfaction of the local government that a holiday house activity will be so managed as to ensure that it will not cause nuisance or annoyance to the owners of adjoining or nearby properties. 5.26.2 The Local government may require the provision of additional parking areas to be provided onsite over and above those required for residential uses under the Residential Design Codes. 5.26.3 Unless the local government determines otherwise, any approval granted for such a development will be granted for a limited period of one year renewable by way of further application towards the expiration of that period. If the local government has received complaints regarding the holiday house activity, a further approval may not be granted. 5.26.4 Holiday houses are generally considered appropriate within coastal communities of the local government area or within close proximity to major tourist attractions but are not considered to be appropriate within residential districts of inland settlements.
City of Busselton	<ul style="list-style-type: none"> 4.18.3 Advertising signage associated with 'Holiday Home (Single House)' and 'Holiday Home (Multiple/Grouped Dwelling)' shall have a maximum area of 0.2m². 4.18.4 Holiday Homes shall meet the development standards established by the Residential Design Codes of Western Australia, as modified elsewhere in this Scheme, for 'Single House', 'Grouped Dwelling' and 'Multiple Dwelling', as appropriate, although higher levels of car parking provision may be required for holiday homes providing accommodation for more than six people. 4.18.5 Notwithstanding the requirements of Table 1, a Holiday Home (Single House) which proposes to accommodate 9 or more people will be considered under the 'A' symbol and will require public advertising pursuant to Clause 64 of the Deemed Provisions. AM
City of Fremantle	<ul style="list-style-type: none"> 61.6(l) The use of a single house, grouped dwelling or multiple dwelling as a short stay dwelling, where occupied by 6 or fewer persons.
Shire of Esperance	<ul style="list-style-type: none"> Schedule 1: 22. Bed and Breakfast and Holiday Home Requirements (a) Where Bed and Breakfast and Holiday Home uses are proposed, the site is to be connected to reticulated sewerage or the effluent disposal systems are to be of suitable quality and size.

Our examination has found that such provisions are generally contained in a small number of schemes and generally those who have higher than average demand for short-stay accommodation.

Local Planning Policies

Not all Local Governments have Local Planning Policies concerning short-stay accommodation. Our examination indicates that Local Governments are more likely to have adopted a Local Planning Policy (LPP) to address short term accommodation in areas where short-term accommodation is more prevalent.

Part 2 Division 12 of the LPS Regulations 2015 provide Local Governments with the authority to prepare a LPP in respect to any matter related to the planning and development of its Scheme Area. An LPP may apply to one matter or a range of matters, and may apply to a specific part of the Scheme Area or the entirety of the Scheme Area. LPPs are not statutory documents and are generally put in place to guide applicants in their submission of an application and to provide clarification on the Local Government's approach to dealing with certain planning matters.

With regard to short-stay accommodation, the Association's Discussion Paper found that LPPs generally focus on a specific type of development rather than dealing with the issue of short-stay accommodation more generally. For the purposes of this submission, a sample of LPPs (13 in total) relating to holiday houses has been examined.

In line with the definition provided by the R-Codes for a dwelling, all but one of the 13 LPPs examined consider short-term rental to be a different form of development compared with a residential land use. As such, an application for a 'change of use' from residential use to short term accommodation would be required in these jurisdictions. This approach is consistent with the approach of Local Governments who are managing holiday houses through Local Planning Scheme provisions.

Table 5 (below) demonstrates that there is a range of different LPPs dealing with the management of different forms of short-stay accommodation. Whilst a variety of descriptions and definitions are used in these LPS, the definitions used closely align with the specific form of development that the LPP seeks to manage. Where the same term or a similar term is used by different Local Governments, there is often a lot of consistency and commonality in the definition adopted to describe the particular form of development.

Table 5 also shows that the most popular forms of LPP controls relate to car parking standards and the requirement for a management plan (almost two-thirds of LPPs examined). More than half of the policies examined contain provisions relating to development design. Whilst development design controls are somewhat varied, generally they relate to ensuring that the development design is such that its use for short-stay accommodation purposes does not adversely impact on neighbouring land uses. Other common features include: the restriction of development to certain zones or areas; and, the limitation of the number of occupants to six persons.

Typical examples of these LPP controls are set out in Table 6. It should also be noted that other Local Governments, such as the City of Fremantle, City of Busselton and City of Wanneroo have developed 'Local Laws' in relation to the management of short-stay accommodation. These Local Laws, which contain similar provisions to those included within the LPPs examined, will be discussed later in this submission.

Table 5: Local Planning Policy - Requirements

Local Government and Local Planning Policy Title	Augusta-Margaret River: Holiday Houses	Bridgetown-Greenbushes: Holiday Accommodation	Broome: Tourist Accommodation Development in Tourist Zone	Capel: Bed & Breakfast Accommodation	Chapman Valley: Rural Tourism Development	Donnybrook-Balingup: Chalet(s) Development & Bed & Breakfast	Exmouth: Bed & Breakfast Accommodation	Exmouth: Holiday Accommodation	Esperance: Holiday Homes – Development Requirements	Geraldton: Holiday Houses	Joondalup: Short-term Accommodation	Perth: Special Residential (Serviced & Short-term Accommodation)	South Perth: Serviced Apartments
Requirements													
Restricted to Certain Zones	Y			Y				Y		Y			Y
Minimum Lot Sizes / Density Restrictions	Y	Y	Y										
Maximum Occupancy / No. Rooms	Y			Y		Y		Y		Y			
Management Plan			Y	Y	Y			Y	Y	Y	Y	Y	Y
Emergency Response Plan		Y						Y	Y				Y
Annual Renewal of Approval				Y				Y	Y				
Design Provisions	Y	Y			Y		Y	Y		Y		Y	Y
Car Parking		Y	Y	Y	Y		Y	Y		Y	Y	Y	
Landscaping/Screening		Y	Y										
Concentration of Uses		Y											
Strata Restrictions / Evidence of Strata Approval			Y		Y							Y	Y
Maximum Length of Stay		Y							Y	Y			
On-site manager / Located Close by							Y	Y	Y				

Table 6: Examples of Typical Local Planning Policy Requirements for Holiday Houses

Requirements	
Concentration of Uses	<ul style="list-style-type: none"> More than two Bed and Breakfast Accommodation uses within cul-de-sac or small residential streets may not be supported. Developments should not contribute to a concentration of similar land use activities that would alter the established character of the surrounding area.
Design Provisions	<ul style="list-style-type: none"> Decks and balconies are located away from the bedrooms of neighbouring dwellings and, if located close to living and dining areas of neighbouring dwellings, suitable screening is provided. The minimum distance between the external walls of any building and another on the land shall be 10 metres for the purposes of privacy and amenity. Developments that adjoin residential zoned land shall be designed so as not to impact negatively on the privacy and amenity of the adjoining residents.
Landscaping / Screening	<ul style="list-style-type: none"> The site shall contain tree cover adequate to provide visual screening.
Management Plan	<ul style="list-style-type: none"> The Management Plan is to include; <ul style="list-style-type: none"> a code of conduct detailing the expected behaviour and obligations of guests which is to be displayed in a prominent position within the premises a Complaints Management Procedure details regarding guest check-in and check-out procedures details regarding waste management
On-site Manager / Located Close by	<ul style="list-style-type: none"> Manager or a contactable employee of the manager that permanently resides no greater than 1 hour's drive from the site. The host is to permanently reside in the dwelling approved for a 'bed and breakfast' establishment. All Holiday Accommodation is to be managed by local real estate agents, or have a local caretaker / manager living and readily contactable within 10 minutes of the property.
Strata Restrictions / Evidence of Strata Approval	<ul style="list-style-type: none"> The applicant is to provide evidence that: <ul style="list-style-type: none"> (a) the owners of all dwellings on that site have given written consent for the proposed use of particular dwellings as serviced apartments; (b) by-laws have been adopted by the strata company approving the proposed use and requiring the vendor of any existing dwelling on the site to inform all prospective purchasers of the approved use of particular dwellings as serviced apartments; and (c) the strata company has given consent to the management plan.
Other	<ul style="list-style-type: none"> Amplified music is only played outside of the Holiday House or Holiday House (Large) between the hours of 10am and 10pm. Written evidence demonstrating that the operator of the special residential use has valid membership to an appropriate professional board or body, which operates within a code of practice or licensing system. A proportion of the short-term and serviced apartments should be designed to accommodate people with a disability.

The choice not to regulate

To this point, our submission has largely focused on Local Governments who have chosen to regulate holiday houses through the planning system. However, there are Local Governments who have chosen not to regulate short stay accommodation.

For example, the City of Mandurah is unique in that it is a Local Government that experiences high rates of holiday house activity but has actively chosen not to regulate this activity. According to the City, the adoption of this approach follows considerable macro analysis of the behaviour of existing holiday houses within the City, as well as following extensive

community engagement. This is referred to by the City of Mandurah as a 'responsive approach'. The Committee may wish to take note of the resolutions of the Council of the City of Mandurah as they provide a comprehensive overview of the rationale behind their position, see: G.19/06/13 (23 June 2015); G.17/03/15 (24 March 2015); and G.12/08/17 (08 August 2017).

The City's Local Planning Scheme does not currently provide for a definition of 'holiday house' and as such, holiday house is treated as a 'use not listed' under Clause 3.2.2 of the Scheme. As an interim measure, the City has determined that all holiday houses shall be treated in the same manner as a single, grouped or multiple dwelling in any zone where such uses are a discretionary or permitted land use.

Consequently, in the City there is no relevant planning scheme provisions, no Local Planning Policy, nor any Local Laws made under the Local Government Act 1995 which relate to the regulation of holiday houses. However, an 'information sheet' is available to holiday house providers. Also, the City manages any complaints and issues through existing health and environmental regulations.

This example highlights the need for the Committee to consider the appropriateness of recommending a blanket 'state-wide' approach to the regulation of holiday houses, and gives rise to the consideration of proposals that consider an 'opt-in' registration system for Local Government within an overarching state level regulatory framework (as outlined in the City of Busselton's submission to this inquiry). This flexible approach would allow Local Governments, such as the City of Mandurah, to continue to regulate holiday houses in line with their local social and economic conditions and the desires of the local community.

Short-stay Accommodation Local laws

The *Local Government Act 1995* (LG Act) enables Local Governments to make local laws considered necessary for the good government of their districts. A small number of Local Governments have utilised these powers to enact local laws that seek to regulate short-stay accommodation. While the purposes of the local laws vary, generally these laws have been established to provide measures which require the registration and regulation of short-stay accommodation on an ongoing and day to day basis, complementing controls introduced under the local planning framework.

The Association is aware of three local laws that relate to short-stay accommodation: the City of Busselton's Holiday Home Local Law; the City of Fremantle's Short Stay Dwelling Local Law; and, the City of Wanneroo's Short Term Accommodation Local Law. All three have been summarised below to further demonstrate Local Government approaches to the regulation of the short-stay accommodation sector. Common requirements of these local laws are discussed in the following sections and outlined in Tables 7, 8, 9 and 10.

Common Local Law Requirements

One common component of these local laws is the inclusion of a requirement for registration before 'a person' may use a dwelling as short-stay accommodation or a holiday house. Properties being used as a private holiday house are generally not required to register under these local laws.

Table 7: local law - requirements of registration

Requirements of Registration	
Busselton	<ul style="list-style-type: none"> • Unless planning approval has been granted under the Local Planning Scheme to use the dwelling as a holiday home • Compliance with the conditions of the registration • Compliance with the provisions of the local law
Fremantle	<ul style="list-style-type: none"> • Compliance with the conditions of the registration • Compliance with the provisions of the local law
Wanneroo	<ul style="list-style-type: none"> • Dwelling to be located within a specified zone • Compliance with the conditions of the registration • Compliance with the provisions of the local law

All local laws also articulate the form that a registration application should take, as well as those matters that should be addressed in the application. These are outlined in the table below.

Table 8: local law - requirements of application

Requirements of Application	
Busselton	<ul style="list-style-type: none"> • In writing, on the appropriate form, and from or on behalf of the owner of the holiday home; • Nominate a natural person , who may or may not be the owner, to be the proposed manager; • Nominate a natural person , who may or may not be the owner, to be the proposed acting manager; • Be accompanied by the appropriate fee.
Fremantle	<ul style="list-style-type: none"> • Be in writing; • Made by the proprietor of the proposal, and signed by the owner of the dwelling; • Be accompanied by the appropriate fee.
Wanneroo	<ul style="list-style-type: none"> • Be in writing; • Made by the proprietor of the proposal, and signed by the owner of the dwelling; • Be accompanied by the appropriate fee.

All local laws also articulate the details that are to be lodged with an application for registration of holiday house or short stay dwelling. These are outlined in Table 9 below:

Table 9: local laws - information to accompany applications

Details to be provided with Application	
Busselton	<ul style="list-style-type: none"> • A site plan of the premises; • A floor plan of the holiday home; • Location and title details; • Number of bedrooms proposed • Maximum number of occupants to be accommodated; • Details of on-site parking; • Details and contact details of the owner; • For the manager and acting manager; proof that they have consented to these roles, as well as their contact details; • Proof or an undertaking by the manager and acting manager that they will have day-to-day management of the premises, and commitment to respond to events within 24 hours.
Fremantle	<ul style="list-style-type: none"> • A floor plan of the short-stay dwelling; • Location and number of bedrooms proposed; • One proposed on-site parking bay – unless registration of for 4 occupants or less; • Name and contact details of the manager, and commitment to respond to events within 12 hours.
Wanneroo	<ul style="list-style-type: none"> • A floor plan of the short-stay dwelling; • Location and number of bedrooms proposed; • One proposed on-site parking bay – unless registration of for 4 occupants or less; • Name and contact details of the manager, and commitment to respond to events within 12 hours.

All local laws articulate the ability for the decision maker to impose conditions on any registration of a holiday house or short stay dwelling. These are outlined in Table 10 below:

Table 10: conditions of approval under a local law

Conditions that may be imposed	
Busselton	<ul style="list-style-type: none"> • Maximum number of occupants; • Maximum number of attendees; • Number of on-site parking bays for exclusive use; • Maximum number of vehicles • Location and number of bedrooms; • Measures to ensure effective communications to attendants of conditions of registration and emergency management procedures • Ensuring that the manager or acting managers is contactable and able to respond within 4 hrs to complaints and requests
Fremantle	<ul style="list-style-type: none"> • Each booking and tariff must be for a minimum stay of 2 consecutive nights; • Not more than 6 occupants; • Minimum one on-site parking bay per two occupants; • Manager must be contactable, and must respond, within 12 hours, to any contact relating to the registration.
Wanneroo	<ul style="list-style-type: none"> • A floor plan of the short-stay dwelling; • proprietor at all times remains responsible for the actions of the occupants of the holiday home and must do all things necessary to ensure that the occupants do not cause a disturbance of the quiet enjoyment of neighbouring properties; • Manager must be contactable, and must respond, within 12 hours, to any contact relating to the registration.

A person who is adversely affected by a decision made under a local law may retain a right of appeal or an objection right to any decision or condition of registration. These rights are

outlined in Part 9, Division 1 of the LG Act and in the *Local Government (Functions and General) Regulations 1996*.

Infringements

Local laws make use of infringement notices related to those persons who breach the provisions of a local law. As is common with local laws, a penalty and modified penalty are provided for. Further additional penalties can be levied where the infringement is an ongoing or continuous one. Maximum infringement imposed under the three reviewed local laws are outlined in Table 11.

Table 11: local law - maximum infringements

LG	Maximum Infringements
Busselton	\$5000
Fremantle	\$4000
Wanneroo	\$5000

As per section 9.17 of the LG Act, a modified penalty under a local law should not exceed 10% of the maximum fine imposed by a court. All three local laws utilise modified penalties. It should be noted that the body of evidence required to infringe under the LG Act is as high as that needed for a prosecution.

Lastly, the Association draws the Committee's attention to the City of Busselton's submission to this Inquiry. In particular, the City's commentary around the enforcement of such infringements (section 2.1.1) and the City's comments in relation to the effectiveness of the current enforcement regimes as a deterrent, the cost effectiveness of the current system, and the unknown effectiveness of using such mechanisms to regulate unregistered online listings.

Local Government Rating of Short Stay Accommodation

Local Governments have taken action in recent times to alter the manner in which they rate properties that have been registered as a holiday house under a local law. The City of Busselton and the City of Fremantle have both undertaken such changes. Differential rating for such land uses is a new approach, with both Local Governments introducing these rates recently.

Throughout the remainder of the state those properties that feature a holiday house are subject to the relevant rate, likely to be the 'residential improved' rate, which is generally the lowest rate applied by a Local Government. In contrast, properties that feature more traditional tourist accommodation options such as hotels, resorts, serviced apartments and motels, would likely be subject to 'commercial' or 'city centre' rates, which are generally higher than 'residential improved' rates.

City of Fremantle

The City of Fremantle has resolved to include a rating category titled: 'Residential Short Term Accommodation' for the 2018-19 financial year. This rate is defined as 'land zoned residential where a purpose for which the land is held or used is short term accommodation'. The rationale for the category is 'to ensure the owners of residential land wholly or partly used for the

commercial purpose of short term accommodation contribute to the provision of services and facilities that may be associated with such commercial use.’⁶

The ‘Residential Short Term Accommodation’ rate in the City of Fremantle is set at 0.080143 cents in the dollar and is equivalent to the ‘commercial and industrial general’ rate.

City of Busselton

The City of Busselton has also recently introduced a higher ‘rate in the dollar’ for registered holiday homes. These changes occurred at the start of the financial year 2018/19 and have a staged approach to bringing the rate paid by holiday homes, in alignment with those paid by commercial properties in the tourism zone. For the 2018/19 financial year, registered holiday homes will pay 5% more than the residential rate, with a further increase of 5% scheduled in the year 2019/20.

The City of Busselton has also determined that the revenue derived from this rate will be hypothecated for the purposes of promoting the City’s events and tourism marketing programme. Until the introduction of this rate, these short term stay accommodation providers in the City are likely to have directly benefited from tourist promotional activities but have not contributed to the cost of providing these promotional activities.

Online Letting Platforms – The need for data

Online accommodation listing websites, such as Airbnb and HomeAway (formerly Stayz), have internal policies of not making listing data, including aggregate data, publicly available⁷. The effect of these policies is that such data is not made available to government bodies or tourism associations where laws do not require its provision. Local Governments consulted for the Association’s Discussion Paper (2017), as well as those surveyed across Australia for research conducted for the Australian Coastal Councils Association Inc., have noted that this lack of data limits Local Governments’ ability to effectively regulate the sector and causes difficulties in establishing an understanding of the impacts of such uses on local communities.

In light of this resistance to data-sharing, many jurisdictions across the world have established legislative enforcement regimes which force online listing websites to provide local authorities with the necessary data. Airbnb has intensely resisted such efforts, citing privacy concerns and the burden associated with compliance⁸. The Committee may wish to review Guttentag (2017), cited below, which provides an extensive list of such attempts as well as a detailed explanation of the responses from companies like Airbnb. Such information may be useful to the Committee in formulating its position on the issue of data-sharing.

While companies such as Airbnb have resisted such moves there has in recent times been a softening of their approach to the issue of data-sharing. Since November 2015, Airbnb has pledged to be transparent with their data and information as part of a broader ‘Airbnb Community Compact’. However, recent discussions between the Tasmanian Government and both Airbnb and HomeAway (formerly Stayz) to develop a voluntary data-sharing agreement

⁶ <https://www.fremantle.wa.gov.au/residents/rates/2018%E2%80%932019-rate-information>

⁷ Gurrin, N *et al* (2018) Planning responses to online short-term holiday rental platforms.

⁸ Guttentag, D (2017) Regulating Innovation in the Collaborative Economy: An examination of Airbnb’s early legal issues.

demonstrate the continued reluctance of online sharing platforms to freely share their data with government agencies⁹.

This continued reluctance, and the current concerns around housing affordability in Tasmania, have resulted in the drafting of new legislation in Tasmania which would see the sharing of the locations of properties by online listing sites. Similar data-sharing requirements are also a feature of the recently announced legislative changes to short-stay accommodation in New South Wales. In NSW, short-stay operators and online listing sites, such as Airbnb, will be required to sign a 'Code of Conduct' and required to share their data with Fair Trading NSW.

Adopting a similar approach to data-sharing in Western Australia would allow Local Governments who choose to regulate short-stay accommodation greater capacity to ensure compliance with their regulatory responses, and meet the needs of local communities. Further data-sharing would assist Local Governments that have elected to undertake 'differential rating' of short-stay properties the ability to render an accurate assessment of the owners' liability, which may also be of benefit to the Office of State Revenue and the Australian Taxation Office.

Conclusion

The Association would like to thank the Committee for the opportunity to provide this submission on this important matter. The Local Government sector has sought from the beginning to work in partnership with the State Government on this area of policy, which is reflected in the WALGA State Council resolution of December 2017.

Following the completion of the Committee's work, the Association and the Local Government sector looks forward to being consulted on any proposed legislative or policy changes in accordance with the consultation requirements of the State and Local Government Partnership Agreement.

⁹ ABC (2018) Tasmanian Government seeks to increase fines for short-stay permit breaches