



Submission

Inquiry into Short Stay Accommodation

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### **Who we are**

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

### **Our Mission**

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can be best be summarised as follows:

*To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.*

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## Preparation

This submission has been prepared in response to the Economics and Industry Standing Committee inquiry into Short-Stay Accommodation in WA. The Draft Options Paper, *Options for regulating sharing economy short-term accommodation in WA* as released by the Department of Planning, Lands and Heritage is referenced below.

## Overview

The inquiry into the short stay accommodation industry in Tasmania is of interest to building surveyors in that it in part deals with matters relevant to the responsibility of building surveyors; building safety.

Tourism is a key industry throughout Australia, and it is critical that the reputation of Australia as a safe and orderly travel destination is not jeopardised by inadequate standards and controls. At the same time, it is important to ensure that controls do not unreasonably burden operators so that development of accommodation options can occur efficiently in locations which do not adversely impact neighbouring land uses.

It is noted that the discussion paper primarily focusses on land use issues. AIBS also notes that this focus arises from considerable public attention on amenity issues arising from proximity of different land uses and that there is a need to consider the best ways to manage such issues. There are far fewer examples of adverse safety outcomes arising from use of land for tourist accommodation purposes however there are increasing numbers of adverse incidents which must be addressed if the reputation of Australia as a tourist destination is to be preserved.

## Evaluation of occupant risk potential

The NCC BCA Volume One Clause A3.2 sets out how buildings are to be classified. The purpose of this is to establish a system of sorting buildings according to similar risk profiles so that requirements can be assigned commensurate with the appropriate risk profile.

Buildings used for accommodation purposes typically do not have the same risk profile as a private dwelling and so attract a different building classification from that of private dwellings. A private dwelling could attract a classification of Class 1a or Class 2 depending on the situation of that dwelling relative to other buildings or dwellings. In general, a dwelling located above another dwelling or above another class of building will be a class 2 building otherwise class 1a will apply.

Buildings used for accommodation will be classified as Class 1b or Class 3 buildings. A class 1b building is very similar to a Class 1a building physically so that it is the occupant characteristics that define the different risk profile. This classification can only be applied where there are less than 12 occupants and the floor area of the building is less than 300m<sup>2</sup>. A class 3 building is typically a multi-storey hotel and can be of motel type accommodation or single storey buildings where class 1b limitations are exceeded.

There are distinct differences in requirements for these types of accommodation reflecting the differing risk profiles of the use of these buildings. Smoke alarms must be provided in all class 1 buildings however because of the increased risk to occupants of Class 1 buildings that are not private dwellings (i.e. Class 1b buildings), additional smoke alarms must be provided. Indeed, these buildings must also have a system that provides illumination in the event that a smoke alarm is activated to aid in evacuation of these buildings.

There are differences also related to buildings with classifications of Class 2 or Class 3. These differences become more pronounced as the height of the building (hence the number of storeys and building population) increases and include the extent to which a building must be accessible for persons with disabilities.

## The WA review discussion paper

AIBS believes it is important that the interplay between land use and technical compliance is understood to ensure adverse safety outcomes are avoided. For example, as described in the discussion paper, the NSW model allows for the use of properties for differing periods of time dependent on the presence or otherwise of the host and also on the proximity of the property to metropolitan areas.

What is missing from the explanation of this model is that whilst a property may be exempt from complying with the land use requirements, there is still a need to address important safety considerations related to technical compliance with such properties. Property owners are prone to also miss this fact and operate accommodation in contravention of requirements, potentially placing occupants at safety risks and the reputation of the operator and ultimately the industry at jeopardy.

Great care must be taken to ensure that the community and providers of short-term accommodation are not led to believe they do not have to comply with every requirement where a land use application exemption applies, rather that they know that land use is just one of potentially several points of compliance they must address with such proposals.

The same or a similar issue arises with the City of Freemantle model whereby registration is not required for certain forms of accommodation within limited times etc., which many may also take to mean that technical compliance with safety requirements is also not required.

AIBS believes that consistency of requirements is important. Our policy position is that nationally uniform technical requirements are applied and in support of this, it is important that land use approval triggers are also consistent so that the community and operators know what is expected. This point is in part addressed in the discussion paper.

Options 5.1 and 5.2 which propose no change to current arrangements and no change to requirements but with provision of guidance respectively are not supported by AIBS as these do not resolve the issues of inconsistency of requirements within WA nor do they address the need to ensure the community and accommodation providers understand their obligations and the importance of addressing technical compliance to deliver a safe standard of accommodation.

Options 5.3, 5.4 and 5.5 have in common the provision of a trigger for owners and accommodation providers to understand that they need to comply, including with technical safety requirements. This is important and supports our view that there needs to be clarity around what is required and that this is consistent throughout.

Where a property is subject to a strata scheme, AIBS believes that use of the Strata Titles Act provides further opportunities to address specific building maintenance issues related to ensuring that a building used for short-term accommodation purposes, in whole or in part, will have clear structures in place to ensure compliance with appropriate technical safety requirements, and that features required are then maintained throughout the life of the building. Such provisions might also be used in the ordinary case so that proper maintenance of a strata building is more clearly understood and provided for. By-laws under a strata scheme should provide for the necessary access to all parts of the building necessary to facilitate maintenance of items such as automatic sprinkler systems, fire hydrant reticulation systems and the like, particularly where such systems cross strata boundaries.

AIBS notes that with industry led schemes described at 6.1, the opportunities for enforcement of requirements are limited. Currently, building surveyors are able to take action where there is a threat to safety however it is unlikely that accommodation which might be a threat to safety would come to the attention of a building surveyor so that action would not be able to be taken in a proactive way. A regulated scheme would provide for proactive identification and evaluation of each premises so that a better outcome could be achieved.

## Other matters for consideration

There are a range of matters that AIBS believes need to be considered as part of the review as follows.

### Existing buildings vs new build

AIBS notes that since 1990, there has been a continual increase in stringency of requirements pursuant to the NCC BCA related to:

- construction of buildings within bushfire prone areas;
- construction of balustrades;
- construction of waterproof membranes in bathrooms;
- provision of safety glass;
- construction of stairs with respect to slip resistance;
- installation of heating appliances particularly freestanding wood burning appliances and associated features; and
- structural requirements, particularly those pertaining to light timber framing.

A building built as little as 20 years ago would be unlikely to comply with almost all of the technical requirements applicable for the same building today. In light of this, there needs to be particular care applied when considering the conversion of an existing dwelling for the purposes of short-stay tourist accommodation. Even common backyard features such as swimming pools are unlikely to comply with contemporary pool fencing requirements so that families utilising a property for short-stay purposes might unreasonably be exposed to risks if building safety standard deficiencies are not resolved with a change in use of the property.

Whilst the West Australian Parliament has not considered it necessary for persistent existing use of existing buildings to undergo mandatory upgrade with stringency changes, it is not appropriate for buildings where the use changes to remain in a condition of inferior compliance.

### Novel and other forms of accommodation

We note also that there are forms of short-stay accommodation which do not appear to be contemplated by the discussion paper such as those typically termed “glamping” style accommodation. This is where a structure is created that resembles a tent but provides a far more comfortable experience than a traditional tent on the ground. Such structures are not clearly defined in planning schemes and are not clearly fitting within technical regulatory schemes either.

It is perhaps also necessary to consider the need or otherwise for controls related to the letting of granny flats, caravans and similar types of accommodation outside of caravan parks. It is possible that a person with a caravan parked on their residential property might consider offering this as short-stay tourist accommodation which may raise safety and land use concerns not currently controlled. Similarly, granny flats and even some backyard sheds have been offered as short-term tourist accommodation. The review of the scheme should contemplate how best to manage such structures from both a land use and safety point of view.

The review should also take into account the needs of many industries operating remote work sites where accommodation is provided. The definitions of short-stay accommodation may inadvertently capture mine sites providing accommodation for fly-in-fly-out workers who are effectively accommodated for short stays on site. Similarly, many students will share rental accommodation for the duration of courses, sometimes these are short courses so that arrangements they make might also be caught by definitions of short-stay accommodation buildings. In most instances, it is appropriate that such buildings are not subject to additional requirements, including with respect to technical compliance.

There are exceptions. Where the occupants of a dwelling do not ordinarily know the other occupants of the dwelling, they will not generally know who is present in the event of an emergency. Accordingly, additional technical requirements should apply to provide for the extra time that emergency responders will need to search and potentially rescue anyone remaining inside the building following turn out to site.

In this way, the relationships between the occupants of the building are an important factor in determining if a building should be subject to requirements for registration, certification or similar processes aimed at ensuring the provision of accommodation is appropriate.

### **Interstate legislative provisions**

The National Construction Code Building Code of Australia (NCC BCA) is called up in all other states and territories of Australia and also by Commonwealth legislation dealing with Defence buildings and Federal Airport buildings. In this sense, the same technical requirements arise nationally regarding short or medium-term accommodation buildings.

The administrative provisions which govern the need or otherwise for an approval for these types of buildings are also largely uniform. New work of this nature is only permitted to be undertaken following a process of assessment against the provisions of the NCC BCA and an approval of some form where it has been demonstrated that requirements are to be met.

There are also similarities in most jurisdictions regarding the obtaining of a permit to occupy such buildings post completion of construction. Some jurisdictions do not require an occupancy permit to be issued for Class 1 buildings, but all require an occupancy permit of some form to be issued for Class 2 and 3 buildings.

All jurisdictions have requirements governing the process of changing the use of a building to address the need to review the suitability of the building from a technical compliance point of view for the proposed use.

Having said this, short and medium-term accommodation uses have provided difficulty for regulators nationally. There are examples of litigation which predominantly relates to matters of amenity impacts arising where a building has been approved for private residential use and then subsequently used for short or medium-term accommodation.

There are examples of litigation where issues arising related to technical compliance with building requirements have also been examined, particularly in association with larger commercial scale buildings. In these instances, the questions that typically arose related to the differences between buildings that had been classified as Class 2 and then subsequently alleged to be used as though they were Class 3 buildings.

### **AIBS recommendations**

The review should consider the relationship between land use and technical safety requirements and ensure that any changes made do not detract from the ability of the community, industry and practitioners to understand their obligations and requirements related to technical compliance.

The review should consider the differences between new build situations and conversion of existing buildings and take into account novel forms of accommodation.

The resulting legislative scheme should provide for consistency of requirements throughout Western Australia, and ideally, with other jurisdictions within Australia.

### **In closing**

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.