



22 July 2010

Ms Louise Sylvan
Presiding Commissioner
Regulatory Burdens: Business and Consumer Services
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Re. Comments on the Draft Report – *Annual Review of Regulatory Burdens on Business: Business and Consumer Services.*

Dear Ms. Sylvan

The Tourism & Transport Forum (TTF) appreciate the opportunity to provide a further submission and comments to the Productivity Commission regarding the Draft Research Report on the *Annual Review of Regulatory Burdens on Business: Business and Consumer Services*. Please find enclosed a document containing TTF's comments in this regard.

Regards

EVAN HALL
National Manager, Tourism

Productivity Commission Review of Regulatory Burdens on Business

TTF Submission on the Productivity Commission Draft Research Report

The Tourism & Transport Forum (TTF) appreciates the opportunity to comment on the Productivity Commission Draft Research Report on the Annual Review of Regulatory Burdens on Business: Business and Consumer Services (the draft Commission report). TTF welcomes the analysis, findings and recommendations of the draft Commission report. In this submission, TTF is making further input on three specific sections of the draft Commission report:

- A. Tourism and hospitality related services - overseas investment issues (section 3.2)
- B. Building and planning regulation – differences in standards applying to similar use buildings (section 5.3)
- C. Building and planning regulation – disability access standards are excessive (section 5.4)

A. Tourism and hospitality related services - Overseas investment issues

TTF supports the analysis and recommendation of the draft Commission report in section 3.2 regarding indexation of monetary thresholds. TTF contends that the review of hotel management agreements is also unnecessary to meet the objectives of the *Foreign Acquisitions and Takeovers Act 1975* (the FA&T Act) and places an unnecessary regulatory burden on industry. TTF proposes that a specific recommendation also be made with regard to exempting hotel management agreements from the foreign investment review process.

Background

The foreign acquisition of hotel property has always been covered by the FA&T Act. However the application of the FA&T Act to hotel management agreements has varied over time, depending on interpretation of the Act by the Foreign Investment Review Board (FIRB). Since 2009, FIRB has been advising that hotel management agreements come within the ambit of the FA&T Act.

Objectives of the Act

The objective of the FA&T Act is to ensure that overseas investment is in the 'national interest'. Agreements for international operators to manage hotels are in the national interest. International brands automatically provide international marketing of Australian tourism product. International brands also apply internationally competitive technology and hotel management practices.

More critically, there is no scenario where a hotel management agreement could contravene the national interest. This is evidenced by the fact that no hotel management agreement has ever been declined when reviewed by the FIRB. Furthermore, in the past, hotel management agreements were not reviewed by FIRB without detriment to the national interest. Given that for extended periods hotel management agreements have not been reviewed by FIRB, it seems unnecessary for the assessment to occur in the future.

Scale of compliance

TTF conservatively estimates that there are at least 400 hotels in Australia valued at over \$100 million, that would have a management agreement with an international operator. Management agreements for these hotels have a typical life of approximately 10 to 20 years. As a conservative estimate, there would therefore be approximately 20 hotel management agreements per annum now being subject to FIRB.

Prior to 2009, tourism approvals by FIRB were for foreign acquisition of hotel buildings. The total number of these tourism approvals in previous years, as reported in the FIRB Annual Report 2008-09, was:

Financial Year	2004-05	2005-06	2006-07	2007-08	2008-09
No. of Tourism Approvals	54	57	68	38	19

The addition of a further 20 approvals, following the inclusion of management agreements, will result in a significant increase in total tourism approvals by FIRB.

This is a significant increase in the scale of compliance. Previously compliance was limited to changes of hotel ownership involving a foreign investor. By including hotel management agreements, compliance now includes changes in a hotel manager and the renewal of the agreement with an existing hotel manager.

Cost of compliance

TTF members report that the legal, human resource and administrative costs of obtaining approval for a hotel management agreement are approximately \$30,000 per review. This represents a \$600,000 annual impost on the hotel industry to seek an approval which will be granted as a matter of course because there is no threat to the *national interest*.

Solution

There are a range of solutions to reduce this unnecessary regulatory burden. Hotel agreements could be exempted from review under the FA&T Act. Another possibility is that proposed hotel agreements could be simply reported to FIRB and only subject to review if called in by FIRB. The tourism industry and FIRB could be tasked with developing a solution without undermining the objectives of the FA&T Act.

Any such exemption, or solution, could be tightly targeted to hotel management agreements by limiting that solution to agreements for the management of Class 3 buildings under the Building Code of Australia (BCA). This would ensure residential or commercial property was not inadvertently included in the exemption.

TTF Proposed Productivity Commission Recommendation

TTF proposes the following recommendation for the Productivity Commission report:

“That a regulatory mechanism for exempting, or mitigating, the application of the Foreign Acquisitions and Takeovers Act 1975 to hotel management agreements of Class 3 buildings be investigated by the Foreign Investment Review Board in consultation with the tourism industry.”

B. Building and planning regulation – differences in standards applying to similar use buildings

TTF supports the analysis and key points of the draft report in section 5.3 regarding differences in the building standards applying to similar use buildings. Considering the significance and current relevance of the issue, TTF contends that this regulatory issue warrants a recommendation from the Productivity Commission.

Issue not resolved

As noted in the draft report, when the Australian Building Codes Board (ABCB) last reviewed the issue of differences in standards applying to similar use buildings “*a consensus view on the need for change was not reached*” and that “*one of the key considerations identified during the consultation process was the complexity of the issue*”.

TTF contends that the complexity of the issue is not sufficient reason to defer resolving the issue. TTF believes a recommendation by the Productivity Commission is appropriate guidance that this important regulatory matter should not be avoided indefinitely.

Issue exacerbated by emerging technology

The factors driving this issue are not going away. Subject to variable local government policies, it has always been possible to let a residential property for a short term period on the tourist market. Previously the

distribution costs of advertising a single apartment to the tourist market created an effective barrier between residential and tourism use.

The advent of the internet has now removed all barriers to letting a residential property on the short term market. In simple terms a residential apartment can be converted to tourism use simply by advertising on a third party website such as wotif.com. This trend for third party online distribution of apartment room nights continues to grow each year and is exacerbating the issue.

The BCA makes major distinctions in permanent construction standards between tourism use and residential use. In practice a property owner, or their agent, can move between tourism and residential use on a daily basis by changing the website on which the property is advertised. In this context the building code is unsustainable because a property owner can effectively choose which standard they will comply with.

Significant impact on the tourism industry

This regulatory issue continues to have major ramifications in the tourism industry. The latest ABS Survey of Tourist Accommodation recorded an average 80% occupancy of accommodation rooms across the capital cities¹. An average of 80% is the upper limit of occupancy, and effectively means we have reached 100% occupancy on Monday to Friday nights.

Our stock of tourist accommodation in capital cities has reached capacity for those nights of the week that are sought by visitors. However Class 3 buildings are not being developed to supply this demand. Instead, this growing demand is being supplied by the conversion of Class 2 residential buildings to tourism use, simply by advertising room nights to tourists. The low construction and operational costs of Class 2 buildings means they can undercut Class 3 buildings in room rates. Class 2 buildings can also revert to the residential market during tourism low seasons and downturns and do not have to carry these risks over the cycle in their room rates.

The net impact is that investment in new hotels in our major markets (all capital cities, the Gold Coast and Cairns) has practically evaporated over the last five to ten years. This has left the tourism industry unable to develop new hotel product to attract new international markets in China, India and the Middle East. This is most apparent in Cairns where the local economy has been devastated by the decline of the Japanese tourist market but has been unable to capture increased market share from China with new tourism product. This is fundamentally due to the oversupply of cheap serviced apartments in Class 2 buildings undercutting the return on any investment in hotel product.

Impact on government housing policy

It should be noted that this regulatory issue is not only a problem for the tourism industry. Federal and State governments have established strong policy incentives for investment in affordable housing, leading to the development of Class 2 apartment units. These apartment units are then being converted to tourism use to take advantage of the unlevel playing field. This obviously makes the units unavailable for the policy objective of affordable residential housing.

TTF contends that the Productivity Commission should make a recommendation on this issue because it remains unresolved and will intensify with the growing market of online accommodation distribution. Moreover, the issue remains a major regulatory challenge to tourism investment and government affordable housing policy.

¹ Tourism & Transport Forum, *TTF Capital City Accommodation Index: March Quarter 2010, July 2010* (attached)

Review of building codes is a current policy issue

As noted in the draft Commission report, the ABCB determined that no further work was to be undertaken on this issue in February 2009. Since that time, the Australian Government has announced a policy to review and reform the regulatory barriers impacting on tourism investment. The Australian Government's National Long-term Tourism Strategy states *"The different levels of government in Australia present regulatory challenges to businesses resulting in complex and lengthy investment and development approval processes, and impediments to reinvestment. Regulatory reform is needed to provide transparency and certainty for investors and business."*²

More recently, the Minister for Tourism, the Hon Martin Ferguson AM MP, stated in May 2010 that *"through the National Long-Term Tourism Strategy all tourism ministers have signed up to a cross-jurisdictional process to attract investment in hotels. Together, we'll assess the planning system, environmental regulations and building codes, and seek to remove barriers to investment."*³

TTF contends that this Australian Government policy gives greater relevance, timeliness and priority to a review of the building code by the ABCB, and this course of action should be recommended by the Productivity Commission.

Review of the building code may prevent inconsistent state variation

As noted in the draft Commission report, there were different views within the ABCB on the 'need for change'. TTF understands that several jurisdictions are currently and actively considering solutions to the Class 2 / 3 building standards issue. This may well result in state variations to the building code.

The active consideration of the issue at the state level indicates the ongoing need to resolve this regulatory issue. A state level solution would of course lead to the problems with inconsistency identified in section 5.1 of the draft report. TTF believes this possible state action creates a greater case for a recommendation from the Productivity Commission for the BCA to be reviewed to enable a consistent national solution to the issue.

Review more likely to succeed

At the time of the last attempted review of this issue in 2008-9 by the ABCB, there was no consultation with direct representatives of the tourism industry. TTF contends that the understanding of the issues, and scope for successful resolution, would be enhanced by a new review that involved tourism representatives.

Since the last attempted ABCB review, state governments have further developed strategies and policies on tourism property development and investment issues. The Australian Government's National Long-term Tourism Strategy has also created a deeper understanding of the policy implications surrounding this issue and a Federal-State mechanism to resolve the tourism aspects of this issue. In particular, the Tourism Ministers' Council has appointed an investment and regulatory reform working group including industry, and state and territory stakeholders, to implement and progress the tourism regulatory reform priorities.

TTF believes that a further reason the Productivity Commission should recommend a review the building codes, is that there has been an enhanced capacity by government and industry to understand and resolve the complex issue.

² Australian Government: Department of Resources, Energy and Tourism, *National Long-term Tourism Strategy*, December 2009

³ Minister for Tourism, the Hon Martin Ferguson AM MP, *Media Release: Australian government Invests in Tourism's Future*, May 2010

Solution

There are a range of solutions to this regulatory issue. The broad options include:

1. Eliminating the Class 2/3 distinction to create a single standard; or
2. Reducing the differential between Class 2 /3 standards to mitigate the extent of distortion; or
3. Creating a Class 2B standard for buildings intended for both tourism and residential use; and/or
4. Creating a regulatory barrier to prevent Class 2 buildings converting to tourism use unless they meet the higher building standards e.g. not permitting a Class 2 apartment room to be let for a period of less than 7 nights unless they convert to Class 3.

Unless the building code is reviewed again by the ABCB there can be no nationally consistent solution. It is critical that these, and other solutions, be considered by the ABCB with input from both a tourism and residential perspective, including consultations with the tourism industry and input from the state and federal departments of Tourism.

TTF Proposed Productivity Commission Recommendation

TTF proposes the following recommendation for the final Productivity Commission report:

“The ABCB should review the current variation in standards where buildings are used for similar (especially short term accommodation) purposes. The review should include consultation with the tourism industry and be undertaken in cooperation with the Tourism Ministerial Council, consistent with the National Long-term Tourism Strategy”.

C. Building and planning regulation – Disability access standards are excessive

TTF appreciates the inclusion of the issue of excessive disabled access standards in section 5.4 of the draft Commission report. The standards are a complex regulatory issue that require careful analysis. TTF welcomes the opportunity to comment on the draft Commission report in this respect.

Reporting of the TTF view on disabled accessible rooms

Since this issue has proved capable of raising passionate comment, TTF would appreciate the final Commission report includes a quote from TTF that effectively summarised our whole position on disabled access standards. We believe an appropriate quote would be:

“TTF and the tourism industry support a regulatory requirement for all accommodation to provide accessible rooms for guests with a disability. This must be an equal requirement on all types of accommodation, to provide genuine access for all guests and a level playing field for the industry. The regulation should require as many accessible rooms as are needed or sought by guests, but should not require more rooms than are needed”.

Key Issues

A regulation requiring a quota of accommodation rooms to be accessible rooms is necessary to meet the policy objective of access for disabled guests. It is the quantum of that quota of rooms required which is the key issue.

The BCA requirement is not a general onus to provide accessible rooms, but a very specific quota. If the quantum of the BCA accessible room requirement exceeds the number of rooms needed or sought by disabled guests then that quantum is, by definition, unnecessary to meet the policy objective.

It is therefore not possible to determine if the quantum of the BCA accessible room quota is an unnecessary regulatory burden without a quantitative assessment of the supply and demand of accessible rooms.

BCA accessible room requirements not properly assessed

The draft Commission report referred to the policy development and consultative processes behind the new Premises Standards. However these processes did not properly assess the quota of accessible rooms during negotiations on the draft standard, the regulatory impact statement or the Parliamentary Inquiry.

Throughout the process for determining the Premises Standards, no one counted the number of accessible rooms available, or the number of accessible rooms needed, before regulating the number of accessible rooms required.

Lack of consultation and proper assessment

The draft Commission report suggests that extensive consultation occurred on the Premises Standards and that the views of TTF and the Australian Hotels Association (AHA) were taken into account. This is a misrepresentation of the process. The tourism industry was not represented in negotiations that resulted in the draft Premises Standards or even aware that negotiations were taking place. There was little transparency around that negotiation process, however we understand that there was no quantitative assessment on the need for accessible room during negotiations.

The tourism industry was not consulted by the Department when developing the Regulatory Impact Statement. The regulatory impact statement for the negotiated draft premises standards did not assess the need for, or supply of, accessible rooms. The Regulatory Impact Statement simply commented on the scale of the increase and did not assess the impact of the previous BCA accessible room quota to which the increase was added. The regulatory impact statement was simply that *“the effective changes proposed for Class 3 buildings are limited in most cases”* and *“the expected benefits of these changes are considered to be moderate in size”*.

The Parliamentary Inquiry

The views of TTF and AHA were taken into account by the Parliamentary Inquiry and the tourism industry certainly appreciated this first opportunity to express our view. Unfortunately the timeframes of the Parliamentary Inquiry prohibited the tourism industry from undertaking and presenting a proper quantitative assessment of the quantum of the accessible room requirements. More critically, no quantitative assessment, evidence or submission was presented to Parliamentary Inquiry by any party.

In the time available, the Parliamentary Inquiry was only able to canvass and report on a range of opinions, arguments and assertions. The lack of proper quantitative assessment is clear from the ABCB submission to the Parliamentary Inquiry which was cited in the draft Commission report *“Some people thought it was not enough. Some people thought it was too much. But, generally, the consensus through the process was that we probably got the numbers about right.”* TTF does not consider this to be a proper assessment of the quota of accessible rooms required to meet the objectives of the policy.

Quantitative assessment demonstrates unnecessary regulatory burden

The first, and only, quantitative assessment on the supply and demand of accessible rooms was undertaken by TTF and the AHA and presented to the Commission in our supplementary submission. This was the first time the industry had sufficient notice and opportunity to gather and present a proper quantitative assessment.

This first proper quantitative assessment of accessible rooms is compelling evidence that the quantum of the BCA accessible room requirement is an unnecessary regulatory burden. TTF seeks the Commissions response to this evidence in the final Commission report.

Improving demand and effectiveness of accessible rooms

The draft Commission report cites comments by the Parliamentary Inquiry committee regarding the tourism industry’s ability to increase demand for accessible rooms through marketing and room design.

The TTF survey data shows that accessible room demand is approximately 0.45% of rooms, while the regulatory required supply is approximately 4.5% of rooms. The Parliamentary Inquiry recommendations on marketing and design could not possibly result in a 1,000 per cent increase in overall annual demand to meet the regulated quota of supply. It should also be noted that this recommendation is essentially that demand should be stimulated to meet the regulated supply level, which is not the policy objective.

The critical issue remains that the Parliamentary Inquiry had no data on the availability or need for accessible rooms, and was therefore unable to assess whether there is a 'lack of demand'. In the absence of data the Committee expressed a 'belief'.

Marketing and distribution of accessible rooms

Individuals do not travel because they are seeking short term accommodation. Individuals travel for business purposes, to attend an event, or to experience a destination. While marketing an event or destination increases overall demand, marketing an accommodation establishment only increases that establishment's market share of that overall demand. For this reason marketing might lift demand for particular accessible rooms but would have minimal impact on total demand for those rooms, because staying in a room is not why guests travel.

Our survey results showed that 78% of establishments marketed their accessible rooms. Unfortunately, the distribution of accommodation is predominantly external to accommodation establishments and takes place through third party websites such as wotif.com. These agents are beyond the control of accommodation providers and are not covered by the regulations.

TTF believes that there is broad awareness of the availability of accessible rooms; however we also believe guests are probably seeking more information on the actual content of the room beyond the BCA requirements. This is because the BCA requirements are primarily for wheelchair access and these rooms are often not sought by other guests with other disabilities.

Greater information through various distribution channels on the content of accessible rooms could therefore improve ease of accessibility. The tourism industry would be pleased to work with government and disabled groups to improve the distribution of accessible rooms to disabled guests. For example, an online accommodation advertising and reservation service for accessible rooms could be distributed through disability representative groups. This could improve ease of access and improve market share for participating establishments, but would not increase overall demand.

TTF recognises that efforts to improve distribution would also assist in understanding and acceptance that an over supply exists.

Accessible room design for guests without disabilities

The Parliamentary Inquiry comments on room design related to improving the appeal of accessible rooms to guests without disabilities in order to ameliorate the impact of vacant accessible rooms. While this may have some benefit, it should be noted that no amount of room design can recover the additional floor space required for an accessible room and the revenue lost from having less rooms, conference or dining space in a Class 3 building.

From the perspective of assessing unnecessary regulation however, these comments by the Parliamentary Inquiry essentially accept that there is an oversupply. The proposal in no way assists the objective of providing access for guests with disabilities. The proposal essentially calls for a financial investment in redesign of existing

accessible rooms in order to stimulate demand by non-disabled guests in the hope of matching the regulated oversupply of accessible rooms.

Accessible room design for guests with a disability

There is a more critical issue of design, which is the effectiveness of the furniture, fittings and equipment of the accessible rooms in meeting the needs of guests with disabilities. This is because the BCA room requirements are fundamentally aimed at the needs of wheelchair bound guests. These requirements can be either unnecessary or unhelpful for guests with other disabilities. For example an elderly guest may need hand rails on the bathroom wall near the toilet, while other guests need the walls to be further away from the toilet to have room for the wheelchair.

To the extent that the content, not the quantum, of accessible rooms do not meet the needs of guests with a disability, better design could tap into some unmet demand for people who already want to travel but are unable to do so. However the oversupply of accessible rooms caused by requirements on quantum and size of rooms, rather than the content of rooms, creates an economic disincentive to invest in better design. This is an area where better consultation between the ABCB, the disability sector and the tourism industry could have resulted in greater access for disabled guests with a lower regulatory burden on industry.

Adverse unintended consequences for disabled guest

The other key issue for consideration by the Commission is the exemption of Class 2 buildings from the BCA accessible room requirement. This means that not only are disabled guests not provided access to this accommodation, but that accommodation is comparatively cheaper than Class 3 accommodation with accessible rooms.

The accessible room requirement, together with other cost differentials, creates a strong economic incentive to invest in constructing Class 2 buildings without accessible rooms. This is evidenced by the strong growth of serviced apartments over the last decade compared to hotel rooms. In practical terms, there has been negligible construction of Class 3 buildings over the last decade. For those existing Class 3 buildings, the oversupply of accessible rooms provides a strong financial disincentive to refurbish the design and content of these rooms.

Review of Premises Standards and BCA accessible room requirements

TTF accepts that the Australian Government has determined the timing of the next review of the Premises Standards. However, we believe that it is within the Commission's terms of reference to make a more comprehensive assessment of the quantitative impact of the regulation and make recommendations which may identify and reduce unnecessary regulation as part of the next review.

TTF believes there is scope for greater assessment and guidance from the Commission because the quantum of BCA accessible room requirements has yet to be properly assessed.

Solution

The TTF quantitative data provided to the Commission provides strong prima-facie evidence of an unnecessary regulatory burden. During the development of the Premises Standards, data on the availability and need for accessible rooms was not considered in establishing the quota of accessible rooms required. Nor has the BCA accessible room requirement ever been quantitatively assessed by a government agency, despite the length of their implementation. We contend that due weight and consideration should be given by the Commission to the quantitative survey data provided by TTF and the need for a proper assessment of the BCA quota.

TTF believes the appropriate solution is an independent quantitative assessment of the BCA accessible room requirement. We further believe that this independent data should be examined by the Department of

Attorney General, the ABCB, disability sector and the tourism industry with a view to improving accessibility and reducing regulatory burdens. Specifically the parties should consult on the quota, size, design, distribution and marketing of accessible rooms in Class 2 and Class 3 buildings.

This study and consultation should take place well before the review of the premises standards to allow meaningful time for consultations.

TTF proposed Productivity Commission key findings and recommendations

TTF is recommending the following key findings and recommendations for the Commission's final report:

"Key Findings

- *It would be an unnecessary regulatory burden if the BCA accessible room quota required a greater quantity of accessible rooms than are needed or sought by disabled guests.*
- *There has been no independent analysis of the quantity of accessible rooms available, or the quantity of accessible rooms needed, upon which to assess the quantity of accessible rooms required under the BCA.*
- *The Access to Premises – Building Standards are to be reviewed in approximately five years."*

"Recommendation

- *The Attorney General's Department and the ABCB commission an independent quantitative supply and demand study of the need for accessible rooms approximately three years following the commencement of the Access to Premises – Building Standards.*
- *The Attorney General's Department and the ABCB consult with the tourism industry and the disability sector on the independent study and means to enhance the effectiveness of the provision of accessible rooms."*