

COMBATING UNSAFE AND ILLEGITIMATE BACKPACKER ACCOMMODATION IN NSW

DISCUSSION PAPER ON POLICY OPTIONS

FOR

**THE AUSTRALIAN TOURISM EXPORT COUNCIL
BACKPACKER TOURISM ADVISORY PANEL
NSW BACKPACKER OPERATORS ASSOCIATION
& ACCOR ASIA PACIFIC**

APRIL 2005

“It is important that these regulations are in place to prevent tragic situations, such as the breakout of fires and injury to occupants. The legal operators must comply with these conditions. They play the game; the illegal operators do not.”

David Barr MP, NSW Hansard, 5 September 2002

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The economic assessments in this paper have been prepared at a desktop level and have not been modelled. A person or organisation should not rely on them as modelled assessments.

The evidence of illegal backpacker accommodation in this paper has been sourced from separate research commissioned by members of the NSW Backpacker Operators Association and has been relied on by Aegis Consulting Australia.

CONTENTS		Page
1.	Executive Summary	6
2.	Recommendations	15
3.	Background to this Paper	18
4.	Profile of Backpacker Tourism	20
5.	Economic Contribution of Backpacker Tourism	26
6.	Risks for Backpackers, Community and Government	35
7.	Current Regulation NSW	42
8.	Options to Improve Regulation in NSW	48

LIST OF TABLES	Page
Table 1 – International backpacker volume growth in NSW: 1999 -2003	22
Table 2 – Number of backpacker nights spent in NSW compared to Queensland and Victoria: June 2000 – June 2004	24
Table 3 – Average length of stay (nights) by backpackers in NSW compared to Queensland and Victoria: June 2000 – June 2004	25
Table 4 – International backpacker expenditure in Australia	28
Table 5 – International backpacker expenditure by item in 2003	29
Table 6 – Contribution of international backpacker expenditure to the GVA and employment in main industries: 2001/02 financial year	30
Table 7 – Benefit to NSW economy of backpacker expenditure in 2003	31
Table 8 – Orders available under the EP&A Act to combat illegitimate backpacker accommodation	44

ACRONYNS

AAPC – Accor Asia Pacific

ATEC – Australian Tourism Export Council

BOA – NSW Backpacker Operators Association

BTAP – Backpacker Tourism Advisory Panel

EP&A Act – Environmental Planning and Assessment Act 1979 (NSW)

GST – Goods and Services Tax

LEP – Local Environment Plan

LGA – Local Government Act 1993 (NSW)

1. EXECUTIVE SUMMARY

1.1 Purpose and Structure of this Paper

This discussion paper has been prepared for the information of Australian Tourism Export Council (ATEC), Backpacker Tourism Advisory Panel (BTAP), which reports to ATEC, NSW Backpacker Operators Association (BOA) and Accor Asia Pacific (AAPC).

Together, these parties represent the national and NSW backpacker and general tourism industries.

The objective of the paper is to stimulate joint and integrated responses by local, State and Commonwealth governments and industry to address identified concerns about illegitimate backpacker accommodation.

Failure by governments and industry to address the growing problem of illegitimate backpacker accommodation in NSW and Australia generally can have three main adverse consequences.

- It can explicitly damage the reputation of backpacker tourism and thus put at risk the contribution of the industry to the NSW and national economies as well as the related tax revenue generated for the Commonwealth and NSW Governments; and
- It can create unacceptable risks for the personal safety, property and amenity of backpackers using, and local communities living adjacent to, illegitimate backpacker accommodation; and
- It can lead to higher costs for local and State government such as liabilities for failures to prevent the illegal use of premises that result in personal and property damage, as well as losses in compliance, rates, stamp duty and tax revenue.

Based on the costs and benefits of options canvassed in this paper, a range of action by local, State and Commonwealth governments is recommended to address the identified risks and costs arising from illegitimate backpacker accommodation. These recommendations are detailed in Chapter 2.

The background to this paper is discussed in Chapter 3. The profile of backpacker tourism and its growth nationally and in NSW are discussed in Chapter 4.

The economic significance and value to government revenue of backpacker tourism nationally and in NSW are discussed in Chapter 5.

In Chapter 6, the paper details the risks to backpacker and community safety and amenity and potential costs to local councils and Commonwealth and NSW Governments arising from the illegitimate use of residential premises as backpacker accommodation.

Chapter 7 discusses the ability of current regulation to address these risks and whether such regulation should be enhanced and/or better enforced.

Chapter 8 sets out a variety of policy and regulatory options that government can apply to sufficiently address these risks and associated industry concerns.

1.2 Key Issues

There are a range of safety risks and costs to government and industry arising from the use of residential premises as illegitimate backpacker accommodation, which is prevalent in cities and regions frequented by backpackers.

Of particular concern are the situations where an owner or a primary lessee of a residential dwelling offers short term room or bed accommodation to transient travellers under conditions that differ from normal lease or sub-lease arrangements governed by residential tenancies law. These conditions include no requirement for a bond, no tenancy agreement, shared rooms, and rooms or beds provided on a first come first serve basis.

This scenario is distinct from a situation where an owner or lessee, leases or subleases a room in a shared house to another person under a standard tenancy agreement for a long term. This is legitimate rental market activity that should not concern the tourism industry.

1.2.1 Damage to Australian Tourism and the Economic Effect

The poor quality, risks to personal safety and any actual incidences of injury or damage associated with illegitimate backpacker accommodation can damage Australia's reputation as a tourist destination of choice and cause downward pressure on growth in the backpacker tourism and general tourism industries. This is particularly because the international tourism market is highly competitive, with consumers exercising choice on the key factors of cost, safety and quality of experience.

Any decline in backpacker tourism can reduce the significant contribution it makes to the national and NSW economies, as well as to Commonwealth and NSW government revenues arising from activity in the backpacker tourism industry.

International backpacker tourism is a growth industry whose reputation government needs to protect and support by ensuring against the increasing number of poor quality and unsafe accommodation being offered.

By doing so, government also avoids any risk to the Goods and Services Tax (GST) and Company Tax receipts arising from expenditure by backpackers.

Although GST is collected by the Commonwealth Government, total net GST receipts are distributed to State governments, including NSW, as untied funding able to be used for health, education, police, infrastructure and other spending at State level.

As a result, the Commonwealth and NSW governments should share responsibility for ensuring that there are effective regulatory safeguards and enforcement against illegitimate backpacker accommodation.

The value of backpacker tourism to the national and NSW economies and Commonwealth and NSW government revenues is discussed in Chapter 5.

Contribution of Backpacker Tourism to the National Economy

In 2001/02 (the most current data year for gross value added calculation purposes) expenditure by international backpackers generated a Gross Value Added (GVA) of \$1.4 billion (5% of national tourism GVA) and led directly to the employment of 27 900 people (5% of tourism employment).

In 2003, national spending by international and domestic backpackers was \$2.7 billion. Of this international backpackers spent \$2.3 billion or 20% of expenditure by all international visitors.

Contribution of Backpacker Tourism to the NSW Economy

In NSW, international backpackers spent about \$797 million in 2003 which contributed an estimated 0.31% of Gross State Product (GSP).

NSW is the most popular State for backpackers. Sydney, Northern Rivers, Central Coast and Illawarra are the most popular areas with backpackers. In NSW between 1999 and 2003 international backpacker tourism grew by an average annual rate of 3.2%.

Of the total number of backpackers with working holiday visas (44 000), 93% visited the State. Many contributed their labour to regional areas during crop harvest season.

Goods and Services Tax Revenue from Total Backpacker Expenditure

It is estimated that the total net value of GST on backpacker expenditure nationally in 2003 was \$190 million. This is estimated to be 0.6% of total GST revenue distributed to States and Territories in 2003.

It is estimated that the total net value of GST on backpacker expenditure in NSW in 2003 was \$56 million. This is estimated to be 0.5% of the total GST revenue distributed to NSW by the Commonwealth in 2003-04.

Goods and Services Tax Revenue from Backpacker Expenditure on Hostel Accommodation

It is estimated that net GST revenue from backpacker expenditure on hostel accommodation nationally in 2003 was \$10 million.

Company Tax on Profit by Backpacker Hostel Accommodation Operators

It is estimated that company tax payable on profit by legitimate backpacker operators nationally in 2003 was \$32 million.

1.2.2 Increased Risks to Backpacker and Community Safety

There is an increased risk of fire where premises are used for backpacker accommodation but do not meet relevant fire and building regulations.

For example, legal backpacker accommodation operators are required by fire and building safety standards to arrange accommodation to provide at least 3.25 square meters per person.

In contrast, landlords or primary lessees using residential accommodation as illegitimate backpacker accommodation have a commercial interest in maximising the number of beds per room or dwelling in ways that contravene the ratios imposed on legal operators.

Breaches of fire and building regulations can result in personal injury or death and property damage to the premises, adjacent property and/or communities in which the premises are located.

Poor use of premises in order to maximise the number of residents and associated rents can also lead to less than appropriate public health and hygiene standards. This can promote vermin in the dwelling used as illegitimate backpacker accommodation and surrounding apartments and/or houses.

These issues are discussed in more detail in Chapter 6.

1.2.3 The Cost to Government

There are a range of costs for local, State and Commonwealth government arising from the use of residential premises as illegitimate backpacker accommodation. These range from higher potential liability for damage to actual losses of tax revenue.

Where governments fail to properly prevent the use of residential premises as illegitimate backpacker accommodation they are increasing their liability risk and potential revenue losses.

These costs are discussed in more detail in Chapter 6.

Liability of local and State Governments for Personal Injury and Property Damage

There can be a higher liability risk for local and State governments where they breach their duty of care to ensure that premises are used consistently with development approval and enforce fire, building and other conditions attaching to the approval and use of buildings.

This duty of care may be express or implied by the existence of a development approval process and/or government agencies, such as the fire brigade, which are required by policy or legislation to administer the regular certification of building safety.

Compliance, Rates and Stamp Duty Revenue

Both local and State government in NSW can lose revenue because the operation of illegitimate backpacker accommodation avoids the appropriate payment for the costs of development approval, compliance certificates required for approved backpacker accommodation, council and utility rates.

The NSW government can be denied appropriate stamp duty revenues if property transacted as residential is actually used for commercial purposes, particularly where the value of the sale or lease of the property as a commercial premises would attract a higher duty.

Tax Revenue

There is a loss of GST revenue to the Commonwealth Government where a person is operating an illegitimate backpacker accommodation business from a residential premises and earning above the Australian Tax Office threshold for GST registration, but does not register and therefore pay GST on services supplied.

Losses in GST revenue to the Commonwealth Government impact on the NSW Government as total net GST revenues are distributed to it and other States and Territories.

It is estimated that nationally in 2003 owners of rented or share accommodation earned about \$140 million from the use of their premises by backpackers.

If it assumed that 100% of the nights spent by backpackers in these premises were spent in properties not registered for GST the estimated gross GST loss to the Commonwealth Government was up to \$14 million.

Using the same assumptions the estimated gross GST loss arising from the use by backpackers of such properties in NSW was up to \$5.2 million.

There is also a loss of company tax receipts to the Commonwealth Government where backpackers use illegitimate backpacker accommodation such as residential premises rather than legitimate operators who are incorporated and subject to company tax on profit. We have not sought to quantify this for the purposes of this paper.

In NSW government may also be denied vendor tax on the sale of a property where a person uses that property to provide illegitimate backpacker accommodation, but claims the property as a principle place of residence.

1.2.4 Impact on Community Amenity

As most illegitimate backpacker accommodation occurs in residential apartment blocks and houses in residential areas, the presence of such accommodation can have an extensive negative impact on the amenity and quiet enjoyment of neighbours and the community generally.

Common problems arising associated with illegitimate backpacker accommodation include noise pollution, garbage disposal on public streets, contravention of rules and regulations in strata title buildings which are intended to ensure community amenity and safety, and the compromise of building security arrangements because of the volume of transient persons.

These risks are discussed in more detail in Chapter 5.

1.3 Current Regulation in NSW

There are four primary instruments potentially governing the provision of backpacker accommodation. These are the *Local Government Act 1993 (NSW)*, *Environmental Planning and Assessment Act 1979 (NSW)*, *Building and Fire Codes*, and *Occupational Health and Safety Regulation 2001 (NSW)*.

However, only the *Environmental Planning and Assessment Act 1979 (NSW)* creates a direct framework to combat illegitimate backpacker accommodation. Its effectiveness relies on the resources available to local councils to enforce conditions on the use of premises.

These issues are discussed in more detail in Chapter 7.

1.4 Options to Improve Regulation of Backpacker in NSW

These options are discussed in more detail in Chapter 8.

Under current regulatory arrangements the prevention of the illegitimate and unsafe use of premises for backpacker accommodation depends primarily on the commitment of local council resources to enforce zoning requirements and development approvals under the EP&A Act and State and local government resources to enforce fire and building and safety regulations.

Both kinds of enforcement require regular physical checks of premises to establish compliance.

Because councils lack sufficient resources to effectively identify all existing premises that may be operating as backpacker accommodation in breach of development consent and/or fire and building safety, current regulation is a limited deterrent to illegitimate operators, such as owners or primary lessees of premises.

1.4.1 Options Being Considered by Local Government

To overcome the funding constraints associated with regular physical inspections of premises some councils are considering a range of approaches including prohibitions on advertising on illegitimate backpacker accommodation, and limiting the number of people able to reside in a leased residential dwelling.

Whilst these initiatives should be supported, it is recommended that stronger packages of these and further options be jointly implemented by local, State and Commonwealth governments.

1.4.2 Other Options Considered in This Paper

Options considered in this paper are:

(a) Prohibit the advertising of illegitimate backpacker accommodation.

As most advertising for such premises is via shop front windows, public places such as bus stops and in local newspapers, a prohibition on advertising can be practically enforced and penalties for non-compliance can act as an effective deterrent for shop owners and newspapers.

(b) Prescribe the maximum number of persons able to reside in a leased residential dwelling at one time.

The maximum number of persons can be determined by local councils as part of conditions on acceptable floor space to living space ratios which are currently imposed during development approval.

Permits could be issued along with contracts for the sale of property (like section 149 certificates) and included in the terms of residential property leases. Property lessees can be granted exemptions to the limit where they prove this is necessary to accommodate their families.

This approach is consistent with current regulations prescribing for safety reasons the maximum number of persons able to travel at any one time in a car, boat, bus, train, tram, plane, elevator and alike.

(c) Use Local Environment Plans (LEPs) to impose conditions that discourage the use of premises as illegitimate backpacker accommodation.

Under the *Environmental Planning and Assessment Act 1979 (NSW)*, the NSW Government can direct one or more local councils to include in their LEPs conditions for development consent that discourage illegitimate backpacker accommodation.

(d) Introduce a licensing regime that registers and accredits backpacker operators who meet development consent, fire and building safety standards.

This enables councils to more easily identify backpacker accommodation that is not registered and accredited. There is ample precedent in NSW for local government licensing of specific activities to ensure safety and quality including legislation governing swimming pools, companion animals and dividing fences.

This option is of particular benefit in regional areas where there is limited supply of accommodation to meet the demand by backpackers working there during crop harvest seasons. A licensing regime allows current operators in regional areas to declare any deficiencies in the safety of their accommodation and apply for exemptions under conditions acceptable to government.

This process allows government greater control over potential safety risks and enables property owners and government to work co-operatively to find solutions to address safety issues at minimal cost so that accommodation can continue to be provided to meet demand.

(e) Increase Commonwealth and NSW Government funding for improved enforcement.

Additional government funding is required to adequately resource councils to enable them to effectively enforce the regulatory framework currently provided by the *Environmental Planning and Assessment Act 1979 (NSW)* as well as any new regulations that may be agreed to.

Given the estimated loss to the Commonwealth and NSW governments in gross GST revenue arising from illegitimate backpacker accommodation funding enhancements for enforcement can be budget neutral. This is particularly the case if improved enforcement results in fines being levied on operators of illegitimate backpacker accommodation and restricts the availability of illegitimate accommodation in favour of legal backpacker accommodation.

To ensure joint action by all three tiers of government for specific outcomes, Commonwealth funding could be provided on a dollar for dollar basis with the NSW Government and where local and State government implement stricter controls such as those discussed at (a) – (d) above.

(f) Apply a levy on legitimate backpacker operators to increase funding for improved enforcement.

This may reduce investment in the development and operation of legitimate backpacker accommodation and/or force up the cost of backpacker/hostel bed rates thereby encouraging more travellers to seek out cheaper illegitimate premises.

(g) Apply a levy on users of legitimate backpacker accommodation to increase funding for improved enforcement.

This may encourage travellers to seek out rented and shared accommodation and thus stimulate the market for unsafe and illegitimate backpacker accommodation and/or increase the scarcity of rental accommodation for the wider market of consumers.

(h) Apply a levy on backpackers visiting Australia at the point of entry or as part of visa requirements to increase funding for improved enforcement.

This is likely to be difficult to enforce as it may not be clear if a traveller can be objectively categorised as a backpacker at the point of entry or visa purchase. A levy may also dissuade backpackers from visiting Australia.

(i) Developer contributions to the cost of enforcing regulations governing the use of premises as backpacker accommodation.

The imposition of such contributions may discourage property investment in residential development and/or raise the average price of apartments.

Alternatively developers and potential purchasers (whether investors or owner occupiers) may support the levy where its use provided certainty that apartments could not be used as illegitimate backpacker accommodation.

(j) Improve Reporting Methods.

This could include self regulatory arrangements with penalties for non-compliance applying to strata managers, landlords and/or lessees.

It is unlikely that this option alone would be sufficient to deter the illegitimate and unsafe use of premises as backpacker accommodation as it relies on physical checks by councils and State authorities, which as discussed needs greater funding support.

2. RECOMMENDATIONS

The following recommendations have been developed based on the options discussed in Chapter 8.

No single recommendation would be properly effective in regulating the unsafe and illegitimate use of premises as backpacker accommodation. As a result it is proposed that the following packages of recommendations be considered by industry and government.

Package 1 – recommendations 2.1, 2.2, 2.3 and 2.5

Package 2 – recommendations 2.1, 2.4 and 2.5

2.1 Prohibit Advertising of Illegitimate Backpacker Accommodation

A practical and low cost way to prevent the illegitimate use of premises for such purposes is to ensure that only backpacker accommodation approved by a local council can be advertised in any public place, shop, newspaper or other publication in the municipality.

The power for local authorities to enforce a ban on the advertising of unapproved backpacker accommodation can be provided via a range of means including LEPs, directions from the NSW Government and/or amendments to the Local Government Act and Protection of the Environment Operations Act.

In order to be an effective deterrent against the illegitimate use of premises for backpacker accommodation regulation of advertising in this way should include appropriate penalties for shop owners and publications hosting any such advertising and the owner or primary lessee of the premises being advertised.

To be properly effective it is recommended that this approach be part of both packages of measures which also include recommendations 2.2, 2.3, 2.4 and 2.5.

2.2 Prescribe the Maximum Number of Persons Able to Reside in a Leased Residential Dwelling At One Time.

To ensure that leased premises are not being used as illegitimate backpacker accommodation a local council should have the power to regulate the maximum number of tenants permissible in a residential leased premises at one time.

Limits could be simply applied through a permit that accompanies contracts for the sale of property (like section 149 certificates) and is included in the terms of residential property leases.

Lessees should be able to be exempted from the limit where they can prove that their families exceed it.

For this provision to be an adequate deterrent to the illegitimate use of premises for backpacker accommodation appropriate penalties should apply to landlords, primary lessees, strata managers, real estate agents and any other persons involved in the management and leasing of premises.

To be properly effective it is recommended that this approach be part of a package of measures which also include recommendations 2.1, 2.3 and 2.5.

2.3 Utilise Current Planning Policy

Local councils are able to include in their LEPs and development consent a range of conditions that discourage the use of premises as illegitimate backpacker accommodation. The NSW Department of Infrastructure and Planning is also able to direct two or more councils to include in their LEPs conditions regulating against the use of premises as illegitimate backpacker accommodation.

While the enforcement of development consent and LEP conditions requires councils to identify, investigate and conduct physical checks of premises, councils should use the current planning system to discourage the use of premises for illegitimate purposes.

To be properly effective it is recommended that this approach be part of a package of measures which also include recommendations 2.1, 2.2 and 2.5.

2.4 License Backpacker Accommodation

The most effective way to combat unsafe and illegitimate backpacker accommodation is via a licensing regime which allows for the registration and accreditation of backpacker accommodation that meets development consent, fire and building safety standards.

A licensing system allows councils to more easily identify backpacker accommodation that is not registered and accredited, thereby reducing the costs normally associated with the identification, investigation and physical checking of premises.

To be properly effective it is recommended that this approach be part of a package of measures which also include recommendations 2.1 and 2.5.

2.5 Increase Commonwealth and NSW Government Funding for Enforcement of Current Regulations

Irrespective of the package of recommended measures that may be adopted, the Commonwealth and NSW Government should provide additional funding to combat unsafe and illegitimate backpacker accommodation.

This funding is an essential investment in the safety and quality of the backpacker tourism industry which is a significant contributor to the national and NSW economies and Commonwealth and NSW government revenue.

It is recommended that local, NSW and Commonwealth Governments consult to determine the appropriate levels of funding depending on the adoption of packages 1 and 2 proposed above.

Given the estimated loss to the Commonwealth and NSW governments in gross GST revenue arising from illegitimate backpacker accommodation, industry urges government to consider that funding enhancements for enforcement can be budget neutral, particularly where enforcement increases the use of and associated taxation receipts from legitimate operators.

It is recommended that the NSW Government also consider additional funding as an investment to reduce the risk that it will be held liable for personal injury and/or property damage arising from illegitimate backpacker accommodation which it had a duty of care to prevent.

To ensure joint action by all three tiers of government for specific outcomes, it is recommended that Commonwealth funding for improved enforcement be provided:

- On a dollar for dollar basis with the NSW Government; and
- Where local government and the NSW Government agree to tighten regulation by prohibiting advertising of illegitimate backpacker accommodation, prescribing the number of persons able to reside in a leased residential dwelling, licensing backpacker accommodation and/or imposing stricter conditions on building use in LEPs.

3. BACKGROUND TO THIS PAPER

The growing number of residential premises being used as illegitimate backpacker accommodation poses risks to the reputation of backpacker tourism, the contribution it makes to the national and NSW economy and government revenues, and the safety and amenity of backpackers and the community and their property.

This trend also creates costs to local, State and Commonwealth governments where they fail to effectively prevent illegitimate backpacker accommodation.

This paper has been prepared for the information ATEC, BTAP, BOA and AAPC to assist them consider the risks associated with illegitimate backpacker accommodation and appropriate policy responses.

The paper is also aimed at stimulating discussion between industry and government to find common responses to the identified issues.

A brief description of ATEC, BTAP, BOA and AAPC is provided below.

ATEC

The ATEC is the national peak body of the \$17 billion tourism industry. It represents the interests of over 1150 tourism export companies throughout Australia, including accommodation providers, tour companies, inbound tour operators, attractions, airlines, cruise lines, transport, food and beverage outlets and tourism services. ATEC membership is recognised as a strong indicator of business reputation and experience.

ATEC has operated since 1972 to optimise the business success of members so that the resulting economic and social impact of tourism exports for Australians is maximised.

BTAP

Following a request from the backpacker industry, ATEC established the Backpacker Tourism Advisory Panel (BTAP) - an initiative incorporating Tourism Australia's former Backpacking Tourism Advisory Group (BTAG).

BTAP's objective is to facilitate an industry platform for the development and growth of the backpacker tourism segment by elevating the policy agenda and providing a unified voice on backpacker issues at all levels of government.

The panel comprises representatives from the accommodation, transport, tour operator, and retailer/wholesaler industries as well as Tourism Australia, state tourism bodies, state based backpacking industry associations and ATEC.

AAPC

Accor Asia Pacific is the largest hotel group in Australia employing about 10 000 people. It is also the second largest hotel group in the world and a leading advocate for safety and quality across all types of accommodation from backpacker to 5 star. It has brands across all accommodation types.

The Chairman of AAPC is recognised by industry as being responsible for developing institutional investment in tourism accommodation in Australia, which has enabled the sector to develop the capacity to meet tourism demand.

BOA

The NSW BOA represents legitimate backpacker operators. Members of the BOA are operators who own, control or manage backpacker accommodation that meet development approval, fire and building safety and other regulations imposed on the provision of such accommodation by local and State government.

Members of the BOA are also registered businesses subject to State taxes and levies such as payroll tax, and workers compensation and Commonwealth taxes such as the Goods and Services Tax (GST). Members of the BOA pay commercial rates for water, gas and electricity as the premises they operate are deemed to be business premises under development approval processes.

4. PROFILE OF BACKPACKER TOURISM

Key Facts

Between 1999 and 2003:

- The national volume of international backpackers increased by an average annual rate of 3.5%, compared to only 1.4% for all international visitors.
- The national volume of domestic backpackers increased by an average annual rate of 8.2% compared to a mere 0.2% for all domestic travellers.
- In NSW international backpacker tourism grew by an average annual rate of 3.2%.
- NSW remained the most popular State for backpackers. The most visited regions were Sydney, Northern Rivers, Central Coast and Illawarra.

Between June 2000 and June 2004 the number of nights spent by international backpackers in Australia increased by a national average annual rate of 4.6%.

In 2003:

- Nationally, there were 468 000 international and 475 000 domestic backpackers.
- Nationally, international backpackers represented about 11% of all international visitors. About 368 000 or 80% of all international backpackers visited NSW. This was 13% higher than in 1999.
- Nationally, international backpackers stayed a total of 30 million nights or 25% of the total nights spent by all international visitors. In NSW international backpackers spent a total of 11 million nights.
- International backpackers spent an average of 64 nights in Australia compared to 23 nights for other international visitors. In NSW international backpackers spent an average of 28.9 nights.

Travel by international and domestic backpackers is a significant and distinct part of the Australian tourism market. The volume of backpackers, the average nights they spend and the revenue they contribute to the Australian tourism economy have increased substantially as a percentage of total domestic tourists and international visitors over the five years from 1999 to 2003.

Tourism Research Australia (TRA)¹ and the Australian Bureau of Statistics maintain authoritative national statistics on international and domestic backpacker travel in Australia via the use of international and national visitor surveys.

Both organisations define a backpacker as a visitor over the age of 15 who spends at least one night in a youth or backpacker hostel during their travel in Australia. Although this is a broad definition, its scope does not undermine the basic outcomes sought by industry to ensure the safety and legitimacy of backpacker accommodation.

4.1 Backpacker Volume

Data trends over the last five years confirm that backpacker tourism is a growth market far in excess of general tourism.

4.1.1 National Growth

In 1999, 753 000 international and domestic backpackers travelled in Australia. In 2003 this figure had increased by 25% to 943 000.²

In 1999 backpackers represented about 9% (404 300) of the total number of international visitors.³ In 2003 about 468 000 international backpackers visited Australia, representing about 11% of all international visitors.⁴

Between 1999 and 2003 the volume of international backpackers visiting Australia increased by an average annual rate of 3.5%. By comparison the average annual growth rate over the same period for all international visitors was only 1.4%.⁵

In 2003, 475 000 domestic backpackers travelled in Australia compared with 346 000 in 1999. This represents an average annual increase of 8.2%. By comparison the same rate of growth for all domestic travellers in Australia over the same period was a mere 0.2%.⁶

The most recent 2004 financial year data confirms the 2003 annual reporting. In the financial year to June 2004 there were over 4.8 million international visitors to Australia. Of this backpackers represented 10% (486,217).⁷ Between June 2000 and June 2004 the volume of backpackers visiting Australia increased by an annual average rate of 3.4%.⁸

¹ From 1 July 2004 TRA incorporated the former Bureau of Tourism Research

² Tourism Research Australia, *Backpackers In Australia*, 2003 Niche Market Report, p.1

³ See Australian Bureau of Statistics, *Overseas Arrivals and Departures: January 2002*, ABS Catalogue 3401.0 (Australian Bureau of Statistics, Canberra, 2002), p.4. Backpacker figures supplied by the Bureau of Tourism

⁴ Tourism Research Australia, *Backpackers In Australia*, 2003 Niche Market Report, p.1

⁵ *Ibid*, p.2

⁶ *Ibid*

⁷ Tourism Queensland, *International Backpackers Market*, Fact Sheet, 2004, p.1. The fact sheet is based on TRA data and the Queensland Tourism Regional Tourism Activity Monitor.

⁸ *Ibid*

4.1.2 NSW Growth

NSW is the most popular State for international and domestic backpackers. In 2003, NSW was visited by 368 000 or 80% of all international backpackers. Between 2001 and 2003 a total of 143 000 or an average of 38% of all domestic backpackers visited NSW.⁹

The volume of international backpacker tourism in NSW in 2003 was 13% higher than the volume in 1999. Between 1999 and 2003 the average annual rate of growth in international backpacker tourism in NSW was 3.2%.¹⁰

The following table illustrates the increase in international backpacker volume in NSW in the five years from 1999-2003.

Table 1 – International backpacker volume growth in NSW: 1999 -2003

<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>Annual average change</i>
324 000	375 000	365 000	381 000	368 000	+ 3.2%

The 2004 financial year data also confirms the popularity of NSW to international backpackers. In the financial year ending June 2004 78% (380,462) of international backpackers to Australia visited NSW.¹¹

4.2 Average Length of Stay

The average length of time backpackers stay in Australia is another measure of growth in the backpacker market both at national and state level. The average length of stay by backpackers and tourists generally is also directly related to the volume of their expenditure while in Australia.

Where backpackers are choosing to stay longer in Australia or in any one State or region this may reflect the appeal of locations, attractions, experiences and accommodation and value for expenditure.

Conversely where the average length of stay of backpackers is declining this may reflect a range of factors influencing their decision making including:

- Poor experiences with accommodation.
- Lack of accommodation.
- Limited sightseeing, attractions and/or available experiences.
- Increased costs.
- Competition from other tourist destinations.

⁹ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.12-13

¹⁰ Ibid

¹¹ Tourism Queensland, International Backpackers Market, Fact Sheet, p.1

- Limitations imposed by travel packages and/or airfares.
- Commitments in their countries of residence.

Low growth over time in the average length of stay by backpackers in any one State may also occur if volumes at the beginning of the reporting period are already high causing limited capacity for further growth.

4.2.1 National Growth

International backpackers have a very high average length of stay in Australia, compared with other categories of international visitors.

In 2003 international backpackers spent about 30 million nights in Australia. This is 25% of the total number of nights spent by international visitors, even though backpackers represented 11% of the total number of international visitors.¹²

On average backpackers spent 64 nights in Australia compared with 23 nights for other international tourists. Even when measured according to a median duration of visit (as opposed to average), international backpackers stayed in Australia for 30 nights compared to 9 nights for other international visitors.¹³

Between June 2000 and June 2004 the number of nights spent by international backpackers in Australia increased by a national average annual rate of 4.6%.¹⁴

The average volume of nights spent by domestic backpackers during their travel in Australia is less than that for international backpackers and closer to the average nights spent by all domestic tourists. In 2003 domestic backpackers spent an average of 5 nights during their travel in Australia. By comparison all domestic tourists spent an average of 4 nights per trip. Domestic backpackers spent a total of 2.4 million nights in Australia.¹⁵

4.2.2 NSW Growth

Compared to national trends and that for Queensland and Victoria (the two biggest backpacker destinations after NSW), NSW experienced poor growth over the last five years in the total number of nights spent by backpackers and a slight decrease in the average length of stay (nights) by backpackers in the State.

¹² Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.3

¹³ Ibid

¹⁴ Tourism Queensland, International Backpackers Market, Fact Sheet, p.1-5

¹⁵ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.3

4.2.2.1 Total Nights

In the year ending June 2004, international backpackers spent a total of about 11 million nights in NSW compared to 10.2 million nights in the year ending June 2000. This represents an average annual increase of 1.9%.¹⁶

By comparison the national average annual increase in nights spent by international backpackers between June 2000 and June 2004 was 4.6%. In terms of State comparisons over this period, Victoria experienced an average annual increase of 15.3% and Queensland 5.2%.¹⁷

The following table illustrates the State comparisons discussed above.

Table 2 – Number of backpacker nights spent in NSW compared to Queensland and Victoria: June 2000 – June 2004¹⁸

Backpacker Nights (million)				
<i>Market</i>	<i>Year ending June 2000</i>	<i>Year ending June 2002</i>	<i>Year ending June 2004</i>	<i>Annual average Change</i>
NSW	10.2	12.4	11	1.9%
Queensland	6.6	7.5	8.1	5.2%
Victoria	4	4.9	7	15.3%

Arguably the low growth in NSW can be attributed to the high number of nights spent by backpackers in NSW in June 2000 compared to Queensland and Victoria. The comparative number of nights spent in these three States in June 2000 provides more scope for growth in Queensland and Victoria than NSW over the reporting period. This view is also supported by the fact that in June 2004 backpackers were continuing to spend a significantly higher number of total nights in NSW than Queensland and Victoria.

Based on the total number of nights spent by backpackers in Australia over the last five years NSW remains the most popular State to visit.

4.2.2.2 Average Nights

The average number of nights spent by each backpacker in NSW, Queensland and Victoria has changed over time. The following table illustrates the decline in the average length of stay by backpackers in NSW compared to increases in Queensland and Victoria between the years ending June 2000 and June 2004.

¹⁶ Tourism Queensland, International Backpackers Market, Fact Sheet, p.4-5

¹⁷ Ibid

¹⁸ Ibid

Table 3 – Average length of stay (nights) by backpackers in NSW compared to Queensland and Victoria: June 2000 – June 2004 ¹⁹

Average Length of Backpacker Stay (nights)

<i>Market</i>	<i>Year ending June 2000</i>	<i>Year ending June 2004</i>	<i>Change</i>
NSW	29.4	28.9	- 0.5 nights
Queensland	23.5	28.9	+ 5.4 nights
Victoria	22.1	33.1	+ 11 nights

As this data is based on visitor surveys it is difficult to determine the precise reasons for the decline in NSW.

The average length of stay by backpackers in a State is significant because a backpacker's length of stay is the primary contributor to their level of expenditure while in that State.²⁰

Where NSW is experiencing minimal growth or a decline in the average length of stay by backpackers its revenue share from total national backpacker expenditure would also be limited or reduced. Equally States such as Queensland and Victoria where backpackers are choosing to stay longer would receive an increased share of national total backpacker expenditure.

This can have an adverse impact on the industries and employment that benefit from backpacker expenditure.

¹⁹ Ibid

²⁰ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.4

5. ECONOMIC CONTRIBUTION OF BACKPACKER TOURISM

The economic contribution of backpacker tourism can be assessed in terms of its overall economic effect on gross value added and employment as well as its benefit to government revenue arising from taxation on backpacker expenditure and company tax paid by registered backpacker accommodation providers.

The following discussion identifies the significant contribution of backpacker tourism to the national and NSW economies and Commonwealth and NSW government revenues.

Key Issues

In 2001/02 (the most current data year for gross value added calculation purposes) expenditure by international backpackers generated a Gross Value Added (GVA) of \$1.4 billion (5% of national tourism GVA) and led directly to the employment of 27 900 people (5% of tourism employment).

In 2003:

- National spending by international and domestic backpackers was \$2.7 billion. Of this international backpackers spent \$2.3 billion or 20% of expenditure by all international visitors.
- Nationally, international backpackers spent an average of \$4 857 per trip (\$75 per night) compared with \$2 272 per trip (\$98 per night) for other international visitors.
- Spending by backpackers created employment in the accommodation, food, beverage, retail, education, transport and entertainment industries.
- In NSW, international backpackers spent about \$797 million which contributed an estimated 0.31% of Gross State Product (GSP).
- In NSW, international backpackers spent an average of \$75 per night. This is equivalent to an average expenditure of \$2168 per backpacker.
- Of the total number of backpackers with working holiday visas (44 000), 93% visited NSW. Many contributed their labour to regional areas during crop harvest season.

5.1 Total National Expenditure

Total expenditure by international backpackers in Australia can be related to a number of factors including the volume of visitors, the length of their stay, and prevailing exchange rates which favour spending, although the primary contributor to average expenditure is the average length of stay.²¹

In 2003 international and domestic backpackers spent a total of \$2.7 billion in Australia, with spending by international backpackers responsible for \$2.3 billion. This expenditure by international backpackers represented 20% of total spending by all international visitors.²² Between June 2000 and June 2004 the level of expenditure by international backpackers visiting Australia grew by an annual average rate of 7.5%.²³

In 2003 the average expenditure by international backpackers was \$4 857 per trip or \$75 per night. By comparison other international visitors spent \$2 272 per trip or \$98 per night.²⁴ Average total expenditure by backpackers occurred over an average of 64 nights while that for other international visitors occurred over 23 nights.

During the same year domestic backpackers spent a total of \$456 million with an average of \$959 per trip or \$191 per night. Although the total volume of international and domestic backpackers was similar in 2003 (475 000 domestic and 468 000 international) domestic backpackers had a higher average spend per night because on average they travelled only 5 nights compared to 64 nights for international backpackers.²⁵

The following table illustrates the level of backpacker expenditure in 2003.²⁶

²¹ Ibid

²² Ibid, p.1-5

²³ Tourism Queensland, International Backpackers Market, Fact Sheet, p.4

²⁴ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.5

²⁵ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.4-5

²⁶ Ibid, p.5

Table 4 – International backpacker expenditure in Australia

<i>Backpacker origin countries</i>	<i>Number of backpackers (000)</i>	<i>Backpacker nights (million)</i>	<i>Average stay (nights)</i>	<i>Backpacker expenditure (\$million)</i>	<i>Average expenditure per night (\$)</i>	<i>Average expenditure per trip (\$)</i>
Other Europe	126	8	65	639	79	5,081
United Kingdom	120	9	74	649	73	5,390
Germany	52	3	65	240	72	4,650
USA	44	2	52	193	84	4,420
Japan	32	2	60	132	69	4,166
New Zealand	25	1	29	60	81	2,381
Canada	15	1	68	78	77	5,245
Korea	14	1	94	81	61	5,730
Other Asia	25	1	51	102	80	4,061
Other Countries	16	1	77	99	83	6,370
<i>Total</i>	<i>468</i>	<i>30</i>	<i>64</i>	<i>2,273</i>	<i>75</i>	<i>4,857</i>

Notes:

- Average expenditure per trip excludes package tours, other major purchases and pre-paid international airfares.
- Other Europe excludes the United Kingdom and Germany.
- Other Asia excludes Japan and Korea.

5.1.1 Spending by Item

Expenditure by international and domestic backpackers in 2003 related to a range of good and services provided by various industries. Almost half of total expenditure by both international and domestic backpackers was on accommodation, food and drink. International backpackers spent about \$1.1 billion and domestic backpackers about \$208 million on accommodation, food and drink.²⁷

The following table describes the main range of goods and services purchased by international backpackers in 2003.

²⁷ Ibid, p.6

Table 5 – International backpacker expenditure by item in 2003²⁸

<i>Good/Service</i>	<i>Total expenditure (\$ million)</i>
Accommodation, food and drink	1,100
Education	200
Shopping	250
Organised tours	200
Airfares	100
Entertainment	100
Rental vehicles	50
Other transport (eg taxis, rail and bus)	180
Other expenses	150

In addition to accommodation, food and drink the primary areas of expenditure were education (9% of total spend), shopping (11% of total spend) and organised tours (9% of total spend).²⁹

The main industries directly benefiting from backpacker expenditure are hospitality, food and beverage production, processing and supply, retail and associated manufacturing, tourism, transport (air, train, bus, taxi and rental vehicle businesses) and leisure and entertainment.

5.2 National Economic Contribution

Tourism Research Australia calculates the contribution of backpackers to the Australian economy by measuring Gross Value Added (GVA) and employment. These are estimated using international and national visitor surveys and Tourism Satellite Account (TSA) data maintained by the Australian Bureau of Statistics. These measures are the most accurate available and thus we have relied on them for our analysis.

The most current TSA data is for the 2001/02 financial year, although we understand that TRA intends to update current estimates with 2002/03 data. This update was not available at the time this report was prepared.

The economic contribution model measures the GVA and employment resulting from expenditure by international and domestic backpackers. In 2001/02 total backpacker expenditure was \$3.8 billion, which generated a GVA of \$1.4 billion (5% of national tourism GVA) and led directly to the employment of 27 900 people (5% of tourism employment).³⁰

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid,p.16

The most significant contribution of backpacker expenditure to the GVA and employment in various industries benefiting directly and indirectly from such spending is illustrated in the following table.

Table 6 – Contribution of international backpacker expenditure to the GVA and employment in main industries: 2001/02 financial year³¹

<i>Industry</i>	<i>Gross Value Added (GVA) (\$ million)</i>	<i>Contribution as proportion of total GVA (%)</i>	<i>Employment generated (jobs)</i>	<i>Contribution as proportion of total employment generated (%)</i>
Accommodation, café and restaurant	385	36	9,974	36
Transport and storage	350	25	4,734	17
Education	230	16	3,393	12
Cultural and recreational services	122	9	NA	NA
Retail trade	NA	NA	3,826	14

5.3 Economic Value to NSW

There is significant value to the NSW economy flowing from backpacker expenditure. The value can be measured on a state-wide and regional basis.

5.3.1 State-wide Value

As discussed earlier, in 2003 international backpackers visiting NSW stayed an average of 28.9 nights and spent an average of \$75 per night. This is equivalent to an average expenditure of \$2168 per backpacker.

In 2003 NSW was visited by 368 000 or 80% of all international backpackers. Relying on the average expenditure calculation above, the estimated total expenditure by backpackers visiting NSW in 2003 was \$797million.

The following table illustrates the value of international backpacker expenditure to NSW in 2003.

³¹ Ibid

Table 7 – Benefit to NSW economy of backpacker expenditure in 2003

<i>Average expenditure per backpacker (\$ per night)</i>		<i>Average length of stay by backpacker in NSW</i>		<i>Total number of backpackers visiting NSW</i>		<i>Total value to NSW economy (\$ million)</i>
75	x	28.9	x	368 000	=	797

In the financial year 2003-04, NSW Gross State Product (GSP) was about \$255 billion.³² Based on data from the 2003 calendar year, the economic contribution made by backpacker expenditure was about 0.31% of GSP.³³

5.3.2 Regional Value

International backpackers visiting NSW tend to frequent a range of metropolitan and regional destinations within the State.

Between 1999 and 2003 the two most popular destinations for international backpackers were Sydney (visited by 76% of all international backpackers) and Northern Rivers Tropical NSW (visited by 28% of all international backpackers). In 2003 the Central Coast and Illawarra attracted 7% and 8% respectively of international backpackers visiting NSW.³⁴

In the same period the two most popular destinations for domestic backpackers were Sydney (visited by 14% of all domestic backpackers) and North Coast NSW (visited by 5% of all domestic backpackers).³⁵

In urban and regional areas the primary economic contribution of backpackers is via their expenditure and participation in the workforce. A large number of international backpackers enter Australia having been granted working holiday visas, which enables them to be employed while in the country. The bulk of these visa holders visit NSW. For example, in 2003, 9% of international backpackers (44 000) entered with working holiday visas and 93% of them visited NSW.³⁶

The labour contribution of backpackers can be especially important in regional NSW during crop harvest season.

The Northern Rivers Tropical NSW region for example is a significant fruit production area and its popularity with international backpackers reflects its ability to offer them employment during fruit picking season. The contribution made by backpackers to fruit picking is an important part of the primary production process

³² NSW Government, Budget Statement 2003-04, Budget Overview, p.ii

³³ It should be noted that this estimation is not based on an economic model assessing the inputs and outputs contributing to GSP.

³⁴ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.15

³⁵ Ibid

³⁶ Ibid.,17

relied on by the food industry and the export, retail, restaurant and transport industries that directly and indirectly depend on food production.

5.4 Value to Commonwealth and NSW Government Revenue

There are a range of benefits to the Commonwealth and NSW Government's budgets flowing from backpacker tourism. The main benefits are discussed below.

Key Issues

- It is estimated that the total net value of GST on backpacker expenditure nationally in 2003 was \$190 million. This is estimated to be 0.6% of total GST revenue distributed to States and Territories in 2003.
- It is estimated that the total net value of GST on backpacker expenditure in NSW in 2003 was \$56 million. This is estimated to be 0.5% of the total GST revenue distributed to NSW by the Commonwealth in 2003-04.
- It is estimated that net GST revenue from backpacker expenditure on hostel accommodation nationally in 2003 was \$10 million.
- It is estimated that company tax payable on profit by legitimate backpacker operators nationally in 2003 was \$32 million.

5.4.1 GST Revenue from Total Expenditure

5.4.1.1 National

The primary source of taxation revenue arising from backpacker tourism is the Goods and Services Tax (GST) applicable to the goods and services purchased by backpackers in Australia. The GST is collected by the Australian Tax Office and allocated to the Federal Government's Consolidated Revenue.

Under the *A New Tax System (Commonwealth-State financial Arrangements) Act 1999*, total GST revenue (net of administrative costs) is paid by the Commonwealth to the States as part of general purpose payments (GPP). These payments are not tied to any specific expenditure by States. Under the Act States are also entitled to receive specific purpose payments (SPP) which are linked to particular outcomes.

The share of GST revenue paid to each State under the Act and the terms of the related intergovernmental agreement is determined on the basis of recommendations by the Commonwealth Grants Commission.

The Commonwealth Government estimates that it allocated \$33.2 billion in GST revenue to the States and Territories in 2003-04.³⁷ As discussed above total

³⁷ Australian Treasury, Commonwealth Budget 2004-05, Budget Paper 3

expenditure by backpackers in 2003 was about \$2.7 billion. If it is assumed that this expenditure is inclusive of GST, then on its face the value of GST is \$270 million.

However we have reduced this figure by 25% to reflect the average net GST paid by service providers and a further 5% to reflect any margin of error arising because of any difference between calendar and financial year data. Based on this it is estimated that the value of total GST on purchases by backpackers in 2003 was about \$190 million. This is about 0.6% of total GST revenue distributed to States and Territories in 2003-04.

5.4.1.2 NSW

The Commonwealth Government estimates that in 2003-04 it distributed about \$9.7 billion of total GST revenues to NSW.³⁸ As discussed above we have estimated that backpackers spent \$797 million in NSW in 2003. If it assumed that this expenditure includes GST, then on its face the value of GST is about \$80 million.

Again we have discounted this figure by 30% to reflect both average net GST paid by service providers and margins of error arising from any difference between calendar and financial year reporting. Based on this the estimated value of GST generated in NSW by backpacker expenditure in 2003 was about \$56 million. This equates to about 0.5% of the total GST revenue distributed to NSW in 2003-04.

5.4.2 GST Revenue from Expenditure on Hostel Accommodation - National

In 2003 international and domestic backpackers spent a total of about 32 million nights traveling in Australia. Of this about 13 million nights were spent in backpacker or hostel accommodation.³⁹

Industry estimates are that backpackers are charged an average of about \$25 per night for a bed in hostels and backpacker accommodation. Based on the total number of nights spent by backpackers in such accommodation (13 million nights) it is estimated that backpacker accommodation generated about \$325 million in 2003.

As the provision of backpacker accommodation is a low margin business we have assumed that average costs are about 70%.⁴⁰ Thus while the GST on total revenue is \$32.5 million we have discounted it by 70% to estimate net GST paid by accommodation providers. Accordingly net GST revenue on the sale of backpacker and hostel accommodation in 2003 is estimated to be about \$10 million.

5.4.3 Company Tax on Profit by Hostel Accommodation Operators – National

Another source of tax revenue arising from backpacker tourism is company tax paid by backpacker accommodation providers, who are incorporated. All providers who have development consent from local councils to operate hostels or other backpacker

³⁸ Ibid

³⁹ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.8

⁴⁰ Based on industry consultations

accommodation are likely to be registered for company tax. Company tax is applicable to company profit.

Assuming as above that average costs per bed sold are about 70%, then backpacker and hostel operators achieve an average profit of about \$7 per bed per night. Based on the sale of 13 million nights nationally in 2003 total profit is estimated to be \$91 million in that year. Company tax on this profit is estimated to be about \$32 million.⁴¹

⁴¹ Based on the company tax rate of 36%

6. RISKS FOR BACKPACKERS, COMMUNITY AND GOVERNMENT

Key Issues

Illegitimate Backpacker Accommodation:

- Is likely to breach regulations governing fire and building safety and public health.
- Increases the risks of personal and property damage from fire and other causes for backpackers using such accommodation as well as the local community living adjacent to such premises in apartment buildings or local streets.
- Increases the liability of local and State government, particularly if injury or damage arises from breaches of regulations which councils and government agencies are expressly or impliedly responsible for enforcing. This can especially arise where compliance with such regulations is part of development consent or premises are being used for purposes prohibited by development consent.
- Is estimated to have denied the Commonwealth Government up to \$14 million in gross GST receipts in 2003 of which about \$5.2 million was generated in NSW.
- Disrupts the amenity of communities living adjacent to such premises in apartment buildings or local streets because of noise pollution, poor garbage disposal, and limited respect for strata title rules governing common areas. Costs associated with dealing with these activities can add to the burden on council ratepayers and owners of strata title dwellings as well as reduce the value of property investment in such areas.

6.1 Overview of Risks

There is a variety of accommodation used by backpackers. Not all are safe and contribute to the quality of the tourism experience in Australia and NSW. Unsafe accommodation represents risks to the health and lives of backpackers, and amenity and security of neighbouring properties.

These possibilities also create liabilities for local government where unsafe accommodation causing injury to persons and property is operated contrary to development approvals and/or local government has a duty of care to enforce development conditions.

Where these risks lead to adverse perceptions about the safety and quality of the backpacker experience in Australia and/or NSW it can threaten to reduce the significant value of backpacker tourism to the national and NSW economy and Commonwealth and NSW government revenue.

Accordingly, the objective of policy should be to ensure that there is appropriate regulation to reduce the prevalence of unsafe accommodation.

6.2 Accommodation Market

The two most prevalent types of accommodation used by backpackers are backpacker/hostel accommodation and rented accommodation being a house, apartment, flat or unit. Reflecting growth in backpacker tourism, the total number of beds in backpacker/hostel accommodation increased nationally and in NSW by about 70% between 1999 and 2003.⁴²

In 2003 there were about 48 500 beds available nationally to backpackers in backpacker hostels. Of these about 10 800 or 22% were available in NSW.⁴³ On average international backpackers spent about 39% of their total nights in Australia in 2003 in backpacker/hostel accommodation. By comparison domestic backpackers spent about 66% of their total nights in this kind of accommodation.⁴⁴

On average international backpackers spent about 26% of their total nights in Australia in 2003 in rented accommodation.⁴⁵

The preference for these two main types of accommodation by backpackers reflects the fact that in general terms, backpackers favour independently organised and flexible travel arrangements where they can meet other travellers, and engage in informal and participatory holiday and sightseeing activities.⁴⁶

For example, in the year ending June 2004 72% of backpackers travelled alone to Australia, 14% travelled with friends and 13% travelled as part of an adult couple.⁴⁷ During the same period 50% of backpackers were aged 15-24 years with 43% aged 25-44 years and 7% aged over 45. The average age of a backpacker is less than 25 years.⁴⁸

6.3 Illegitimate and Unsafe Accommodation – Risks for Backpacker and Community Safety

The illegitimate use of premises as backpacker accommodation generally arises in circumstances where residential dwellings (houses, apartments, units, flats), are used for backpacker accommodation on a commercial basis. These premises are predominately located in residential areas, rather than commercial precincts in the suburbs frequented by backpackers.

⁴² Australian Bureau of Statistics, Tourist Accommodation, Expanded Scope Collection, Australia and Tourism Indicators Australia 2002, Catalogue Number 8635.0.55.001

⁴³ Ibid

⁴⁴ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.8

⁴⁵ Ibid

⁴⁶ International Backpackers Market, Fact Sheet, Tourism Queensland.

⁴⁷ Ibid

⁴⁸ Ibid and Tourism Research Australia.

In Sydney this includes, Glebe, Ultimo/Pymont, Bondi, Manly, and Coogee. Industry investigations indicate that there are at least 150 residential premises in Sydney alone illegitimately operating as commercial backpacker accommodation. On average each premises has 3 bedrooms available and 3 beds per room totaling 1350 beds.

Legal backpacker accommodation operators are required by fire and building safety standards to arrange accommodation to provide at least 3.25 square metres per person.

In contrast, landlords or primary lessees using residential accommodation as illegitimate backpacker accommodation have a commercial interest in maximising the number of beds per room or dwelling in ways that contravene the ratios imposed on legal operators.

The safety of travellers using such premises can be compromised where dwellings host at any one time a number of backpackers that exceeds the normal threshold required to maintain fire and building safety standards applied by local and State government planning, fire and building regulations. This can arise for example where rooms include more than the permitted or reasonable number of beds and there are limited bathroom, toilet and electricity facilities.

Breaches of fire and building regulations can result in personal injury or death and property damage to the premises, adjacent property and/or communities in which the premises are located.

Poor use of premises in order to maximise the number of residents and associated rents can also lead to inappropriate public health and hygiene outcomes. This can promote vermin in the dwelling used as illegitimate backpacker accommodation as well as surrounding apartments and/or houses.

Illegitimate and unsafe backpacker accommodation generally takes two main forms:⁴⁹

(a) Free standing multi-room dwellings (residential houses or hostels) where the owner and/or primary lessee make rooms and/or beds available to backpackers.

In these circumstances owners or private/commercial lessees of these premises have not sought development approval to operate the premises as legitimate backpacker accommodation/hostel. As a result, the use of these premises as commercial accommodation for travellers is not subject to the same regulatory requirements applying to legitimate backpacker accommodation such as health and fire and building safety.

⁴⁹ Based on industry consultations

(b) Apartments, flats or units in blocks subject to strata title where the owner and/or primary lessee make rooms and/or beds available to backpackers.

Because these dwellings are generally investment properties located in apartment blocks their use is subject to regulations imposed by the owner's corporation in each building. These regulations can vary from one apartment building to another and generally do not exclude the use of dwellings by backpackers.

Any regulations prohibiting the use of an apartment block by backpackers would require consent of the majority of owners and its enforcement would rely on co-operation between the owner's corporation, appointed strata management agent and various real estate agents managing the lease of apartments. This is often difficult to achieve.

It is accepted by industry that the trademark signs that these two types of dwellings are being used for illegitimate backpacker accommodation are:⁵⁰

- The landlord or lessee of a residential dwelling subleases beds or rooms in that premises to travellers.
- No bonds are required.
- Rent may be pre-paid.
- There are no residential tenancy agreements.
- Clients are allocated beds or bedrooms on a first come first serve basis.
- The length of stay of clients can vary.
- The landlord or lessee of the dwelling may require a person to stay for a minimum period (3 months) so that the landlord or lessee can avoid breaching residential tenancies legislation.
- Accommodation is advertised through word of mouth, small advertisements at bus shelters, in shop windows, other public places and/or newspaper advertisements.

6.4 Risks and Costs for Government

The illegitimate use of premises as backpacker accommodation creates a number of risks and costs for local, State and Commonwealth Government.

⁵⁰ Based on industry consultations

6.4.1 Liability of local and State Government for Personal Injury and Property Damage

Local councils and State government agencies may be liable for damages or compensation where injury or death to persons and/or damage to property is proven to occur because premises being used as backpacker accommodation did not comply with fire, building, health or other conditions attaching to such use.

This may particularly occur where a council or agency is proven to have a duty of care under development consent conditions or other regulations to monitor and enforce those conditions which expressly or impliedly prohibit the use of premises as backpacker accommodation.

This duty of care may be express or implied by the existence of a development approval process and/or government agencies, such as the fire brigade, which are required by policy or legislation to administer the regular certification of building safety.

Depending on the scale of liability local councils may face financial difficulty or be forced to increase rates or impose special levies to fund responsibilities. Liability may also increase the cost of its insurance premiums.

6.4.2 Loss of Compliance, Rates and Stamp Duty Revenue

Both local and State government in NSW can lose revenue where owners and primary lessees of premises use their premises for backpacker accommodation but do not pay the costs of development approval for such use, or fire, building, health and other compliance certificates required for approved backpacker accommodation.

Local government can be denied appropriate rates revenue if residential premises are being used as commercial backpacker accommodation. Council rates in NSW are levied on the basis of land value, with land zoned commercial generally attracting higher rates than land zoned residential. This equates with the higher use of council services, such as garbage collection, by commercial premises. Commercial premises that provide accommodation for travellers such as hotels and hostels are often high users of such council services.

The NSW government can be denied appropriate stamp duty revenues if property transacted as residential is actually used for commercial purposes, particularly where the value of the sale or lease of the property as a commercial premises would attract a higher duty.

Where there are variations between the energy and water rates applying to residential and commercial dwellings, NSW Government utility corporations, such as Sydney Water, can be denied revenue to which they are entitled if residential premises are being used for commercial purposes.

6.4.3 Loss of Tax Revenue

Where persons use their residential premises for commercial backpacker accommodation without registering for GST and other business tax liability, the Commonwealth Government can be denied appropriate GST and company tax revenue. As net GST revenue is distributed to States and Territories, lower total GST receipts can deny the NSW Government its appropriate level of GST revenue.

Nationally in 2003 international backpackers spent a total of 30 million nights in Australia. On average backpackers spent 26% of these nights (7.8 million nights) in rented or share accommodation such as houses, apartments, flats or units.⁵¹

Industry estimates are that backpackers are charged an average of \$18 per night for rented or share accommodation meaning that total potential revenue to owners of rented or share accommodation in 2003 from backpacker use was about \$140 million.

If it is assumed that 100% of nights in rented or shared accommodation were spent in premises that are not registered for GST, then on its face the estimated gross GST loss to the Commonwealth Government was about \$14 million.

On the other hand, if it is assumed that 25% of nights (1.95 million) in rented or shared accommodation were spent in premises that are not registered for GST, then on its face the estimated gross GST loss to the Commonwealth Government was about \$3.5 million.

In the year ending June 2004 international backpackers spent a total of about 11 million nights in NSW. Based on the national average of nights spent by international backpackers in rented or share accommodation (26%), it is estimated that they spent about 2.9 million nights in such premises in NSW. Assuming that backpackers paid an average of \$18 per night for such accommodation the number of nights spent equates to about \$52 million in revenue for property owners in NSW.

If it is assumed that 100% of these nights was spent in premises that are not registered for GST, then on its face the estimated gross GST loss arising in NSW was about \$5.2 million.

Industry investigations indicate that there are at least 150 residential premises in Sydney alone illegitimately operating as commercial backpacker accommodation. On average each premises has 3 bedrooms available and 3 beds per room totaling 1350 beds. If it is assumed that these beds are occupied 85% of the year (310 nights) the total number of beds sold per year is about 418 830.⁵² On the basis that the average cost of these beds is \$18 per night the total revenue generated by this accommodation is over \$7.5 million.

⁵¹ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.8

⁵² Based on industry consultations

Given that these beds are sold as illegitimate backpacker accommodation, the owners or primary lessees of these residential premises are unlikely to be registered for GST or company tax.

In NSW government may also be denied vendor tax on the sale of a property where a person uses that property to provide illegitimate backpacker accommodation, but claims the property as a principle place of residence.

6.5 Impact on Community Amenity

As most illegitimate backpacker accommodation occurs in residential apartment blocks and houses in residential areas, the presence of such accommodation can have an extensive negative impact on the amenity and quiet enjoyment of neighbours and the community generally.

Common neighbourhood concerns arising from the presence of backpacker accommodation in residential areas include:

- Noise pollution from backpacker parties at the dwelling or in common areas in apartment blocks, as well as intoxicated backpackers returning home in the evening or early morning from clubs and pubs;
- Lack of respect for or awareness by backpackers of garbage disposal regulations in a local council area or strata title building, leading to refuse being disposed on public streets. This creates public health risks and increases the incidence of vermin in neighbourhoods. This problem is particularly prevalent in inner city areas such as Pyrmont, Ultimo, Glebe and Bondi where there is a high concentration of apartment buildings and use of them by backpackers.
- Increased wear and tear and in some instances damage by backpackers to lifts, swimming pools, gyms and other common property items and areas provided in strata title buildings. This increases the repair, maintenance and cleaning costs for property owners in strata title buildings and reduces the value of their investment.
- The contravention of rules and regulations in strata title buildings which are intended to ensure community amenity. This includes the consumption by backpackers of alcohol in common areas such as swimming pools, gyms and roof top areas. Such behaviour dissuades property owners from enjoying building facilities which their strata levies fund.
- The compromise of building security arrangements because the volume of transient persons using apartments in any given day, week or month requires the distribution of building keys and access in an unregulated way.

7. CURRENT REGULATION IN NSW

There is a range of local and State government regulations governing the development and operation of backpacker/hostel accommodation. While these regulations provide compliance parameters for legitimate backpacker/hostel accommodation, their ability to combat illegitimate and unsafe backpacker accommodation depends on appropriate enforcement by local and State government authorities.

7.1 Local Government Act 1993

The NSW *Local Government Act 1993* (LGA) defines the regulatory functions of a council (Part 7). Under Part 7 of the LGA:

- Various activities can only be carried out if the council gives its approval. Some of these approvals may also be granted as part of the development consent process under Part 4 of the EP&A Act; and
- A council can order a person to do, or to stop doing, something. Failure to obtain or to comply with an approval and failure to comply with an order are made offences under sections 626, 627 and 628 of the LGA.

Chapter 7 lists specific activities requiring council approval. These relate to structures or places of public entertainment; water supply, sewerage and stormwater drainage work; management of waste; use of community land; use of public roads and other more general activities.

However, Chapter 7 does not list the provision of backpacker accommodation as an activity requiring specific council approval and thus it cannot be relied upon to prevent illegitimate and unsafe backpacker accommodation.

7.2 Environmental Planning & Assessment Act 1979

The *Environmental Planning & Assessment Act 1979* (EP&A Act) provides councils with the power to create Local Environment Plans (LEPs) which can permit backpacker/hostel accommodation where consistent with relevant zoning.

As a result, council governance of backpacker accommodation is through the development consent process under the EP&A Act, which gives local government the power to make and enforce orders in relation to backpacker accommodation that does not comply with zoning requirements.

Section 76A of the EP&A Act specifies the kind of development that requires consent. The two types of development that require consent are:

- Local development (identified by Local Environment Plans). This includes complying development which is where an environmental planning instrument

may provide that local development that can be addressed by specified predetermined development standards.

- State significant development (identified by State or Regional Environment Plan).

Under section 54 of the EP&A Act two or more local councils (upon agreement between them) can develop joint LEPs. This means that the Act can be used to promote uniform guidelines to regulate backpacker accommodation through the development consent process.

Section 55 of the EP&A Act provides the Director-General of the Department of Planning Infrastructure and Natural Resources with the power to direct a council, or two or more councils jointly, to perform any function conferred or imposed on it or them under section 54 or any other provision of the part of the Act relating to LEPs.

Under section 121B of the EP&A Act a consent authority (a local council, or any other person with functions as a consent authority, except in relation to complying development for which a complying development certificate has been issued) can give orders to refrain or do something to comply with development consent.

In relation to the use of premises for backpacker accommodation contrary to development consent these orders can include those described in the following table.

Table 8 – Orders available under the EP&A Act to combat illegitimate backpacker accommodation

To do what?	In what circumstances?	To whom?
<p>To cease using premises for a purpose specified in the order</p>	<ul style="list-style-type: none"> ▪ Premises are being used for a purpose that is prohibited. ▪ Premises are being used for a purpose for which development consent is required but has not been obtained. ▪ Premises are being used in contravention of the conditions of development consent. 	<p>Owner of premises, or person by whom premises are being used for the purpose specified in the order</p>
<p>To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness</p>	<ul style="list-style-type: none"> ▪ Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire ▪ Maintenance or use of the premises constitutes a significant fire hazard 	<p>Owner of premises or, in the case of a place of shared accommodation, the owner or manager</p>
<p>Not to conduct, or to cease conducting, an activity on premises (being an activity that is, or is capable of being, the subject of a development consent, whether or not the activity is the subject of a development consent)</p>	<p>The activity constitutes or is likely to constitute:</p> <ul style="list-style-type: none"> ▪ a life threatening hazard, or ▪ a threat to public health or public safety, <p>and is not regulated or controlled under any other Act by a public authority</p>	<p>Any person apparently engaged in promoting, conducting or carrying out the activity</p>

To do what?	In what circumstances?	To whom?
To cease the use of a building	The use of the building: <ul style="list-style-type: none"> ▪ is not consistent with its classification under this Act or the Local Government Act 1993, and ▪ constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and ▪ (c) is not regulated or controlled under any other Act by a public authority 	The owner or occupier of the building
To comply with a development consent	The development consent is not being complied with	Owner or occupier of building. Person entitled to act on the development consent or person acting otherwise than in compliance with the development consent

7.2.1 Evidence Gathering Under the Act

With respect to enforcement of development consent or orders by council, section 124AA of the EP&A Act specifies that in any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a backpackers' hostel. Examples of circumstantial evidence include (but are not limited to) the following:

- Evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises for a backpackers' hostel,
- Evidence of the premises being advertised expressly or implicitly for the purposes of a backpackers' hostel (including advertisements on or in the premises, newspapers, directories or the Internet),
- Evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises for a backpackers' hostel,

- Evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises for a backpackers' hostel.

This section reduces the burden of proof for any prosecution for illegal use of premises as a backpacker hostel.

This section was introduced in 2002 following a Legislative proposal from the Independent MP for Manly, David Barr. In his speech on the legislative proposal Mr Barr said:

“Councils control backpacker accommodation in a number of ways. For example, in Manly the backpacker establishments are required to prepare, together with their development applications, a management plan that illustrates how they intend to minimise the impact of the facility and amenity on the surrounding area.

They must enter into an agreement with council that allows council to inspect the premises twice a year and pay a fee of \$150 for that purpose. Those inspections are to ensure that the establishments comply with the conditions of consent and the regulations governing health and amenity, good management and number of guests per room. The establishments must ensure that the premises are maintained in a clean and safe manner in accordance with the local government authority

The council's environmental health officers inspect the premises and make sure that the maximum number of guests per room is clearly marked in each room and is not exceeded. They ensure that the bathroom and toilet facilities are adequate and that shared facilities are provided. They also check the adequacy of the laundry facilities, cleanliness and maintenance, the provision of waste management and the reasonable provision of disability access.

It is important that these regulations are in place to prevent tragic situations, such as the breakout of fires and injury to occupants. The legal operators must comply with these conditions. They play the game; the illegal operators do not. This legislation will assist councils to close establishments that do not comply. The illegal establishments often operate in a cash economy and do not pay the appropriate tax. The legal operators are at a competitive disadvantage because the illegal establishments undercut their prices by stinting on compliance with health and safety conditions”.⁵³

7.3 Building and Fire Safety

There are three main instruments that regulate fire safety:

- Building Code of Australia.
- Environmental Planning and Assessment Regulation 2000 – requires owners of commercial premises including blocks of units to obtain and advise the Fire Brigade of certified fire safety measures.

⁵³ NSW Hansard, 5 September 2002.

- Guidelines for local government and building approval bodies – advises on best practice automatic fire alarm systems.

These instruments create responsibilities and associated liabilities for local government, developers and landlords with respect to fire safety and make fire safety measures an integral part of development consent. The risk of liability would increase where a premises is being used for purposes outside the development consent.

However the instruments themselves do not directly create a regulatory environment that prevents the illegal use of premises as backpacker accommodation.

7.4 The Occupational Health and Safety Regulation 2001

The Regulation applies to all businesses regardless of the number of employees. It adopts a primarily risk management approach on the basis that employer rather than regulators are best placed to assess whether a workplace is safe and healthy. The risk management system allows the employer to use the approaches which it feels are best suited to its particular circumstances to achieve the safest and healthiest outcome.

The Regulation sets out requirements for a risk management system, but retains existing prescriptive requirements for such areas as manual handling, hazardous substances, noise control, injury reporting and OHS Committees. It requires employers to undertake hazard identification and risk assessment and to implement risk control measures for all potential hazards.

While the Regulation creates liabilities for employers operating backpacker accommodation, it does not of itself deter the illegal use of premises for backpacker accommodation.

8. OPTIONS TO IMPROVE REGULATION IN NSW

Under current regulatory arrangements the prevention of the illegitimate and unsafe use of premises for backpacker accommodation depends primarily on the commitment of:

- Local council resources to the enforcement of zoning requirements and development approvals under the EP&A Act; and
- State and local government resources to the enforcement of fire and building and safety regulations.

Both kinds of enforcement require regular physical checks of premises to establish compliance. While section 124AA of the EP&A Act permits councils to rely on circumstantial evidence in prosecutions concerning illegitimate backpacker accommodation, resources are still required to physically identify, monitor and collect evidence on the use of premises in this way.

Most local councils do not have the capacity to solely fund the required level of investigations for enforcement and therefore many premises used for illegitimate backpacker accommodation escape council notice.

The results of a survey of local councils conducted by the Backpackers Operators Association (NSW) in 2003 identifies that most councils consider that section 124AA of the EP&A Act is useful in assisting them to conduct prosecutions against illegitimate backpacker accommodation. However they also consider that more action is required to enhance their ability to investigate such accommodation.

Some of the options proposed by councils include:

- Additional powers to enter premises without notice and to require names and addresses of occupants; and
- Additional powers to compel records.

Because councils lack sufficient resources to effectively identify all existing premises that may be operating as backpacker accommodation in breach of development consent and/or fire and building safety, current regulation is a limited deterrent to illegitimate operators, such as owners or primary lessees of premises.

The Tourism and Transport Forum has also called for improved regulatory arrangements to govern against the illegal use of premises for backpacker accommodation, such as strata apartments, in its publication titled *Taking Tourism and Transport Forward: A Ten Year Blueprint*.

8.1 Options Being Considered by Local Government

There are a range of options being considered by various councils to improve the regulation of backpacker accommodation by relying on measures separate to but complementary with the development approval process.

In June 2004 Manly Council resolved to establish a working party to examine how to deliver the following solutions to address concerns about illegitimate backpacker accommodation.⁵⁴

- Ensure that advertising in the municipality for backpacker accommodation can only be for legitimate authorised premises;
- Advise all real estate agents in the municipality that leases for residential premises should prescribe the maximum number of persons who can reside in the leased premises at any one time;
- Inspect all premises advertised as backpacker accommodation that come to the attention of the Council to assess whether those premises comply with Council's development application approval; and
- Respond to restrain the use of premises for backpacker accommodation where council consent has not been granted.

Waverly Council has publicly raised concerns about illegitimate backpacker accommodation and the risks such premises pose to the safety and well being of travellers. To improve safety and deliver strategies to combat such premises, the Council has asked for greater co-operation between local, State and Federal Government, particularly because of the economic importance of backpacker tourism to each level of government and the economy generally.⁵⁵

To deliver a co-operative approach to address concerns about illegitimate backpacker accommodation Waverly Council has recommended that the NSW and Federal Government provide funding support for a centralised accommodation information and reservation service that can ensure the safety and quality of accommodation available to travellers. A similar system operates in France where only accommodation approved by authorities can participate in the system.⁵⁶

8.2 Other Options Considered in This Paper

As discussed above the enforcement of development consent is a limited deterrent against the use of premises as illegitimate backpacker accommodation because councils lack sufficient resources to physically identify and check all potential

⁵⁴ Manly Council, Short Term and Tourist Accommodation Working Party Report, 8 November 2004.

⁵⁵ Peter Moscatt, Mayor of Waverly Council, Sydney Morning Herald, November 21 2004, page 5.

⁵⁶ Consultations with Mayor Moscatt.

premises. The enforcement of fire and building safety conditions can also be diminished because of limited resources.

The challenge for government is to implement regulatory measures that provide a stricter deterrent, rely less on continuous enforcement, and/or are able to be applied because of appropriate funding.

There are a variety of ways to address these issues and improve the regulation of backpacker accommodation. These are discussed below.

8.2.1 Prohibit Advertising of Illegitimate Backpacker Accommodation

The advertising of illegitimate backpacker accommodation generally occurs in shop windows, internet cafes, public places such as bus shelters, and in the rental accommodation section of newspapers. Examples of such advertising are at Appendix A.

A practical and low cost way to prevent the illegitimate use of premises for such purposes would be to ensure that only backpacker accommodation approved by a local council can be advertised in any public place, shop, newspaper or other publication in the municipality.

The power for local authorities to enforce a ban on the advertising of unapproved backpacker accommodation can be provided via a range of means including:

- As part of Local Environment Plans (LEPs) for the whole or a part of the municipality.
- A direction by the Director General of the Department of Planning under section 55 of the EP&A Act to two or more councils to jointly include in their LEPs a ban of this kind.
- An amendment to Chapter 7 in the Local Government Act giving local councils the power to specifically regulate the advertising of backpacker accommodation.
- An amendment to the Protection of the Environment Operations Act giving local councils the power to regulate the advertising of backpacker accommodation.

In order to be an effective deterrent against the illegitimate use of premises for backpacker accommodation regulation of advertising in this way should include appropriate penalties for shop owners and publications hosting any such advertising and the owner or primary lessee of the premises being advertised.

Any restrictions on trade imposed by such a ban are likely to be outweighed by the benefits to the community associated with the promotion of safe and clean accommodation for backpacker tourists.

One possible consequence of such a ban is that illegitimate operators may be driven further underground and still operate on the basis of word of mouth. The absence of advertising may make the task of identifying illegitimate operators more difficult.

However, this risk is unlikely to be substantial enough to prevent a ban on advertising illegitimate backpacker accommodation.

8.2.2 Prescribe the Maximum Number of Persons Able to Reside in a Leased Residential Dwelling At One Time.

To ensure that leased premises are not being used as illegitimate backpacker accommodation a local council could regulate the maximum number of tenants permissible in a residential leased premises at one time.

The maximum number of persons could be determined by local councils as part of conditions on acceptable floor space to living space ratios which are currently imposed during development approval.

This approach is consistent with current regulations prescribing for safety reasons the maximum number of persons able to travel at any one time in a car, boat, bus, train, tram, plane, elevator and alike.

Regulation of this kind could be achieved via a range of means including:

- As part of a distinct permit that accompanies contracts for the sale of property (like section 149 certificates) and is included in the terms of residential property leases.
- As part of the LEP for the whole or part of a municipality.
- As a direction by the Director-General of the Department of Planning under section 55 of the EP&A Act to two or more councils to jointly include a provision of this kind in their LEPs.
- An amendment to Chapter 7 in the Local Government Act providing local councils with the power to regulate as a specific activity the maximum number of residents in a leased premises at one time.
- An amendment to the Strata Titles Act providing councils with the power to regulate the number of tenants at any one time in a premises in a strata title building. This would have particular relevance to apartment or unit complexes.

For this provision to be an adequate deterrent to the illegitimate use of premises for backpacker accommodation appropriate penalties should apply to landlords, primary lessees, strata managers, real estate agents and any other persons involved in the management and leasing of premises.

To ensure equitable access to property for genuine lessees, a regulation of this kind would need to incorporate exemptions for lessees with families that exceeded the maximum number permitted in a lease. Lessees would need to prove their eligibility for the exemption according to set criteria.

8.2.3 Increased Funding for Enforcement

One of the key issues in the effectiveness of current or new laws is an appropriate level of funding for enforcement by both State and local authorities. Appropriate funding can be delivered by various means including:

- Properly resourcing State agencies responsible for fire and building safety compliance through budget allocations from Commonwealth and/or NSW Consolidated Fund or funds hypothecated to those agencies from revenues they earn.
- Providing appropriate Commonwealth and/or NSW Government funding to local councils for enforcement purposes.
- Effectively using existing council revenues for targeted enforcement.
- A levy on registered and legitimate backpacker operators.
- A levy on users of backpacker/hostel accommodation.
- A levy on backpackers visiting Australia at the point of entry or as part of visa requirements.
- Developer contributions to the cost of enforcing regulations governing the use of premises as backpacker accommodation.

8.2.3.1 Increased Government Funding

Additional Commonwealth and/or NSW government funding for local and State government agencies to identify and prosecute illegitimate backpacker accommodation operators could be justified on the basis that backpacker tourism is a significant contributor to the national economy (about \$2.7 billion in 2003) and NSW economy (about \$797 million in 2003).

Given this level of expenditure it is arguable that for its size backpacker tourism contributes a reasonable proportion of total GST receipts to the Commonwealth government, which are distributed to NSW and other States and Territories to supplement revenue.

As a result of these contributions to the economy and government revenues, additional funding to combat illegitimate backpacker accommodation to secure the safety, quality and ongoing appeal of backpacker tourism in NSW can be viewed as a sensible investment by the Commonwealth and/or NSW government. Specific

purpose grants with attached performance outcomes could be used to guarantee the use of funding and/or the efficient use of existing council resources for enforcement related activities.

As discussed in Chapter 6, it is estimated that in Sydney alone there at least 150 residential premises (1350 beds) being used as illegitimate backpacker accommodation. If it is assumed that these beds are occupied 85% of the year (310 nights) the total number of beds sold per year is about 418 830. On the basis that the average cost of these beds is \$18 per night the total revenue generated for property owners by this accommodation is over \$7.5 million.

As these residential premises are operating illegitimately as commercial backpacker accommodation, the local councils, and NSW and Commonwealth governments are being denied a range of revenue to which they are normally entitled. This includes appropriate stamp duty, council, water and energy rates and GST and company tax revenue.

For example, as discussed in Chapter 6, it is estimated that illegitimate backpacker accommodation denied the Commonwealth Government up to \$14 million in gross GST receipts in 2003 of which about \$5.2 million was generated in NSW.

A more effective regulatory regime that has the ability to recoup this revenue can be funded by the outstanding revenue collected and/or fines imposed on property owners and/or operators for contravening development consent, fire, building health or other safety and building use regulations.

Equally where enforcement restricted the availability of illegitimate backpacker accommodation, there is likely to be a greater demand for legal backpacker accommodation which could deliver the volume of GST receipts currently denied to government as well as higher company tax receipts from legal operators where higher demand led to increased profit. The value of these receipts could be used fund improved enforcement.

This would enable a new regulatory regime to be budget neutral or at the very least represent a marginal budget cost when compared to the benefit to backpacker tourism and tourism generally.

8.2.3.2 Levies

Depending on its level, a levy on legitimate backpacker operators may lead to negative consequences for backpacker tourism such as reducing investment in the development and operation of legitimate backpacker accommodation and/or raising the cost of backpacker/hostel bed rates thereby encouraging more travellers to seek out rented and shared accommodation, including illegitimate premises.

A levy on the users of backpacker/hostel accommodation may also encourage travellers to seek out rented and shared accommodation. This may stimulate the market for unsafe and illegitimate use of premises as backpacker accommodation

and/or increase the scarcity of rental accommodation generally for the wider market of consumers.

A levy on backpackers visiting Australia at the point of entry or as part of visa requirements is likely to be difficult to enforce as it may not be clear if a traveller can be objectively categorised as a backpacker at the point of entry or visa purchase. Depending on the level of the levy it may also dissuade backpackers from visiting Australia.

8.2.3.3 Developer Contributions

Developer contributions to the cost of enforcing regulations governing the use of premises as backpacker accommodation are likely to be primarily attached to residential apartment developments. On one view the imposition of such contributions may discourage property investment in residential development and/or raise the average price of apartments.

Alternatively developers and potential purchasers (whether investors or owner occupiers) may support the levy where its use provided certainty that apartments could not be used as illegitimate backpacker accommodation. This is because the existing or potential prevalence of illegitimate backpacker accommodation in an apartment complex in areas of high backpacker use (such as Ultimo/Prymont in Sydney) can reduce the appeal and therefore sale and resale value of apartments in that complex.

8.2.4 License Backpacker Accommodation

In order to reduce reliance on the development approval process to regulate backpacker accommodation, the NSW Government could legislate to introduce a licensing system that imposed standards for accreditation as legitimate accommodation. Accreditation could be based on compliance with development consent, fire and building codes and other regulation.

A licensing system of this kind would facilitate a register of accredited accommodation and therefore simplify a council's identification of illegitimate and unsafe accommodation. This system in combination with section 124AA in the EP&A Act could enable councils to identify and prosecute illegitimate backpacker accommodation more effectively and at reduced administrative cost compared to current arrangements which require councils to rely primarily on investigation to establish the presence of illegitimate accommodation.

While licensing may create barriers to entry to the backpacker accommodation market for potential operators, the public good being served includes maintaining the safety of lives and property of backpackers and local communities in which backpacker accommodation is located, and therefore arguably outweighs any anti-competitive effects. Any anti-competitive effect is also likely to be outweighed with the benefits of preserving the reputation and appeal of backpacker tourism in Australia and NSW

which contributes significantly to the national and NSW economies (5% of national tourism GVA and employment in 2001-02).

A licensing regime is unlikely to create barriers to entry that distort the market for backpacker accommodation or lead to monopoly behaviour, as there are a range of legitimate operators already competing vigorously in the provision of backpacker accommodation.

This option is of particular benefit in regional areas where there is limited supply of accommodation to meet the demand by backpackers working there during crop harvest seasons. A licensing regime allows current operators in regional areas to declare any deficiencies in the safety of their accommodation and apply for exemptions under conditions acceptable to government.

This process allows government greater control over potential safety risks and enables property owners and government to work co-operatively to find solutions to address safety issues at minimal cost so that accommodation can continue to be provided to meet demand.

The licensing regime could be implemented via amendments to the Local Government Act 1993 to make backpacker accommodation a specific activity regulated by local government, the EP&A Act to connect development consent processes with accommodation licensing, and/or other specific legislation.

There is ample precedent of specific NSW legislation to govern or license certain activities regulated by local councils but considered important enough to be outside the scope of the Local Government Act. This kind of legislation includes the Swimming Pools Act 1992 (NSW), Companion Animals Act 1998 (NSW), Dividing Fences Act 1991 (NSW) and Impounding Act 1993 (NSW).

Penalties for operating backpacker accommodation without a license would need to be significant to deter the illegitimate and unsafe use of premises.

8.2.5 Use Current Planning Policy

In NSW the most effective current legislation used to combat the illegal use of premises for backpacker accommodation appears to be the EP&A Act. Under the Act the NSW Government appears to have the power to direct local councils to include conditions relating to the illegal use of premises in individual and joint council LEPs which govern development consent.

The NSW Government also appears to have the power to require local councils to enforce these conditions through orders served on anyone responsible for the illegal use of premises.

As a result there is an opportunity for the NSW Government to direct councils to ensure that their LEPs provide development consent conditions specifically relating to the illegal use of premises for backpacker accommodation. This direction could apply

only to councils in areas where backpackers are prevalent or alternatively on a sector wide basis.

One clear purpose for this direction could be to support the objectives of fire safety legislation which does not act to directly regulate against and prevent the illegal use of premises for backpacker accommodation.

This option would not require legislation, but relies on councils to effectively enforce development consent conditions. The ability of councils to enforce these conditions would depend on funding and resources as discussed in 6.2.1.

8.2.6 Reliable Reporting Methods

This could include self regulatory arrangements with penalties for non-compliance. For example strata managers of strata units, landlords and/or lessees could be held liable where their premises are being used as accommodation for backpackers in breach of strata or lease conditions.

Arguably these requirements could be enforced via development consent conditions for new premises. However specific regulation may be needed to impose these conditions on the use of existing premises. This may be achievable via amendments to chapter 7 of the NSW LGA and strata laws.

It is unlikely that this option alone would be sufficient to deter the illegitimate and unsafe use of premises as backpacker accommodation as it relies on physical checks by councils and State authorities, which as discussed needs greater funding support.

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