



**THE REGULATION AND RISKS OF
ILLEGAL BACKPACKER
ACCOMMODATION IN QUEENSLAND**

ISSUES PAPER

FOR BACKPACKING QUEENSLAND

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The information about illegal backpacker accommodation in this paper has been sourced from members of the Backpacking Queensland and has been relied on by Aegis Consulting Australia.

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1. EXECUTIVE SUMMARY

This report has been prepared for Backpacking Queensland, which represents the legitimate backpacker operators in the State. It examines the regulation and risks of the illegal use of shared houses, apartments, caravan parks and motels as backpacker accommodation.

1.1 Regulatory Issues That Should be Addressed

The report identifies that while there is strong anecdotal evidence about the use of shared houses, apartments, caravan parks and motels as illegal backpacker accommodation, there is a lack of solid evidence about the true extent of such illegal activity. It identifies that this poor information creates legal, political and economic risks for government and the industry because government cannot be certain that its current regulatory measures are sufficient to ensure that these premises do not cause another Childers type incident.

As a first step in determining whether regulatory measures, such as resources to identify and prosecute illegal premises, are sufficient to combat illegal backpacker accommodation it is recommended that the State Government fund Backpacking Queensland to research the true extent of illegal activity.

Regardless of the true extent of illegal activity, the report identifies that the *Building and Other Legislation Amendment Act 2002* (BOLA) is currently not effective in preventing the use of shared houses, apartments, caravan parks and motels as illegal backpacker accommodation, and permits such premises to escape the fire safety requirements which BOLA imposes on legitimate backpacker operators. This is a high risk outcome, particularly as in 2004 international backpackers spent 52 per cent of their time in accommodation not regulated by BOLA.

To ensure that all accommodation used by backpackers is regulated equally and subject to the same fire safety requirements, it is recommended that the definition of a budget accommodation building in BOLA be amended to extend to shared houses, apartments, caravan parks and motels.

The report also identifies that while BOLA is triggered by accommodation with six or more people, the *Model Local Law No.16 (Rental Accommodation with Shared Facilities) 2004* (Model Law 16) operates to require local council licensing of rental accommodation for three or more people. This means that a person accommodating five boarders (or providing five beds for backpackers) in their residential home is required to be licensed by their local council under Model Law 16, but would not be required to meet any of the fire safety standards imposed by BOLA.

Accordingly it is recommended that the threshold to trigger BOLA be reduced to three persons consistent with Model Law 16. It is considered that this threshold would capture most illegal backpacker accommodation.

As an alternative or in addition to the proposed amendments to BOLA it is also recommended that Model Law 16 be amended to apply to apartments and motels. It is considered that this would enable local council licensing and easier identification of premises which are currently illegally used as backpacker accommodation. This is likely to act as a stronger deterrent to the use of apartments motels as illegal backpacker accommodation.

The report identifies that while BOLA requires accommodation to comply with a local council's fire safety standard, Model Law 16 does not specifically impose the same condition for a license to operate rental accommodation. Thus in the absence of a local council fire safety standard both BOLA and the Model Law are ineffective in ensuring fire safety compliance in rental accommodation used as illegal backpacker accommodation.

Accordingly, it is recommended that Model Law 16 be amended to require licence holders to comply with the fire safety standards imposed on backpacker operators by BOLA or an equivalent fire safety standard.

With respect to caravan parks the report identifies that *Model Local Law No.12 (Caravan Parks) 2000* (Model Law 12) has sufficient scope to for local councils to regulate to prevent the use of caravan parks as illegal backpacker accommodation where that activity was considered to be unsafe.

However, it is recommended that the State Government amend Model Law 12 to specifically prohibit the use of caravan parks as backpacker accommodation where such activity is unsafe. This could be in addition or as an alternative to extending the definition of budget accommodation buildings in BOLA to cover caravan parks.

1.2 Risks if Government Does Not Act

1.2.1 Political Risk

The report identifies that failure of new legislation such as BOLA and the Model Law 16 to prevent a Childers type incident would create significant political risks for State Government, particularly in an environment where its long term incumbency is beginning to create public concerns about administrative and regulatory complacency.

As local government has licensing functions under Model Laws 16 and 12, and the responsibility for fire safety standards under BOLA, the community may also perceive it to be responsible for failures caused by illegal backpacker accommodation.

The regulatory loopholes identified in the report are particularly politically significant because international backpackers visiting Queensland in 2004 spent 52 per cent of their time in accommodation not regulated by BOLA or Model Law 16.

1.2.2 Legal Risk

The report identifies that 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 that are used as illegal backpacker accommodation do not comply with fire, building, health or other standards which government applies to legitimate backpacker operators.

1.2.3 Economic Risk

The report identifies that:

- ❖ A Childers type incident caused by illegal backpacker accommodation can threaten the legitimate backpacker industry which contributed between \$508 million and \$540 million to the State economy in 2004/05. This is between 0.4 and 0.43 per cent of Gross State Product in 2004/05.
- ❖ Where illegal backpacker accommodation contributes to the decline in backpacker tourism in Queensland it threatens about 7500 jobs.
- ❖ Where illegal backpacker accommodation contributes to the decline in backpacker tourism in Queensland it threatens the generation of \$52 million worth of gross GST from total spending by backpackers in the State. This is funding that is collected by the Commonwealth, but distributed to the States for service delivery including schools, hospitals and infrastructure.
- ❖ Where illegal backpacker accommodation contributes to the decline in backpacker tourism in Queensland it threatens the generation of \$10.7 million worth of company tax earned from legal backpacker accommodation in the State. This is funding that is collected by the Commonwealth, but distributed to the States for service delivery including schools, hospitals and infrastructure.
- ❖ Illegal backpacker accommodation avoids paying about \$3.8 million in gross GST and about \$9.5 million in company tax annually.
- ❖ Illegal backpacker accommodation avoids paying appropriate stamp duty, utilities charges and local council and water rates on commercial premises and therefore siphons away revenue that State and local government should receive.

2. REGULATING BACKPACKER ACCOMODATION

2.1 Government Focus on Budget Accommodation Buildings

In 2000, a fire in a hotel in the Queensland town of Childers killed 15 people, mostly backpackers. In response to this tragedy, the Queensland Government commenced the examination of budget accommodation buildings to assess their compliance with fire safety standards, and enacted the *Building and Other Legislation Amendment Act 2002* (BOLA) which requires such buildings to meet prescribed fire safety standards in two stages commencing June 2003 and July 2005.

Between the time of the Childers incident and the passage of BOLA in April 2002, the Government through the Queensland Fire and Rescue Service (QFRS) examined over 2200 buildings of which 1450 were deemed to be budget accommodation buildings.¹

Since the first stage BOLA requirements commenced in June 2003, QFRS has reportedly conducted 2500 inspections of budget accommodation buildings and found that 98 per cent of buildings comply with required standards.²

It is not clear from government reporting whether any of the budget accommodation buildings examined since 2000 have included shared houses, apartments, caravan parks or motels which Backpacking Queensland and its members are concerned provide significant backpacker accommodation contrary to the legislation governing the appropriate use of such premises.

The industry commends the Government on its efforts to ensure that legal and visible budget accommodation buildings comply with fire safety standards. However, it is concerned that current legislation and policy is ineffective in preventing the illegal use of share houses, apartments, caravan parks and motels as backpacker accommodation or ensuring that such premises comply with fire and building safety standards applied to legitimate backpacker accommodation.

2.2 Industry Focus on Illegal Backpacker Accommodation

A recent working group consisting of Queensland government and industry representatives has identified illegal backpacker accommodation as dwelling houses, units and residential flats which operate as commercial accommodation premises contrary to development approvals, local government licensing or town planning guidelines.³ This includes residential premises that are leased contrary to the requirements of residential tenancies law.

¹ The Hon MF Reynolds, Minister for Emergency Services, Hansard, 20 August 2002, p2907

² The Hon CP Cummins, Minister for Emergency Services, Hansard, 12 May 2005, p1478

³ Advice from Queensland Department of Tourism, Fair Trading and Wine Industry Development

The intentional promotion and use of caravan parks and motels as backpacker accommodation has also been identified by the government/industry working group as a specific problem.⁴

The greatest risk posed by the use of such premises as illegal backpacker accommodation is that they are unlikely to comply with fire and building safety standards. This increases the likelihood that these kinds of premises could generate a Childers type incident which may cause irreparable damage to the national and international reputation of the backpacking industry in Queensland.

2.3 Non-compliance with Fire and Building Safety

Legal backpacker accommodation operators in Queensland are required by fire and building safety standards to arrange accommodation to provide at least 2.5 square metres per person.⁵

In contrast, landlords, primary lessees or operators using residential accommodation (shared houses or apartments), caravan parks or motels as illegal 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.

Fire and building safety in Queensland for accommodation premises is governed by the *Fire and Rescue Service Act 1990*, *Building Fire Safety Regulations 1991*, *Local Government Act 1993*, *Building and Other Legislation Amendment Act 2002* (for budget accommodation), *Building Code of Australia 90 and 96*, and the *Queensland Development Code*.

Specific provisions include the following.

- The *Fire and Rescue Service Act 1990 (Part 9A)* requires the owners and occupiers of all accommodation buildings to provide usable and accessible fire exits free of obstructions.
- Where development approval imposes conditions for the provision and maintenance of fire safety installations, the *Fire and Rescue Service Act 1990 (Part 9A)* requires the owners and occupiers of accommodation buildings to provide and maintain fire protection systems (eg alarms and sprinklers), fire fighting equipment, exit signs, fire doors and a range of other features.

⁴ Ibid

⁵ Based on industry consultations

- The *Fire and Rescue Service Act 1990 (section 104E)* requires the owners and occupiers of accommodation buildings to provide a fire and evacuation plan.
- The *Queensland Development Code (Part 14)* requires the owners or occupiers of budget accommodation buildings to provide emergency lighting, early warning systems, and fire safety management plans.
- The *Local Government Act 1993* and *Fire and Rescue Service Act 1990* provide powers of entry for local government officers and fire brigade officers into budget accommodation buildings to monitor compliance with fire safety standards.
- Under the *Building and Other Legislation Amendment Act 2002*, the Queensland Fire and Rescue Service can undertake random audits of buildings and it has established a prosecution unit in Brisbane to act on non-compliance notices issued by fire officers throughout Queensland.⁶

Whilst these regulations appear to provide a comprehensive framework to address fire and building safety issues, their existence alone is not effective in preventing illegal backpacker accommodation.

This is because in choosing to use their residential premises, caravan parks or motels as illegal backpacker accommodation, the owners and occupiers of such premises have no incentive to ensure that their operations comply with these fire and building safety requirements. Unlike declared budget accommodation buildings, such as hostels or boarding houses, illegal backpacker accommodation operating from shared houses, apartments, caravan parks and motels are not usually readily identifiable.

Thus the effectiveness of current regulations to prevent illegal backpacker accommodation and ensure the compliance of such premises with fire safety standards depends on the capacity of State and local government to practically identify, investigate and prosecute such premises.

2.3.1 The Extent of Non-Compliance

Government may be confident that 98 per cent of budget accommodation buildings, such as hostels and boarding houses comply with BOLA and therefore reduce the risk of a Childers type incident. However the risk of a Childers type incident is equally proportional to the prevalence of illegal backpacker accommodation, and the degree to which such accommodation does not comply with fire and building safety requirements.

Anecdotal evidence suggests that there may be over 30 illegal backpacker hostels in Cairns and about 12 in Brisbane.⁷ Backpacking Queensland considers that illegal accommodation is a widespread problem in high tourist areas, and that in many

⁶ Ibid

⁷ Advice from the Queensland Department of Tourism, Fair Trading and Wine Industry Development

regions the operation of illegal accommodation is well organised through syndicates of travel agents, night clubs, tour operators and other tourism related businesses.

Nevertheless its evidence remains largely anecdotal, making it difficult for authorities to act on in a comprehensive way. The absence of concrete information has been identified by the Queensland government and industry working party as a significant problem hindering the effective enforcement of fire and building safety compliance in share houses and apartments that provide backpacker accommodation.⁸

The lack of solid evidence about the true extent of illegal backpacker accommodation makes it difficult to judge the degree of risk from non-compliance with fire and building safety provisions, and the need for additional regulatory measures.

However, this lack of information in itself exposes local and State government to higher legal and political risk, and the industry to greater economic risk, because it reduces certainty that current regulation aimed at budget accommodation buildings is also sufficient to prevent illegal backpacker accommodation from generating a Childers type incident.

Government reports indicate that much effort has been directed to assessing the compliance of identifiable budget accommodation buildings. However, to be properly effective, this exercise should cover buildings that operate as declared hostels or backpacker accommodation and also shared houses, apartments, caravan parks, motels and other buildings that may be being used for backpacker accommodation purposes. Nevertheless, without industry and community intelligence it is unlikely that government would be able to comprehensively identify illegal operations being conducted in shared houses, apartments, caravan parks and motels.

Currently industry bodies such as Backpacking Queensland have limited resources to undertake the research required to systematically identify illegal backpacker accommodation in support of government. With appropriate resources from government, industry bodies could co-ordinate their members to undertake the field research necessary to assist government fully identify and respond to illegal operations.

Evidence would be most effectively gathered by establishing a centralised process for the backpacking industry to:

- Identify potential illegal backpacker accommodation against defined criteria; and
- Report potential illegal backpacker accommodation to a nominated State Government agency for action.

This reactive approach to illegal premises would complement the pro-active random audits by QFRS which apparently target identifiable budget accommodation buildings.

⁸ Advice from Queensland Department of Tourism, Fair Trading and Wine Industry Development

A further option is to educate other State Government agencies, such as health, to identify possible illegal backpacker accommodation in the course of their general building inspections.

2.3.2 Recommendations – Auditing Illegal Backpacker Premises

It is recommended that:

- (i) The State Government fund Backpacking Queensland to research and gather evidence of the true extent of illegal backpacker accommodation in Queensland. This could be via a centralised process where legitimate backpacker operators identify potential illegal backpacker accommodation against defined criteria; and report potential illegal backpacker accommodation to a nominated State Government agency for action.
- (ii) Subject to the findings of (i), the State Government conduct an audit of the State and local government resources currently dedicated to investigating and prosecuting illegal backpacker accommodation to ensure they are adequate.
- (iii) Where it is identified that State and local government resources are inadequate to address the degree of risk posed by illegal backpacker accommodation, the State Government allocate sufficient resources for investigation and enforcement.

2.4 Regulating Budget Accommodation Buildings

2.4.1 Overview

Budget accommodation buildings are required to comply with a fire safety regime imposed by the *Building and other Legislation Amendment Act 2002* (BOLA). The discussion below indicates that BOLA may be ineffective in requiring shared houses and apartments, caravan parks and motels to comply with the fire safety standards imposed on legitimate backpacker accommodation.

Some rental accommodation that provides shared facilities need to be licensed by local councils under the *Model Local Law No.16 (Rental Accommodation with Shared Facilities) 2004* (Model Law 16). A licensing regime at local level can be an effective mechanism to identify illegal backpacker accommodation of concern to industry and ensure the compliance of such premises with fire safety standards. However Model Law 16 does not apply to shared apartments or motels or impose fire safety obligations.

In addition to the deficiencies in each of these respective instruments, they operate inconsistently with each other and therefore create loopholes through which some illegal backpacker accommodation can escape scrutiny and the need for fire safety.

The current regulatory deficiencies and loopholes in BOLA and Model Law 16 should be addressed regardless of the true extent of illegal backpacker accommodation and whether government accepts recommendation 2.3.2.

This is because the loopholes generate regulatory ambiguity with respect to fire safety and therefore create significant legal, political and economic risks for government and the industry.

2.4.2 Building and Other Legislation Amendment Act 2002 (BOLA)

The BOLA (s.12H) requires budget accommodation buildings built or approved before 1992 to comply with fire safety standards set by their local councils via a three year two stage approach. The first stage required the installation of smoke alarms and emergency lighting by June 2003 and the implementation of fire safety management plans for all relevant buildings including those approved since 1992 (s.12Q). The second stage which commenced on 1 July 2005 requires higher safety standards for some buildings, such as structural improvements.

As discussed above the QFRS has reportedly identified budget accommodation buildings that need to comply with the BOLA obligations however it is not clear whether this includes shared houses, apartments, caravans and motels.

Given the definition of a budget accommodation building in BOLA there is little incentive for QFRS to include shared houses, apartments, caravan parks and motels being used illegally as backpacker accommodation in their investigation programmes. This is because the definition of budget accommodation building cannot be definitively relied on to bring a prosecution of shared houses, apartments, caravan parks and motels for fire safety non-compliance.

Section 12B states that a budget accommodation building is a building that provides the following type of accommodation for six or more persons:

- Boarding house, backpacker hostel or similar type accommodation;
- Hotel accommodation; and
- Accommodation for persons who have an intellectual or physical disability and require full or part time care.

This provision could not be applied to motels, even though hotels are specifically included. Equally it could not be applied to caravan parks. Arguably the phrase 'similar type accommodation' is not definitive enough to include shared houses and apartments, especially because such accommodation is generally not considered to be similar in type to hostels or backpacker accommodation.

Even if share houses, apartments, caravan parks and motels fall within the investigative net of the QFRS under BOLA, owners and occupiers of illegal backpacker premises can circumvent to application of BOLA by keeping the number of occupants below six. In many cases it is conceivable that shared houses,

apartments, caravans and motel rooms accommodate less than six people at any one time, but are provided for the specific purpose of backpacker accommodation.

To be an effective deterrent against the illegal use of shared houses, apartments, caravan parks and motels as backpacker accommodation, BOLA should be amended to specifically include these kinds of premises in the definition of budget accommodation building. This would encourage the QFRS to include such premises in their investigation programs because BOLA could then be used to bring fire safety prosecutions against such premises.

The extension of BOLA to shared houses, apartments, caravan parks and motels would address a loophole that permits such premises to provide illegal backpacker accommodation that remains undetected and avoids compliance with fire safety standards that apply to legitimate backpacker accommodation.

2.4.3 Model Local Law No.16 (Rental Accommodation with Shared Facilities) 2004

Model Law 16 is State legislation intended to encourage uniform local law making in relation to the licensing of rental accommodation where there are shared facilities. It is understood that the majority of local councils in Queensland have adopted Model Law 16.⁹

Under Model Law 16 a person carrying on a business of providing rental accommodation with shared facilities must be licensed by the local council (s.5). The council can grant a licence if it is satisfied that the premises has a development permit under the *Integrated Planning Act 1997* to provide accommodation and accommodation can be provided without significant risk to health and safety (s.7).

A local council can impose conditions on the licence (s.9) which include limiting the number of persons for whom accommodation can be provided. A standard licence condition is that a person cannot sleep in a part of the premises that has not been approved by the council as a dormitory or bedroom.

In the absence of (or in addition to) amendments to BOLA to extend its regulation to shared houses, apartments, caravan parks and motels, Model Law 16 provides an appropriate platform to regulate against the illegal use of such premises as backpacker accommodation. This is because Model Law 16 provides a licensing regime which enforces development consent and use of premises under which residential premises such as shared houses and apartments being used for commercial purposes could be investigated and prosecuted.

Model Law 16 also enables local councils to make subordinate local laws about a range of issues including requirements with which the holder of a licence must comply and conditions that must be imposed in a licence (s.31). This means it is also a

⁹ Advice from the Department of Local Government and Planning

platform for local councils to impose fire safety management requirements on all licence holders and/or fire safety conditions as part of a licence. The use of this mechanism could complement the application of BOLA.

However, Model Law 16 is currently deficient for the purposes of regulating shared apartments, motels and caravan parks. Section 4 states that Model Law 16 does not apply to:

- A hotel or motel.
- A community titles scheme under the *Body Corporate and Community Management Act 1997* (strata titled apartments, townhouses and alike).
- A private home in which accommodation is provided for less than three boarders.

An alternative to amending BOLA to regulate shared apartments, caravan parks and motels is for government to amend Model Law 16 to apply it to all these types of premises. This would facilitate a licensing regime at local level which could act as a deterrent against illegal backpacker accommodation. To complement the fire safety objectives of BOLA, Model Law 16 could also be amended to specifically oblige licence holders to implement a fire safety management plan or comply with other fire safety conditions as a condition of their licence.

A comprehensive approach by government would include these amendments to Model Law 16 in tandem with the extension of the BOLA to cover shared houses, apartments, caravans and motels.

2.4.4 Loopholes Generated by Inconsistencies in BOLA and Model Law 16

Thresholds that Trigger Regulation

BOLA is triggered if there are six or more persons in an accommodation. However, it is conceivable that many budget accommodation buildings (particularly illegal premises) host less than six people at any one time. Accordingly, many backpacker accommodation premises may escape scrutiny under BOLA even if it were amended to cover shared houses, apartments, caravan parks and motels.

By contrast Model Law 16 applies to residential houses used to accommodate more than three boarders.

This inconsistency in the application of BOLA and Model Law 16 means that at present a person accommodating five boarders (or providing five beds for backpackers) in their residential home is required to be licensed by their local council under Model Law 16, but would not be required to meet any of the fire safety standards imposed by BOLA. This appears at odds with the intention of BOLA.

The Use of Apartments Escapes Scrutiny

As discussed the current definition of a budget accommodation building in BOLA does not include apartments used as illegal backpacker accommodation.

Equally, apartment buildings and their use are specifically excluded from Model Law 16. If residential homes can be regulated by Model Law 16, it seems unreasonable to exclude apartments which are widely used as backpacker accommodation by landlords and primary lessees.

Accordingly, the illegal use of apartment buildings as backpacker accommodation remains outside the scope of the very regulation which has been enacted to protect the safety of backpackers. This appears at odds with the regulatory intention of Parliament.

Fire Safety is Compromised

The inconsistencies in the application of BOLA and Model Law 16 enable illegal backpacker accommodation to escape fire safety compliance.

For example, while BOLA requires accommodation to comply with a local council's fire safety standard, Model Law 16 does not specifically impose the same condition for a license to operate accommodation. Thus in the absence of a local council fire safety standard both BOLA and the Model Law are ineffective in ensuring fire safety compliance.

As the Model Law enables local government to impose fire safety conditions as part of accommodation licensing it could be amended to require licence holders to comply with the fire safety standards in BOLA or other appropriate standards. This would address the current loophole.

2.4.5 Recommendations – Closing Regulatory Loopholes

It is recommended that:

- (i) The definition of a budget accommodation building in BOLA be amended to extend to shared houses, apartments, caravan parks and motels.
- (ii) The threshold to trigger the application of BOLA be reduced to three persons consistent with the Model Law 16.
- (iii) Model Law 16 be amended to apply to a community titles scheme under the *Body Corporate and Community Management Act 1997*, caravan parks and motels.

- (iv) An audit be conducted by the State Government of the extent to which local councils have implemented fire safety standards upon which BOLA relies.
- (v) Model Law 16 be amended to require licence holders to comply with the fire safety standards in BOLA or other appropriate standards.

2.5 Residential Share Houses and Apartments

Backpacking Queensland has expressed concern about the use of residential share houses and apartments as illegal backpacker accommodation. The true extent of such illegal premises is uncertain and subject to the evidence gathering exercise recommended in 2.3.2.

Nevertheless the recommendations in 2.4.5 would assist to prevent the use of residential houses and apartments as illegal backpacker accommodation. This is an important outcome to support fire safety management irrespective of the extent of illegal backpacker accommodation in shared houses and apartments.

The owners or private/commercial lessees of these premises have generally not sought development approval to operate the premises as legitimate backpacker accommodation/hostel. Under the current provisions of Model Law 16 owners/occupiers of residential apartments do not need a licence to operate their premises as backpacker accommodation, and therefore local councils are hindered in their regulation of fire safety in apartments used as commercial accommodation.

It is accepted by industry that the trademark signs that these types of dwellings are being used for illegal backpacker accommodation are:¹⁰

- 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.

¹⁰ Based on industry consultations

- Accommodation is advertised through word of mouth, small advertisements at bus shelters, in shop windows, other public places and/or newspaper advertisements.

The illegal use of these premises also exists in other States, such as NSW. Earlier this year Aegis Consulting Australia was commissioned by the Australian Tourism Export Council and NSW Backpacker Operators Association to examine the potential consequences of illegal backpacker accommodation to the NSW Government and economy and recommend options for government action.

In June, the NSW Government established a taskforce to implement most of the recommendations in the Aegis Consulting report. These recommendations include:

- Prescribing the number of people who can live in a rental property at any one time.
- Prohibiting the advertising of illegal backpacker accommodation in newspapers, shop front windows and other locations used by proprietors.
- Use local government development approvals process to specifically prohibit the use of dwellings as backpacker accommodation.

There is scope to consider similar action in Queensland in conjunction with proposed changes to the BOLA and Model Law 16.

2.5.1 Recommendations – Regulating Shared Houses and Apartments

It is recommended that:

- (i) The definition of a budget accommodation building in BOLA be amended to extend to shared houses and apartments.
- (ii) The threshold to trigger the application of BOLA be reduced to three persons consistent with the Model Law No.16.
- (iii) The Model Law No.16 be amended to apply to a community titles scheme under the *Body Corporate and Community Management Act 1997*.
- (iv) Subject to the findings arising from recommendation 2.3.2, the Queensland Government consider prescribing the maximum number of people who can reside in a leased dwelling at any one time.

2.6 Caravan Parks and Motels

Backpacking Queensland has expressed concern about the use of caravan parks and motels as illegal backpacker accommodation. The true extent of such illegal premises is uncertain and subject to the evidence gathering exercise recommended in 2.3.2.

2.6.1 Caravan Parks

The operation of caravan parks is licensed by local councils under *Model Local Law No.12 (Caravan Parks) 2000* (Model Law 12). It is not clear how many local councils have implemented Model Law 12. Under Model Law 12:

- The conditions of a licence to operate a caravan park may include a limit on the number of people accommodated at the site (s.8);
- The park operator must not allow more people than permitted by the licence to occupy the site (s.18); and
- The park operator and caravan occupier must not allow more people to occupy a caravan than the caravan was designed to accommodate (s.18 and 26).

There are no provisions prohibiting the use of a caravan for backpacker accommodation and requiring fire safety measures and a fire safety management plan. However local councils can make subordinate local laws to support the implementation of Model Law 12 including (s.44):

- The criteria with which the management and operation of a caravan park must comply;
- The conditions that apply to a licence; and
- Accommodation appropriate to a caravan park.

There would appear to be sufficient scope in Model Law 12 for local councils to regulate to prevent the use of caravan parks as backpacker accommodation where that activity was considered to be unsafe. This could be by way of licence conditions, or subordinate laws imposing operation criteria on park owners.

Alternatively the State Government could amend Model Law 12 to specifically prohibit the use of caravan parks as backpacker accommodation where such activity was unsafe. This could be in addition or as an alternative to extending the definition of budget accommodation buildings in BOLA to cover caravan parks as recommended at 2.4.5.

Local and State Government would need to ensure that any licence conditions or legislative amendments preventing the use of caravan parks as backpacker accommodation included public goods that outweighed any potential anti-competitive effects.

To be sure of the need for regulatory changes it is likely that both State and local governments would need to be satisfied that the use of caravan parks for illegal

backpacker accommodation is a significant problem. The information required for a judgement in this regard may be provided by the actions recommended at 2.3.2.

2.6.2 Motels

Minimum requirements for motel construction are contained in the *Building Code of Australia* which also sets out space requirements, fireproofing and requirements for the placement of fire alarms and equipment.

There are also requirements under the *Fire and Rescue Service Act 1990* and the accompanying *Building Fire Safety Regulation 1991* which set limits on the number of occupants in a motel as a function of the number of beds in each room; fire appliance requirements, placement and signage and evacuation implementation and training for staff.

Local councils require motels to be licensed although few councils appear to have adopted discreet Local Laws governing motel operations other than those contained in State Government legislation covering health and food services.

An option for the State Government is to extend the definition of budget accommodation buildings in BOLA to motels. As an additional or alternative measure it could amend Model Law 16 to apply it to motels which are specifically excluded from the law at present.

Applying Model Law 16 to motels would enable local councils to impose licence conditions preventing the unsafe provision of motels as backpacker accommodation and ensuring fire safety measures and management plans. This is particularly if the recommendations at 2.4.5 are accepted.

2.6.3 Recommendations – Regulating Caravan Parks and Motels

It is recommended that, subject to the information obtained by recommendation 2.3.2:

- (i) Model Law 12 be amended to specifically prevent the use of caravan parks as backpacker accommodation where it contravenes fire safety.
- (ii) Model Law 16 be amended to apply to motels consistent with the intention of BOLA to apply to premises being used for backpacker accommodation.
- (iii) These recommendations be implemented in conjunction with recommendation 2.4.5.

3. OVERVIEW OF THE RISKS IF GOVERNMENT DOES NOT ACT

Regardless of the true extent of the illegal backpacker accommodation, even a single Childers type incident can have significant consequences for the tourism industry and State economy. The risk of this kind of incident is increased by the presence of regulatory ambiguities and inconsistencies governing fire and building safety highlighted in Chapter 2.

Because current regulation does not ensure the same standards of fire safety management and building use across budget accommodation, shared houses and apartments, caravan parks and motels it undermines the effectiveness of government's efforts to minimise the potential of another backpacker tragedy.

Failure of new legislation such as BOLA and the Model Law 16 to prevent a Childers type incident would create significant political risks for government, particularly in an environment where its long term incumbency is beginning to create public concerns about administrative and regulatory complacency.

As local government has licensing functions under Model Laws 16 and 12, and the responsibility for fire safety standards under BOLA, the community may also perceive it to be responsible for failures caused by illegal backpacker accommodation.

A range of legal risks are also manifest for both State and local government if regulatory complacency can be proven.

The regulatory loopholes identified in the report are potentially politically and legally significant because international backpackers visiting Queensland in 2004 spent 52 per cent of their time in accommodation not regulated by BOLA or Model Law 16.

Illegal backpacker accommodation also siphons away revenue which rightfully belongs to State and local governments. This is a particular concern in the current environment where government must seek operational savings and prevent revenue leakage to afford the capital expenditure to which it has committed, without risking a budget deficit.

These risks are discussed in more detail in Chapters 4 to 7.

4. LEGAL RISK FOR GOVERNMENT

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 standards which government applies to legitimate backpacker operators.

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.

5. RISKS TO BACKPACKER AND COMMUNITY SAFETY AND AMENITY

5.1 Types of Risk

Breaches of fire and building regulations inherent in illegal backpacker accommodation 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.

Illegal backpacker accommodation in shared houses and apartments in residential areas, 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 tile building, leading to refuse being disposed on public streets. This creates public health risks and increases the incidence of vermin in neighbourhoods.
- 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.

6. RISKS TO BACKPACKER TOURISM GROWTH

6.1 Overview

Travel by international and domestic backpackers is a significant and distinct part of the Australian tourism market.

Tourism Research Australia (TRA)¹¹ 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.

The market significance of backpacker tourism can be judged by growth in volume and average nights spent in Australia.

Current analysis indicates that the number of international backpackers visiting Queensland has declined over the last five years despite a national increase, but the average time they spend in the State has increased in line with the national average.

6.2 Backpacker Volume

The declining number of backpackers visiting Queensland is not reflective of national trends which demonstrate a growth in backpacker tourism both within its market and compared to general tourism.

¹¹ From 1 July 2004 TRA incorporated the former Bureau of Tourism Research

6.2.1 National Growth ¹²

In 2003 there were 468 000 international and 475 000 domestic backpackers. In 2004 the number of international backpackers increased to 482 012 or 10 per cent of all international visitors.¹³

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.

Between 1999 and 2005, the number of international backpackers visiting Australia increased by an average annual rate of 1.6%.¹⁴

6.2.2 Queensland Growth

Between 1999 and 2003 Queensland has been the second most popular destination in Australia for international backpackers after NSW.¹⁵ In 2004 about 62 per cent (299, 227) of all international backpackers to Australia visited Queensland. This remains the second highest rate of visitation after NSW.¹⁶

However between 1999 and 2003, Queensland has experienced negative growth in international backpacker tourism. During this period the annual average growth rate of international backpacker tourism in Queensland was negative (-) 0.8 per cent. The number of international backpackers visiting the State in 2003 was 3 per cent less than in 1999.¹⁷

By comparison during the same period the annual average annual growth rate in NSW was 3.2 per cent and in Victoria it was 5.1 per cent. The number of international backpackers visiting NSW was 13 per cent higher in 2003 than 1999 and in Victoria it was 19 per cent.¹⁸

Queensland's negative growth in international backpacker tourism could be attributed to a range of factors including:

¹² Tourism Research Australia, Backpackers in Australia, 2003 Niche Market Report and Australian Bureau of Statistics, *Overseas Arrivals and Departures: January 2002*, ABS Catalogue 3401.0 (Australian Bureau of Statistics, Canberra, 2002)

¹³ Tourism Queensland, International Backpackers Market, December 2004

¹⁴ Tourism Queensland, International Backpackers Market, December 2004

¹⁵ Tourism Research Australia, Backpackers in Australia, 2003 Niche Market Report,p12

¹⁶ Tourism Queensland, International Backpackers Market, December 2004

¹⁷ Tourism Research Australia, Backpackers in Australia, 2003 Niche Market Report,p12

¹⁸ Ibid

- Poor experiences with accommodation.
- Increased costs.
- Competition from other tourist destinations, such as those selling on price not quality of experience.
- Limitations imposed by travel packages and/or airfares.
- Adjustment of travel patterns due to world events.

6.2.3 Impact of Illegal Backpacker Accommodation on Growth

In this context, another Childers type incident would arguably exacerbate the decline in backpacker tourism in Queensland. The risk of this is increased where illegal backpacker accommodation is readily available.

If illegal backpacker accommodation is easily available its affordability relative to legal backpacker accommodation is likely to be appealing to travellers. For example in Cairns industry figures indicate that the average price per person for legal backpacker accommodation is \$22 per night. By comparison the average cost of a room in a shared house used by backpackers is about \$12 per room per night.¹⁹

Between February 2004 and February 2005 bed occupancy rates for legal backpacker accommodation across all of Queensland's primary backpacker tourism regions declined by between 0.5 and 7.8 per cent or an average of 2.5 per cent.

The average decline in bed occupancy rates is far greater than the average decline in backpacker tourism volume over the last five years (0.8 per cent). Whilst the reporting periods for this data are different, the downward trends are similar. Arguably the higher decline in bed occupancy rates (only legal operators are measured) can be explained by the increased use of illegal backpacker accommodation such as shared houses, apartments and caravan parks.

While it would be imprecise to conclude that the occupancy rates of apartments and caravan parks are fully at the expense of legal backpacker accommodation, it is reasonable to expect that there is some leakage from the latter to the former where cost encourages backpacker travellers to switch accommodation styles.

The use by backpackers of illegal accommodation is not attributable to a lack of available beds in legal accommodation.

Reflecting growth in backpacker tourism, the total number of beds in backpacker/hostel accommodation increased nationally and in Queensland by about 70% between 1999 and 2003.²⁰

In 2003 there were about 48 500 beds available nationally to backpackers in backpacker hostels. Of these about 15 756 or 32% were available in Queensland.²¹ On

¹⁹ Backpacker industry assessment

²⁰ Australian Bureau of Statistics, Tourist Accommodation, Expanded Scope Collection, Australia and Tourism Indicators Australia 2002, Catalogue Number 8635.0.55.001

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.²²

On average international backpackers spent about 26% of their total nights in Australia in 2003 in rented share house or apartment accommodation.²³

6.3 Average Length of Stay

The average length of stay by backpackers in a State is significant because it is the primary contributor to their level of expenditure while in that State.²⁴

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 value for expenditure.

Backpacker accommodation needs to be safe, high quality and affordable to preserve the desire for travellers to stay for an extended period of time in any location.

6.3.1 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 per cent of the total number of nights spent by international visitors, even though backpackers represented about 10 per cent of the total number of international visitors.²⁵ On average backpackers spent 64 nights in Australia compared with 23 nights for other international tourists.²⁶

Between June 2000 and June 2004 the number of nights spent by international backpackers in Australia increased by a national annual average rate of 4.6%.²⁷

6.3.2 Queensland Growth

The growth in average nights spent by backpackers in Queensland exceeds national growth rates.

In the year ending December 2004 international backpackers spent an average of 29.2 nights in Queensland. This was the highest of any State and has grown from an average of 23.5 nights in 2000.

²¹ Ibid

²² Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.8

²³ Ibid

²⁴ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.4

²⁵ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.3

²⁶ Ibid

²⁷ Tourism Queensland, International Backpackers Market, Fact Sheet, p.1-5

In the year ending December 2004 international backpackers spent a total of 8.73 million nights in Queensland or 26.8 per cent of total nights spent by backpackers in Australia.²⁸

Between June 2000 and June 2004 Queensland experienced an increase in the annual average number of nights spent by backpackers in the State. Table 1 below illustrates the comparison in this growth between Queensland, NSW and Victoria.

Table 1 – Number of backpacker nights spent in Queensland compared to NSW and Victoria: June 2000 – June 2004²⁹

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

7. RISKS TO THE ECONOMIC CONTRIBUTION OF BACKPACKER TOURISM

7.1 Overview

Where travellers become concerned about the safety of backpacker accommodation in Queensland because of a particular incident or general perception about the prevalence of poor quality and unsafe illegal accommodation, backpackers may choose to avoid Queensland and/or reduce the time they spend in the State.

Lower numbers of, and less time spent by, backpackers in Queensland reduces the contribution their expenditure makes to the State economy. This outcome would be inconsistent with the objectives of the Queensland Government’s Tourism Strategy currently being developed.

Nationally, in 2004 backpackers represented 10 per cent (482,012) of all international visitors to Australia. They spent a total of \$2.35 billion and stayed an average of 64 nights. Their average expenditure per trip was \$4876 or \$76 per night.³⁰ By comparison other international visitors spend about \$2 272 per trip.³¹ Based on actual expenditure by international backpackers and projected spending by domestic

²⁸ Tourism Queensland, International Backpackers Market, December 2004

²⁹ Ibid

³⁰ Tourism Queensland, International Backpackers Market, December 2004

³¹ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.5

backpackers (using 2003 data)³² the total amount of backpacker expenditure in 2004 is estimated to be about \$2.7 billion.

Between June 2000 and June 2004 the level of expenditure by international backpackers visiting Australia grew by an annual average rate of 7.5%.³³

The economic value of backpacker tourism to Queensland can be calculated in a number of ways.

7.2 Backpacker Expenditure as a Proportion of Total Tourism Expenditure

At a national level expenditure by international backpackers in 2004 (\$2.35 billion) was 20 per cent of the total expenditure by all international visitors (\$11.36 billion).³⁴

In the year ending March 2005 Queensland received 2.1 million international visitors who spent a total of \$2.7 billion.³⁵

If it is assumed that, consistent with proportional expenditure at a national level, 20% of this expenditure was by international backpackers, they contributed \$540 million to the Queensland economy in 2004.

7.3 Backpacker Expenditure by Visitor Volume and Nights Stayed

In 2004 international backpackers spent an average of \$76 per night during their trip. In that year international backpackers visiting Queensland stayed an average of 29.2 nights in the State.³⁶ This equates to an average spend by each international backpacker visiting Queensland of \$2219.

In 2004, 62 per cent (299 227) of all international backpackers visited Queensland.³⁷ Based on their average expenditure, this equates to a \$508 million contribution to the Queensland economy.

7.4 Backpacker Expenditure as a Proportion of Gross State Product

In 2003-04 Queensland's Gross State Product (GSP) was \$124 billion.³⁸ Based on the calculations in paragraphs 4.1 and 4.2, international backpacker tourism contributed between 0.40 per cent and 0.43 per cent of GSP in 2003-04.

³² Ibid

³³ Tourism Queensland, International Backpackers Market, Fact Sheet, p.4

³⁴ Tourism Queensland, International Visitor Expenditure in Australia, 2004

³⁵ Tourism Queensland, Tourism Facts and Figures, 20 July 2005

³⁶ Tourism Queensland, International Backpackers Market, December 2004

³⁷ Ibid

³⁸ Queensland Treasury, Office of Economic and Statistical Research 2005

7.5 Employment Generation

Nationally, it is estimated that total tourism employed 536 000 people in 2003-04. Of this, backpacker tourism is estimated to generate about 5 per cent (about 28 000 jobs) of total tourism employment.³⁹

Total tourism in Queensland employs about 150 000 people.⁴⁰ If the national percentages are applied it is estimated that about 5 per cent or 7500 tourism jobs are generated by backpacker tourism.

This does not include the jobs generated in service industries supplying the tourism sector. 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.⁴¹

7.6 Government Revenue

Illegal backpacker accommodation impacts on local and State government revenue in the following ways:

- ❖ Where it creates safety risks and leads to a decline in backpacker tourism it can reduce GST receipts on backpacker expenditure which are collected by the Commonwealth Government, but distributed to State Governments. Losses in GST receipts reduce the total amount able to be distributed to States.
- ❖ Because illegal operators rely on cash payments and are generally unregistered for GST, they avoid paying GST collected by the Commonwealth Government and distributed to the States.
- ❖ Where it creates safety risks and leads to a decline in backpacker tourism it can reduce corporate tax receipts from legal backpacker accommodation which is collected by the Commonwealth Government, but forms part of consolidated revenue used to fund a range of measures including State Government programs for health, schools and infrastructure. Losses in corporate tax reduce the total amount able to be distributed to States.
- ❖ Because illegal operators are not incorporated and rely on cash payments they do not pay corporate tax which is collected by the Commonwealth Government, but used to fund a range of measures including State Government programs for health, schools and infrastructure.

³⁹ Tourism Research Australia, Backpackers in Australia 2003

⁴⁰ Tourism Queensland, Tourism Facts and Figures, 20 July 2005

⁴¹ Tourism Research Australia, Backpackers In Australia, 2003 Niche Market Report, p.6

- ❖ Where residential premises are being illegally used for commercial purposes, the State Government is denied appropriate stamp duty and energy charges.
- ❖ Where residential premises are being illegally used for commercial premises local government is denied appropriate council and water rates and licence fees.

7.6.1 National GST Revenue from Total Backpacker Expenditure

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).

The Commonwealth Government estimates that it allocated \$61.4 billion in GST revenue to the States and Territories in 2004-05.⁴² As discussed above⁴³ total expenditure by backpackers in 2004 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.

This figure can be reduced by 25 per cent to reflect the average net GST paid by service providers and a further per cent 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 2004 was about \$190 million. This is about 0.3 per cent of total GST revenue distributed to the States in 2004-05.

7.6.2 Risk to GST Revenue Earned from Backpacker Expenditure in Queensland

The Commonwealth Government estimates that in 2004-05 it distributed about \$7.3 billion of total GST revenues to Queensland.⁴⁴ As discussed it is estimated that backpackers spent between \$508 – 540 million in Queensland in 2004, or an average of \$524 million. If it assumed that this expenditure includes GST, then on its face the value of GST is about \$52 million.

If this figure is reduced by 30 per cent the estimated value of GST generated in Queensland by backpacker expenditure in 2004 was about \$36 million. This equates to about 0.5 per cent of the total GST revenue distributed to Queensland in 2004-05.

Where illegal backpacker accommodation contributes to the decline in backpacker tourism in Queensland it threatens the generation of \$52 million worth of gross GST or \$36 million worth of net GST in the State.

⁴² Australian Treasury, Commonwealth Budget 2005-06, Budget Paper 3

⁴³ See reference 25

⁴⁴ Australian Treasury, Commonwealth Budget 2005-06, Budget Paper 3

Risk to GST Revenue Earned from Legal Backpacker Accommodation in Queensland

In 2004 international backpackers spent a total of about 4.25 million nights in backpacker or hostel accommodation in Queensland, which is about 48 per cent of total nights spent by international backpackers in the State.⁴⁵

Industry estimates are that a bed in hostels and backpacker accommodation in Queensland costs an average of about \$22 per night. Based on the total number of nights spent by backpackers in such accommodation (4.25 million nights) it is estimated that legal backpacker accommodation earned about \$93.5 million in the State in 2004. The GST of this total revenue is about \$9.3 million.

The provision of backpacker accommodation is a low margin business with average costs about 70 per cent of turnover.⁴⁶ Thus while the GST on total revenue is \$9.3 million it can be discounted by 70 per cent to estimate net GST paid by accommodation providers. Accordingly net GST revenue on the sale of backpacker and hostel accommodation in 2004 in Queensland is estimated to be about \$2.7 million.

Where illegal backpacker accommodation contributes to the decline in backpacker tourism in Queensland it threatens the generation of \$9.3 million worth of gross GST or \$2.7 million worth of net GST from legal backpacker accommodation in the State.

7.6.3 Total GST Not Paid by Illegal Backpacker Accommodation in Queensland

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 Queensland Government its appropriate level of GST revenue.

In 2004 international backpackers spent about 4.5 million nights (52 per cent of total nights) in Queensland in accommodation that was not a registered hostel or backpacker accommodation. This may include share houses, apartments, and caravan parks. Industry estimates are that backpackers are charged an average of \$12 per night for rented or share accommodation⁴⁷ meaning that total potential revenue to owners of rented or share accommodation in 2004 from backpacker use was about \$54 million.

If it is assumed that 75 per cent of backpacker nights (3.2 million) in rented, shared or other accommodation were spent in premises that are not registered for GST, then on its face the estimated gross GST loss was about \$3.8 million.

⁴⁵ Tourism Queensland, International Backpackers Market, December 2004

⁴⁶ Based on industry consultations

⁴⁷ Based on industry consultations

7.6.4 Risks to Company Tax Earned from Legal Backpacker Accommodation in Queensland

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

The industry estimates that for legal operators the average costs per bed sold are about 70 per cent, leaving them with an average gross profit of about \$7 per bed per night. Based on the sale of 4.25 million nights in Queensland in 2004, total profit for legal operators is estimated to be about \$29.7 million. Company tax on this profit is estimated to be about \$10.7 million.⁴⁸

Where illegal backpacker accommodation contributes to the decline in backpacker tourism in Queensland it threatens the generation of \$10.7 million worth of company tax earned from legal backpacker accommodation in the State.

7.6.5 Company Tax Not Paid by Illegal Backpacker Accommodation in Queensland

It is unlikely that illegal operators have a cost margin of 70 per cent. This is because they can maximize the use of each room in their premises beyond regulations governing legal operators and do not provide services beyond a bed or room. For example it is common for 9 or more backpackers to share a house.⁴⁹

Accordingly it is estimated that illegal operators have an average cost of 30 per cent per bed sold.

In 2004, 4.5 million nights were spent by international backpackers in shared houses, apartments, caravan parks and other premises that were not a registered hostel or backpacker accommodation. As discussed above the average cost of a bed in such premises is about \$12 per night.

Assuming that 75 per cent of these nights (3.3 million) were spent in premises that should be but are not registered for corporate tax, and that illegal operators earned a profit of about \$8 per bed sold, total profit for illegal operators is about \$26.4 million. Unpaid company tax on this profit is estimated to be about \$9.5 million.

⁴⁸ Based on the company tax rate of 36 per cent

⁴⁹ Based on industry consultations

7.6.6 State Government Stamp Duty and Utilities Revenue Not Paid by Illegal Operators

Residential premises illegally used as commercial backpacker accommodation avoid paying the appropriate rates of stamp duty and utilities charges. This is because rates for residential premises are generally lower than those for commercial premises.

The absence of definitive statistics about the extent of shared houses and residential apartments being used as illegal backpacker accommodation makes it difficult to quantify the loss of stamp duty and utilities charges to the State Government.

Quantification may be possible if the Government accepts recommendation 2.3.2 regarding the gathering of information about the extent of illegal backpacker accommodation.

Stamp Duty

In Queensland stamp duty on business property transfers and use is higher than the duty on the transfer and private use of residential property. There are also a range of concessions provided to home owners rather than investors.

This means that dwellings purchased for residential purposes, but used for commercial purposes such as houses and apartments providing illegal backpacker accommodation avoid paying the applicable higher rate of duty.

Some common examples are discussed below.

Mortgage Duty is charged at 40c per \$100 or part thereof of mortgage value. However, home borrowers are generally not charged on the first \$70 000 – a saving of \$280. When mortgages are refinanced this concession is expanded to the first \$100 000 – a saving of \$400.

Transfer Duty is charged on a range of transactions involving the transfer of assets. For a business this includes transfer of management rights, goodwill, licences, business names or real property. This is charged on a sliding scale of between \$1.50 to \$3.75 per \$100 or part thereof. For home buyers, the duty on the property transfer is charged at a concessional rate of \$1 for each \$100 or part thereof for the first \$300 000.

Lease duty is payable when a lease is signed or renewed and is charged on the rent payable for the term of the lease at 35c for each \$100 or part thereof. There is no lease duty payable for a lease on a dwelling which is not used for carrying on business or a commercial venture.

Land Tax is paid once the relevant threshold has been reached. An individual may be liable for land tax if the total unimproved value of the freehold land owned by that

person as at 30 June 2005 is equal to or greater than \$450,000. No land tax is payable on a principal place of residence.

A company, trustee (including trustee/s of deceased estates), or an absentee, may be liable for land tax if the total unimproved value of the freehold land owned as at 30 June 2005 is equal to or greater than \$300,000.

Land tax for an individual owner with property valued at \$450 000 would be \$400; Whereas tax on a company for the same land would be \$3 750.

There is a new exemption for caravan parks where 50% of the sites are available for use for residential purposes for periods of 6 weeks or more. This complements the existing concessions on retirement villages.

Utilities Charges

Power charges differ according to whether they are applied to business or residential use. Residential use (Energex tariff 11) is charged between 19.767c and 11.979c per kWh depending on level of use. In contrast commercial use (Energex tariff 20) is charged between 15.125 and 13.200c per kWh, depending on level of use.

7.6.7 Local Government Rates and Licence Fees Not Paid by Illegal Operators

General council rates and water rates for commercial premises are higher than residential premises. Where residential premises are used as illegal backpacker accommodation they avoid paying the appropriate council rates and therefore deny local government revenue it should legally receive.

The table below illustrates the variation in council and water rates applicable to residential and commercial premises. These rates are based on those applied by Brisbane City Council.

Charge type	Charge for domestic use (Category 1)	Charge for business use (Category 4 includes caravan parks, guest houses and hostels)
General Rates	0.4780c/\$	0.6236c/\$
Water Charges	89c per K1	.97c per K1
Sewerage Charges	\$357.36 pa	\$357.36 pa plus Pedestal charge of at least 314.24 per pedestal Charge increases with number of pedestals

Illegal backpacker accommodation also denies local councils the appropriate licence fees generally payable by backpacker accommodation. For example, average annual licence renewal fees for backpacker hostels are \$29.80 per person with a minimum charge of \$285.