

**Submission
No 191**

**ADEQUACY OF THE REGULATION OF SHORT-TERM
HOLIDAY LETTING IN NEW SOUTH WALES**

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Position: Executive Officer
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The Chair
Committee on Environment & Planning
Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir

Inquiry into the adequacy of the regulation of short-term holiday letting in NSW

The Owners Corporation Network of Australia Limited (OCN) is the peak body representing residential strata and community title owners and occupiers. Strata is the fastest growing form of residential property ownership in Australia. Over half the new dwellings to be built in our metropolitan areas over the next decades will be strata titled.


Short term letting is of course most prevalent in these desirable locations, so the growth of short term letting raises increasingly important questions over property ownership and governance.¹

OCN is uniquely positioned through its members to understand the impact of short term letting in long term residential strata buildings. Based on their experiences, as well as overseas experiences, OCN opposes short term lettings, that is, tenancies of less than 3 months in class 2 buildings. The attached submission details the reasons for OCN's stance on this issue.

OCN welcomes this Inquiry and is happy to engage with Committee on any aspect of this submission, and to develop solutions to the issues identified.

To close, I will share the question posed by one Sydney CBD executive committee member expending an enormous amount of time, effort and owners' money to stop this illegal practice in their building: Is the government going to retrospectively remove my rights? If so, will the government compensate me/owners who have purchased a home in a building deemed long term residential in good faith?

Sincerely



Karen Stiles
Executive Officer

¹ City Futures Research Centre 'Strata Data' Issue 4, October 2011

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OCN Submission

Inquiry into the adequacy of the regulation of short-term holiday letting in NSW

Before making specific comments, OCN wishes to point out that the terms of reference should be extended to include:

1. all forms of short term letting. This includes not just holiday lettings, but any short term letting that targets corporate visitors, students and others requiring accommodation for less than three months, and
2. all forms of multiple occupancy letting, whether or not they are for less than three months.

This is critical as all these letting arrangements have a detrimental impact on permanent residents and their strata communities. Fostering a sense of community is fundamental to creating a cooperative living environment that encourages respect for neighbours and the common property. This in turn maintains property values and minimises the cost of repairs and maintenance (levies).

In this regard, short term letting is contrary to everything the government aims to achieve in the reform of the strata laws – the Strata Schemes Management Act 2015.

1. The current situation in NSW and comparison with other jurisdictions

The State of New York prohibits rentals for stays of less than 30 days in Class A buildings. An investigation by the New York State Attorney General ([here](#) and Separate Attachment) found that 72% of units used as private short term rentals on Airbnb appeared to violate the law.

The report also found that Commercial Operators (“hosts”) accounted for a disproportionate share of private short term rentals by volume and revenue – 6% of hosts earned 37% of the annual income (Figure 5). A single Commercial User—the top New York host on Airbnb during the Review Period—controlled 272 unique units and received revenue of \$6.8 million. This individual received 2% of all New York host revenue for private stays (Figure 6).

2. The differences between traditional accommodation providers and online platforms

Licensed short term accommodation providers, such as hotels, Bed & Breakfasts and Farm Stays are highly regulated to protect visitors, particularly in the event of an emergency. Fire safety requirements are more rigorous for short term accommodation because visitors are not familiar with the building, increasing the difficulty of escape and risk of injury or death.

3. The growth of short-term and online letting, and the changing character of the market

Private Short-Term Rentals in NY experienced explosive growth from 2010 to 2014.

Private short-term bookings in New York City on Airbnb registered more than a tenfold increase. The associated revenue also spiked, nearly doubling each year.

Private Short-Term Rentals Displaced Long-Term Housing in Thousands of NY Apartments.

In 2013, more than 4,600 units were booked as short-term rentals through Airbnb for 3 months of the year or more. Of these, nearly 2,000 units were booked for a cumulative total of 6 months or more—rendering them largely unavailable for use by long-term residents. Notably, the share of

revenue from units booked as private short term rentals for more than half the year increased steadily, accounting for 38 percent of each figure by 2013.

Numerous Short-Term Rental Units Appeared to Serve as Illegal Hostels.

NY law does not permit commercial enterprises to operate hostels, where multiple, unrelated guests share tight quarters. In 2013, approximately 200 units in New York City were booked as private short term rentals for more than 365 nights during the year, indicating that multiple transients shared the same listing on the same night, as they would in an illegal hostel. The 10 most-rented units were each booked for an average of about 1,900 nights in 2013, with the top listing accepting 13 reservations on an average night.

4. The economic impacts of short-term letting on local and the state economies

Unrealised Tax Revenue

Operators and hosts of short term letting are unlikely to pay hotel bed tax, income tax, or GST.

Lost Investment in Infrastructure

Another impact on the economy is the reduced attractiveness of cities with large scale private short-term letting to overseas investors, that is, large hotel operators.

Welcoming plans by the Pontiac Group to restore 'The Sandstones' in Bridge St, Sydney, Carol Giuseppi, chief executive of Tourism Accommodation Australia (TAA) warned "The new investment in our city is threatened by the spiralling increase in unregulated short-term accommodation – some within a few hundred metres of the sandstone buildings – which are operating contrary to strata, council and other rules. Investors in Sydney need to be confident that their hotel properties will be able to operate on a level playing field. [Article](#) (also Annexure 1).

Lost opportunity for jobs creation

Illegal short-term letting creates very few new jobs, unlike the established accommodation providers this practice is likely to discourage.

5. Regulatory issues posed by short-term letting including customer health & safety, land use planning and neighbourhood amenity, and licensing

Health & Safety

Class 2 buildings are built to Building Code of Australia (BCA) requirements not designed for short term occupancy (Class 3). For example class 2 buildings are exempt from having illuminated green EXIT signs to indicate the location of a fire escape (BCA E4.7) (Annexure 2).

Residential apartment buildings are exempt from NSW Work Health and Safety Act 2011, whereas Class 3 buildings would be required to adhere to WH&S regulations.

Short term occupants in a Class 2 building would be unfamiliar with the layout of the building and be at greater risk of injury or death in an emergency. Short term letting providers also promote **overcrowding**. See attachment for Air BNB listing for 6 occupants in a 2 bed room apartment (Annexure 3).

Class 2 building emergency escape routes are designed for a specified number of occupants. A significant number of apartments with occupants beyond the design criteria puts at risk the safety of occupants in the event of excessive demand of emergency egress.

There would also be no central register (strata roll) of residents to assist in identifying the missing or dead in the case of an emergency such as the Bondi Junction gas explosion.

6. The impact on long term residents of short-term letting in their building

Allowing checkerboard short term tenancies results in the overall degrading of amenities and capital values, resulting in increases in levies. It is short term profiteering with a long-term cost. Experience of OCN members who have had short term occupants in their class 2 buildings have highlighted many issues including:

- Excessive wear and tear on common property with increased usage
- Increased repair and maintenance costs – Maestri Towers (see item 8. below) is saving \$1.3m *per annum* in administration costs since short-term letting ceased. This levy burden is borne by all owners, and is grossly unfair to owners acting legally and responsibly.
- Breach of building security – ever changing strangers often have little regard for building security and etiquette. Compliance with fire standards and ordinary safety procedures, such as locking doors, are ignored
- compliance with fire standards and ordinary safety procedures, such as locking doors, are ignored
- Excessive noise, including late night parties and loud music
- Drunken behavior
- Garbage disposal issues
- Excessive water use
- Overcrowding
- Violations of by laws, including visitor parking restrictions
- Peak hour demands on lifts at checkout time
- Strata insurance is designed for class 2 buildings with long term residents. Short term letting increases the risk profile of class 2 buildings which could prejudice the Owners Corporation in the event of a major claim.
- Strata contents and landlords insurance is designed to cover long term residents. See Insurance Council of Australia November 2014 media release (Annexure 4). What will happen in the event of injury or death of a short-term occupant? Will the owners corporation – including responsible owners - be sued for damages? Lot owners have unlimited liability.
- The level of threat/intimidation/bullying/harassment of owners attempting to prohibit illegal activities can be extreme/obscene

The physical and financial cost to owners and, in particular, voluntary executive committee members of protecting the common property of their building from the ravages of illegal short-term letting is enormous and unconscionable. The cost of obtaining legal advice, NCAT, Council and Supreme Court applications etc in human and financial terms are incalculable.

7. The impact on Affordable Housing

Short term letting puts greater pressure on availability of long term residential stock, which in many areas of metropolitan Sydney is in great shortage.

Bridgeport in Bridge St, Sydney, short term letting peaked at 58 of 163 residential lots. Maestri Towers in Kent St, Sydney peaked at 205 out of 384 residential lots being short term let.

Reference is made to comments made by the then Planning Minister, Brad Hazzard, in Hansard, 21 November 2013 regarding the critical shortage of residential accommodation (Annexure 5). See also Leichhardt property long term and short term letting fees (Annexure 6).

8. Other related matters.

In ***Dobrohotoff v Bennic*** (2013) NSWLEC 61 (the “Dobrohotoff Case”):

The relevant local environmental planning instrument, the *Gosford Planning Scheme Ordinance*, did not contain a definition of short term holiday rental accommodation. As such, it was unclear as to whether the use of Ms Bennic’s property in this manner was prohibited (and, therefore, in breach of the *Environmental Planning Act 1979* (NSW)). Justice Pepper held that the use of Ms Bennic’s property meant that the property could not be classified as a ‘dwelling house’

...because it could not be fairly said, looking at its use as a whole...that, as a matter of fact, the property was being occupied in the same way that a family or other household were in the ordinary way of life would occupy it. A tenancy granted to persons who are residing in a group situation for periods of a week or less for the purpose of bucks nights and hens nights, parties or for the use of escorts or strippers, is, in my opinion not consistent with the use or occupation by family or household group in the ordinary way of life, and therefore not consistent with the use of the property as that of a dwelling house.

.... Furthermore, when considering the first limb of the definition of dwelling, regard must be had to the notion of domicile contained within it, and the critical element of permanence. Inherent within the term domicile is, as a long line of authority in this jurisdiction has established, the notion of a permanence home or at the very least a significant degree of permanence of habitation.¹

This determination had the effect of rendering the use of Ms Bennic’s property prohibited within the relevant residential zone (as it was not identified as being otherwise permissible) and Ms Bennic was found to have breached Section 76B of the *Environmental Planning Act 1979* (NSW).¹

In ***Council of the City of Sydney v Oaks Hotels and Resorts (NSW) No.2 Pty Limited (No 2 re Maestri)*** [2011] NSWLEC 235 (7 December 2011) Oaks Hotels and Resorts were ordered to stop operating short term serviced apartments in contravention of the development consent:

Orders

1. Accordingly, the court orders:
 1. The respondent (by itself or its agent) is restrained from 1 January 2012 from using the premises situated at and known as 'Oaks Maestri Towers', 298-304 Sussex Street, Sydney NSW ('the Premises') for the purposes of 'serviced apartments' ('the said Purpose') unless and until development consent for such use is granted pursuant to the [EPA Act](#) and such consent is in force.
 2. The respondent (by itself or its agent) is restrained forthwith from:
 - (a) advertising or holding out the Premises or any part of them as available for the said Purpose; and
 - (b) easing or licensing the Premises or any part of them for the said Purpose unless and until development consent for such use is granted pursuant to the [EPA Act](#) and such consent is in force.
3. The respondent pay the applicant's costs of these proceedings as agreed or assessed.
4. The applicant has liberty to apply on three days notice.

¹ <http://www.millsoakley.com.au/happy-holidays-stratum-and-short-term-holiday-accommodation-in-byron-shire-council-and-beyond/>

9. Regulatory Response Required

In the context of strata schemes regulation should take the following form with a requirement:

1. That development consents for strata schemes state expressly whether or not Short Term Letting is permitted
2. That the definition of Short Term Letting be clarified so that it encompasses
 - a) all lettings for periods of less than 3 months, together with
 - b) all lettings which do not have a dominant residential purpose
3. That the Strata Schemes Management Act 2015 be amended to permit the making of by-laws specifically to control the manner in which lots in a residential strata scheme are let or sublet.
4. That the Strata Schemes Management Act 2015 be amended to permit an owners corporation right of access to lots for the purpose of ascertaining that their use is compliant with any relevant planning instrument or the scheme's by-laws, in a manner similar to the way access can be obtained to maintain common property.
5. That s.258 of the Strata Schemes Management Act 2015 extend the obligation to provide details of lessees and sublessees to owners' agents and that the address for service provided for the tenant be a permanent residential address, not that of the owner's agent. The accuracy of such information is essential to the effective control of Short Term Letting. And to identifying people in the building in the case of an emergency.
6. That the Strata Schemes Management Act 2015 be amended to state that the use of a lot for purposes other than as permitted by the relevant planning instruments is an offence rendering both the owner and any tenant liable at law, together with any agent acting with knowledge.

In the context of short term rentals *where they are legally allowed to operate*, in order to qualify as a legitimate short-term rental, the property must abide by a strict set of requirements. It must:

- contain a bathroom and kitchen within the unit
- not be currently be a rent stabilized or rent controlled unit
- not receive any type of subsidy for affordable housing
- have an evacuation diagram posted for guests in case of an emergency
- have smoke detectors located in each room
- be covered by sufficient liability insurance, and
- The operator must pay all appropriate state sales and occupancy taxes
- The operator must register with Council

Further, there needs to be very clear planning requirements that limit the number of properties which may be utilised as short-term rentals.

Under a registration process, the individual would register with their local Council for a fee and attest to a standard of operation that:

- guest registration records will be kept
- no illegal activity or public nuisance will be permitted
- specific building code occupancy limits will be followed
- cleaning procedures will be followed between guests, and
- the name of a local contact person shall be provided to all guests.

Two complaints that lead to findings two separate violations will lead to complete revocation of the operator's registration.

Violations include (1) failure to abide by any of the above provisions, including those attested to in the registration, (2) operating without properly registering with Council, and (3) making any false, misleading or fraudulent statement on the registration.

