

2 April 2020

The Hon Brad Hazzard MP
NSW Minister for Health
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Minister

COVID-19 Residential Apartment Communities

The Owners Corporation Network of Australia is the peak body representing the interests of owners and residents in residential strata communities. On 19 March 2020 OCN raised concerns about transient occupation in residential apartment buildings during the COVID-19 pandemic, facilitated by rental broker platforms like Airbnb, HomeAway, Tujui.

On 31 March 2020, the OCN received advice from the NSW Government that *Public Health (COVID 19 Restrictions on Gather and Movement Order 2020 30 March 2020*, will have the effect of stopping short term rentals.

Regrettably, OCN cannot concur with that interpretation. Independent legal advice to OCN is that:

.... there is nothing in this order that prevents people short-term letting their properties, or people moving in to short-term lets during this time. In fact, there is an express exemption from the restriction on public gatherings for any gathering that may be necessary when moving to a new residence. In addition, no part of this order applies to restrict movements within apartment buildings, which are private spaces not public spaces. Even the restriction on operating pools and gyms is a restriction on public pools and gyms, not private.

While the effect of the Public Health (COVID 19 Air Transportation Quarantine Order 2020 and Public Health (COVID 19 Maritime Quarantine) Order 2020 (28 March 2020) will be to prevent future travellers from overseas staying in short term rental accommodation in residential buildings, it does not address the self-isolation or general behaviour of the existing population of overseas travellers, 'backpackers' and Australian residents in occupation or seeking to move into these unprotected and un-regulated environments among permanent residents.

It is a serious concern to residents, strata agents and building managers that this market is able to continue during COVID-19. There are known issues about the behaviour of transient occupants in

Thanks to our premium sponsor

STRATA |
PLUS

residential areas and apartment communities. There is also known evidence of community transmission and asymptomatic carriers. The residential strata environment is one of close proximity. Indeed, the entire strata sector is calling on government for guidelines that address the specific environment of residential apartment buildings generally, which is attracting increasing media attention.

It is also no surprise to OCN that the areas of Waverley, Northern Beaches and the City of Sydney have been publicly identified in the data and that, sadly, 'backpackers' have been singled out in the media as a source of community transmission. In addition to youth hostels, the CBD, Waverley and Northern Beaches have the highest concentration of "Airbnb apartments" in NSW. The letting arrangements can be a day, two days, or a week. It involves multiple hosts in a single building with multiple cleaners, linen changes and visitors to short stay "guests". The market has fragmented and several platforms are operating in the Australia residential sector, making the ability to use non-legal means more difficult.

It is common for more people to stay than are booked, there is no on-site manager and no ability to manage the situation to reduce risk to legitimate residents. Yet the platforms continue to advertise apartments that explicitly invite excessive occupation, shared laundries and access to apartment building swimming pools. The promised removal of listings by Airbnb (a single platform) of premises that use the words 'quarantine', does not address this issue as all listings, including substandard premises, remain available for bookings despite clear illegality.

I must reiterate that the normal pattern of occupation has been disrupted by COVID-19 and residents are now working from home, children are home from school, and these apartment buildings have a significant number of older and elderly people who are especially vulnerable. These apartment communities are also home to people with mental and physical disabilities, and with co-morbid conditions.

The intensification of the building use increases the foot traffic and use of all common property is further elevated by the additional load of transient occupants, who have no connection to the resident population. It is without doubt that the expectations and behavioural patterns of a significant portion of short stay renters is very frequently at odds with the security, and standards of the residential population for whom their apartment building is their home and who do not have an alternative housing option.

The intention and objectives of the Government are clear but the application to residential strata sector generally is incomplete, especially in respect to strata property and strata facilities. It is also inconsistent in its application with respect to travel and to local transmission between regional and rural communities on the one hand and densely populated apartment communities on the other.

We note that the most recent Public Order includes an explicit reference to travel to regional communities where, in fact, a person may reside in a freestanding house separated from neighbours and with no shared common property. OCN fully endorses and supports your efforts to prevent transmission to regional and rural communities and this includes travel to residential strata schemes in coastal areas. But importantly for OCN, the Order remains silent on the internal transient movement of people into "Airbnb apartments" even in high density areas, and, in fact inadvertently creates an incentive to do so.



In our respectful opinion, without directly addressing the short-term rental 'industry' there is real risk that the Order will be insufficient to achieve the desired result. It is also unclear whether in its current form the Order is sufficient to trigger police powers where breaches of social distancing and social gathering rules occur on the common property of a residential strata scheme (apartment building). This leaves the Government and police in a place of uncertainty, and at risk of potential future litigation.

In light of the foregoing, OCN asks that you bring clarity to the situation for residential strata schemes across NSW in city, regional and rural communities and consider exercising your executive power under section 7 of the *Public Health Act 2010* and give clear direction that:

vacation/short stay rentals such as Airbnb, are prohibited from making new reservations and cannot accept new guests for check-in from 2 April 2020, [for a period to be specified in the order].

Further, when Public Health Orders are issued in relation to premises, we recommend that Government is explicit that this includes premises that are part of a residential strata scheme. Similarly, if an Order relates to facilities, that the common property of a residential strata scheme or community association (including gyms, pools, spas, community rooms) is explicit. This will remove uncertainty; it will prevent internal disputes within these communities which are managed by volunteers and already under pressure, and it will ensure that the Government's public health objectives are achieved. OCN is concerned that this is not the case at present. It will also put the matter of police powers beyond doubt.

If you decide to exercise your executive power in this way, the owners corporations, strata agents and building managers will be able to communicate with the entire owner's group and residential tenants. It will enable building managers to address transient occupation in the buildings they manage and raise the level of protection for their staff. It will reduce risk of community transmission and relieve the mental health burden and stress that is currently being experienced many residents.

It is our strong view that a person (other than a nurse or doctor or other emergency worker) who requires accommodation should do so in a hotel or in a commercially owned and operated serviced apartment facility or other licensed regulated facility, but not paid for, by Government.

In relation to matters of governance, the Public Health Orders have had the effect of preventing many strata schemes from functioning normally, especially large schemes in high density areas such as Darlinghurst and Parramatta. This further exacerbates the difficult governance of apartment buildings, which is the legal responsibility of the entire owner group. The decision-making on issues such as cleaning protocol, facilities, common property, contactless deliveries and communications is therefore also weakened at a time that clear responsible management is most required.

Specifically, the power of owners corporations to prevent the use of apartments in their own scheme for transient short-term stays will not commence until 10 April 2020. The new section 137A, *Strata Schemes Management Act 2015* (NSW) clarifies that the owners in general meeting may pass a by-law banning investor owners from directly short-term letting. This was passed in anticipation of changes to the planning system, which have not yet commenced. It does not deal with tenants on (presumed) long-term residential leases subletting, or resident owners short term letting for what may in fact be most of the year. This provision was adopted by Government to



prevent residential apartments being used as 'quasi-hotels', a reality that heightens the amenity, nuisance and hazard risk to all residents at all times and most especially during COVID-19 pandemic.

Finally, the Code of Conduct for the Short-Term Rental Industry was due to commence on 10 April but has been postponed until after COVID-19. This regulatory framework was initiated in response to known patterns of behaviour that breach the right to quiet enjoyment of property, including causing a hazard and nuisance to residents. In our view, it is beyond doubt that transient occupation among permanent residents in the context of a potentially fatal and highly contagious virus is an unacceptable public health risk which is worsened in an environment that cannot be properly managed.

In the context of the COVID-19 pandemic, the postponement of the Code of Conduct means that owners corporations, strata agents, strata committees and building managers are unable to even require a 'Host' to notify the scheme that a lot is being used for short term letting. This is entirely inconsistent with the governance of such schemes, in which all owners and residential tenants must be recorded on the strata roll. It denies the barest essentials necessary for the governance of the common property and undermines their ability to protect themselves. The inability to manage an apartment building properly during a pandemic increases the risk to residents of community transmissions by transient occupants and all the associated contractors.

The OCN and the entire residential strata sector, including strata managers, building managers and strata lawyers are keen to support your efforts and ensure that public health objectives are achieved. The residential strata sector is not a 'property service', the apartment buildings are the private property of all owners and it is also a network of residential communities, some of them housing thousands of people, and we are acutely aware of the vulnerability of the entire community to COVID 19.

I would happy to provide you with more information or discuss any aspect of this submission and look forward to your considered response. Your staff can contact me directly on 0432 618 937 or Executive Officer, Karen Stiles, on 0418 232 476.

Yours sincerely,

Jane Hearn BA LLB GAICD
Deputy Chair
Owners Corporation Network of Australia Ltd
M: 0432 618 937
E: janeearn2010@outlook.com
W: www.ocn.org.au