

Short Term Letting The Case for the NSW Register

Background

In June 2018, the NSW Government announced changes to the planning system which, if implemented, will mandate that short term letting (STL) is permissible in all residential premises in all zones and locations across NSW.ⁱ

The policy removes from Local Councils their power to prohibit STL via the Local Environmental Plan. The only restriction will be a 180 day cap on "Un-hosted" STL in premises located in the Greater Sydney Area. There will be some standards that have to be met such as occupation limits and fire safety measures. The premises cannot be used for illegal purposes such as a brothel or drug distribution.ⁱⁱ

The changes have been driven by the growth of rental broker, Airbnb. Airbnb's business model depends on skirting residential zoning and promoting a low-key image of "home sharing". Many Hosts are commercial operators and there are thousands of non-professional "Hosts" who do not see STL as a commercial activity with taxation implications and regulatory obligations.

The uncontrolled growth of STL via the global platforms has created the imperative that all residential premises used for STL be registered. The alternative is for Local Councils to introduce registration at a local level to fund their enforcement activities under the amended State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

NSW Short Term Letting Register

The requirement to register the premises and have an ID number would ensure platforms and agents can verify that the "Host" is the owner of the property or has authority from the owner to list the premises; that it is not being offered for STL in breach of a by-law, and that regulatory standards are met.

The registration of all premises would enable:

- local councils, fire, and health authorities to identify premises and enforce regulatory standards, including for public safety, and the 180 day cap.
- fire safety authorities to prioritise audits of residential apartment buildings where there is a risk of overcrowding and high STL activity is present;
- Owners Corporations to enforce by laws and reduce risks to other residents;
- identification of owners, hosts, platforms, agents and STRA Guests;
- investigations into illegal activities such as brothels and drug dealing.

The Taxation Gap – the Black Market in Residential Tourism

There is serious international concern that internet platform businesses are facilitating a black-market in goods and services.ⁱⁱⁱ The Australian Taxation Office (ATO) estimates that in 2016 there were 2 million individual taxpayers who reported rental income of \$42 billion and/or claimed rental expenses totalling \$45 billion.

The Register will support efforts by Federal and State agencies to assess income tax, and apply land tax and capital gains tax more accurately. Properties owned by foreign non-residents will be easily identified and the collection of the annual vacancy fee can be facilitated through the Register.^{iv}

Stakeholder Views

It is only Airbnb that is actively opposed to the Register in NSW, which it claims is expensive red tape promoted by lobby groups with a vested interest.^v In contrast, domestic holiday letting businesses, real estate agents, local councils, and other platform businesses support a Register and ID number to be used in all advertising.

There is strong community benefit in supplying much-needed data to support planning for housing supply and local tourism strategies. The Register will also connect thousands of “non-professional” “Hosts” to the proposed mandatory Code of Conduct for the Short-Term Rental Accommodation.

Conclusion

NSW is out of step with international trends in the regulation of “Airbnb style letting”. The registration of premises used for STL is common in comparable jurisdictions for regulatory purposes. The industry cannot regulate itself. OCN believes there will be no compliance without enforcement and the public benefit of a Register far outweigh the small cost to the thousands of “Hosts” who have chosen to be part of this “industry”. The Parliament has already adopted the necessary amendments and the Register should be established at the outset as part of any new regime.^{vi}

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i The Coalition is by-passing the *Environment Planning and Assessment Act 1979* (NSW) and will declare STL an “exempt and complying development” under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to override residential zoning and consent conditions.

ii *Explanation of Intended Effect: Short Term Rental Accommodation Framework*, NSW Department of Environment and Planning, October 2018.

iii *Tackling the black economy, A sharing economy reporting regime*, The Treasury, 2019, p.5.

iv The annual vacancy fee applies to properties let for periods of less than 30 days.

v In New York, Airbnb is resisting an order to disclose the identity of Hosts and transaction data. In Florida, Airbnb is litigating to prevent the Miami Beach Council from enforcing its regulations that requires the display of a registration number that proves the legality of the listing.

vi Subparagraph 54B (2)(c) *Fair Trading (Short Term Rental Accommodation) Act 2018* (NSW) (unproclaimed).