

NSW Department of Planning, Housing and Infrastructure

Submission to public consultation on short and long-term rental accommodation

The Owners Corporation Network of Australia Limited (**OCN**) is the peak independent consumer body representing residential strata and community title owners. OCN thanks the NSW Government for the opportunity to contribute to the review of regulation and supply of short and long-term rental accommodation in NSW.

Introduction

In 2018, short-term letting saw tremendous growth across NSW, primarily through short-term letting platforms Airbnb and Stayz. The number of Airbnb listings in NSW rose from 19,873 in July 2016 to 55,755 in December 2018.¹ Nearly half were apartments.²

Serious impacts on apartment communities led to an amendment to the *Strata Schemes Management Act 2015 (NSW)* ('**the Act**').³ This clarified that a strata scheme has the authority to adopt a by-law to prohibit the use of a lot for short-term letting, but only when a lot is not a principal place of residence.

OCN submits that, notwithstanding the regulatory framework implemented by the NSW Government in 2018, short-term letting is inherently incompatible with the strata model. While the current review does not consider changes to the existing policy and regulatory settings of the Code of Conduct or strata legislation,⁴ OCN reiterates that improving the regulatory framework is the best approach to achieving the outcomes sought through this review, in particular:

- encouraging owners to move property into long-term use,
- balancing the interests of short-term rental hosts and costs to housing affordability
- minimising impacts on market supply and using housing for its best available use, and
- ensuring compliance and reporting mechanisms are effective and fit for purpose.⁵

Encouraging property owners to move property into long-term use

The NSW Government acknowledges that housing affordability has deteriorated significantly.⁶ It further acknowledges the most effective way to ensure house prices and rents are affordable is through policies that encourage people to make short-term rental accommodation or underused properties (for example, holiday homes) available for long-term use.⁷

¹ Thomas Sigler and Radoslaw Panczak, 'Ever wondered how many Airbnbs Australia has and where they all are? We have the answers', *The Conversation* (online, 13 February 2020) <<https://theconversation.com/ever-wondered-how-many-airbnbs-australia-has-and-where-they-all-are-we-have-the-answers-129003>>.

² Ibid.

³ *Strata Schemes Management Act 2015 (NSW)* section 137A.

⁴ *Discussion Paper*, 19.

⁵ *Discussion Paper*, 26-27.

⁶ *Discussion Paper*, 4-5.

⁷ *Discussion Paper*, 4-5.

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The 2016 *Parliamentary Inquiry into the Adequacy of the Regulation of Short-Term Letting in New South Wales*, which formed the basis of NSW's short-term letting regulatory framework, noted that the impact of short-term letting on housing affordability and availability was compelling. However, a lack of robust measurement and data collection to that date meant that any link was anecdotal.⁸

Since then, the Australian Housing Urban Research Institute (**AHURI**) concluded that Airbnb did have an impact on the availability of private rental properties. In its 2018 survey on the impact of Airbnb on housing opportunity in Sydney and Melbourne, it found that, of those who had offered to let their property through Airbnb, 54 per cent had previously made the property available to either renters or lodgers.⁹

In the only academic study of its kind to date, an analysis by Hill et al found that Airbnb rent yields in Sydney were nearly double that in the long-term rental market.¹⁰ The study found the short-term letting prices ranged from 1.55x to 2.51x the long-term rental market, with premium prices seen in popular tourism locations.¹¹

The AHURI further identified that short-term letting accounted for between 11.2 and 14.8 per cent of rental stock in sought-after Sydney suburbs and was pushing up rents.¹² This supports international evidence which suggest that Airbnb has a significant impact on housing supply, particularly in high tourism areas, potentially halving the rental vacancy rate of a major city.¹³

These recent findings confirm that short-term letting delivers greater financial returns compared to long-term rental. Accordingly, it is clear the current regulatory framework provides little to no incentive for owners to opt for long-term traditional leasing.

Balancing the interests of short-term rental hosts and costs to housing affordability

Strata is the fastest-growing form of residential property ownership in Australia. At least one in five NSW residents now live in strata-titled properties, with over a million lots registered under 89,000 strata schemes.¹⁴ With the urgent need to combat the current housing crisis, it is likely that these numbers will increase dramatically over the short and long-term.

⁸ Parliament of NSW, *Legislative Assembly Committee on Environment and Planning Report into the Adequacy of the Regulation of Short-Term Holiday Letting in New South Wales*, [1.71]-[1.74].

⁹ Australian Housing and Urban Research Institute, *Technological disruption in private housing markets: the case of Airbnb* (October 2018), 48-49.

¹⁰ Robert Hill, Norbert Pfeifer and Miriam Steurer, 'The Airbnb rent premium and the crowding-out of long-term rentals' (2023) 61 *Journal of Housing Economics* 101935, 12.

¹¹ Ibid.

¹² AHURI (n 9) 21.

¹³ David Wachsmuth and Alexander Weisler, 'Airbnb and the rent gap: Gentrification through the sharing economy' (2018) 50(6) *Environment and Planning: Economy and Space*; Karen Horn and Mark Merante, 'Is home sharing driving up rents? Evidence from Airbnb in Boston' (2017) 38 *Journal of Housing Economics* 14; Hans Koster, Jos van Ommeren and Nicolas Volkhausen, 'Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles' (2021) 124 *Journal of Urban Economics* 103356.

¹⁴ UNSW City Futures Research Centre, *Australasian Strata Insights 2022 Report and Infographics*, 2023

<https://cityfutures.adg.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf>

Strata title allows individual ownership of part of a property ('lot'), combined with shared ownership in the remainder ('**Common Property**') through a legal entity called the Owners' Corporation. Broadly, strata schemes exist to ensure buildings and common areas within a strata-titled or community titled scheme are properly maintained for the benefit of all lot owners.

OCN maintains that short-term letting is incompatible with the strata model. The existing strata levy and unit entitlement model is based on normal residential use of a residential building and budgets are developed on that basis. The commercialisation of strata assets brings increased overheads and additional risks and costs to all lot owners in a strata scheme. This may include, for example, additional concierge services, security, increased wear and tear on common areas, greater use of elevator, gym, and pool facilities, etc. These additional costs, in turn, are imposed on other Owners in the form of increased strata levies and potentially on tenants as increased rent.

The model of Airbnb may work for a freestanding home with one occupier, but it is not compatible with the strata model with common property vested in the Owners' Corporation. Even if additional costs were to be directly attributed to particular short-term letting hosts, there is currently no strata mechanism to measure, collect, and charge those costs to individual hosts.

In a traditional hotel business model, costs are borne by the proprietor and offset against the revenue of the business. Pricing of accommodation takes this into account and often fluctuates throughout the year based on varying overhead costs to the business. Similarly, serviced apartments which operate like this impose costs to the Owner, rather than the management company.

Under current regulatory settings, all revenue is derived by the host while all costs to the building and common property are distributed among all lot Owners, often unknowingly. It is fundamentally inequitable for all lot Owners to absorb the costs of short-term letting impacts on residential schemes.

OCN therefore recommends that the following regulatory mechanisms be created:

- require short-term letting hosts to notify the Owners Corporation that they are/wish to undertake short-term letting, as well as information on the number of short-term tenants and total number of days let per year
- introduce a second schedule of strata fees, identified and charged separately to lot Owners who use their lot for short-term letting
- introduce a legislative presumption that the host is legally responsible for the conduct of their guests arising from their short-term letting activity.

Introducing the above measures will bring the advantages and disadvantages of short-term letting much more in line with long-term leasing, encouraging hosts to consider transitioning to long-term rental, while simultaneously removing the burden from other lot Owners and any tenants within those lots.

Minimising impacts on market supply

Academics have opined that there is a strong likelihood that short-term letting is taking away some properties that would otherwise be in the rental market. According to an article in the *Harvard Law & Policy Review*:

Airbnb likely reduces the affordable housing supply by distorting the housing market in two interconnected mechanisms. The first such mechanism is one of simple conversion: any housing unit that was previously occupied by a city resident, but is now listed on Airbnb year round, is a unit that has been removed from the rental market and has essentially been added to [the city's] supply of hotel rooms... More disconcertingly, conversion reduces [a major city's] already-limited supply of affordable housing. The second mechanism is "hotelization" [sic]. So long as a property owner or leaseholder can rent out a room on Airbnb for cheaper than the price of a hotel room, while earning a substantial premium over the residential market or rent-controlled rent, there is an overpowering incentive to list each unit in a building on Airbnb rather than rent to [city] residents, thereby creating "cottage hotels." This decreases the supply of housing and spurs displacement, gentrification, and segregation.¹⁵

This effect has been acknowledged in NSW, particularly in the context of the recent housing crisis debate. Dr Laura Crommelin recently commented that "housing was already unaffordable before short-term letting platforms like Airbnb came along, but it is another factor exacerbating the problem. Just because it's not the sole cause, doesn't mean it's not having a significant impact".¹⁶

As the NSW Government has acknowledged, roughly 95,000 residential properties in NSW are not used for long-term housing, 35,000 of which are attributable to dwellings used as non-hosted short-term rental accommodation.¹⁷ This is the basis on which Victoria has both increased vacancy tax¹⁸ and introduced levies on short-term letting platforms.¹⁹ Similarly, Queensland is looking to acquire vacant properties such as hotels and retirement villages to convert them into social housing.²⁰

As surmised by Dr Crommelin, "what we've seen emerge in places with light regulation is the type of short-term rental that is not just renting out a spare room a few nights a week, but one that's on the market all year-round, often run by a professional property manager with large portfolios – more like permanent tourist accommodation".²¹

¹⁵ Dayne Lee, 'How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations' (2016) *Harvard Law & Policy Review* 229.

¹⁶ Ben Knight, 'Will tighter regulations on short-term letting work?', *UNSW*, 28 September 2023 <<https://www.unsw.edu.au/newsroom/news/2023/09/will-tighter-regulations-on-short-term-letting-work-#>>.

¹⁷ *Discussion Paper*, 11.

¹⁸ Parliament of Victoria, 'Tax increase on vacant property passes parliament, 6 December 2023 <<https://www.parliament.vic.gov.au/news/economy/land-tax>>.

¹⁹ Benita Kolovos, 'Airbnb petitions Victorian government to exclude single rooms and cheap stays from new levy', *The Guardian*, 11 October 2023 <<https://www.theguardian.com/australia-news/2023/oct/11/airbnb-short-term-rental-levy-victoria>>.

²⁰ Meaghan Scanlon, 'South Brisbane hotel to transform into housing for people in need', *The Queensland Cabinet and Ministerial Directory*, 16 January 2024 <<https://statements.qld.gov.au/statements/99493>>.

²¹ Knight, (n 16).

Ensuring compliance and reporting mechanisms are effective.

OCN contends that the regulatory framework designed and implemented by the NSW Government in 2018-2021 is not currently fit for purpose.

As the *Discussion Paper* notes, the Department of Planning, Housing and Infrastructure does not have a role in statutory compliance.²² Compliance and enforcement actions are typically driven by local council, in line with other planning policies at the local level.²³ Authorised officers within councils therefore have access to the Register for this purpose.²⁴

In a strata-title setting, compliance with the short-term letting regulatory framework relies largely on reports of wrongdoing by other lot owners. However, this reality isn't considered in the current regulatory regime. For example, the Register is not publicly available for owners to ensure a suspected short-term rental accommodation in their complex is in fact being used for short-term letting and is duly registered. Short-term letting in apartment complexes could therefore be operating with little to no regulatory oversight.

As the NSW Government has acknowledged, there are currently 35,000 non-hosted short-term rental accommodations.²⁵ With nearly half of these properties being apartments,²⁶ this represents an enormous regulatory gap in the NSW short-term letting industry.

Submitted 6 March 2024

²² *Discussion Paper*, 35.

²³ *Discussion Paper*, 36.

²⁴ *Ibid.*

²⁵ *Discussion Paper*, 11.

²⁶ Sigler et al (n 1).