

**Submission
No 117**

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

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**Submission to NSW Government
Legislative Assembly
Committee on Environment and Planning**

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

Submitted by J. C. and K. J. Scott
[REDACTED]

Terms of reference:

That the Committee inquire into and report on the adequacy of the regulation of short-term holiday letting in NSW, with particular reference to:

- a) The current situation in NSW and comparison with other jurisdictions
- b) The differences between traditional accommodation providers and online platforms
- c) The growth of short-term and online letting, and the changing character of the market
- d) The economic impacts of short-term letting on local and the state economies
- e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation
- f) Any other related matters.

Background: This submission is the product of first-hand experience living in an apartment block very close to the CBD of Sydney which was originally built as owner occupied and long term leased 2-3 bedroom apartments that does **not** have Council consent to operate as serviced apartments.

Today around 12% of the apartments in the building are illegally operating as serviced apartments. Our local Council has never given consent for operation as serviced apartments with a lease period less than 3 months and have issued a 'cease and desist' letter to the Owners Corporation, which has been distributed to all owners and key agents.

WEB based operators such as AirBnB are only a part of the problem, the main instigator in this particular case is a local real estate agent who has worked their way onto the Executive Committee of the Owners Corporation – even though they do not own or live in the building. In the key positions held on the Committee (secretary and treasurer) they 'manage' all aspects of the building, installing themselves as the 'gatekeeper' handling all communication in and out of the building. The building has effectively been hijacked by clearly conflicted real estate agents running it as part of their business!

We were very pleased to see that this scenario has been addressed in the bill that has just been passed by NSW Parliament to become the *Strata Schemes Management Act 2015*. Even though non owner real estate agents becoming part of the new Strata Committee (old EC) will not be possible in future there are many lessons we have learnt in the process. In this submission we

address certain terms of reference and provide some specific recommendations based on our experience. The first of the terms of reference to be addressed is: **b) The differences between traditional accommodation providers and online platforms.**

The internet has provided an extremely efficient and effective means of advertising accommodation, both long term and short term. The new generation of smart device based advertisers such as AirBnB have absolutely no relationship with the owners of property they advertise, or other occupants. They are very much hands off, and simply take a hefty commission for a very effective advertising experience.

Local real estate agents often provide a service to owners in the same way AirBnB does, but their more detailed local knowledge and personal service make their advertising even more effective, even though it might be to a smaller client base. In many cases they advise owners to short term rent, even though it may be illegal, and possibly not in the owner's longer term financial interest. The latter a result of vested interests of the agent who is driven by the higher than normal fee from short term rentals, even though the owner may receive an overall return similar to that for long term rental (due to the often lower occupancy rate).

The responsibility for operating within the law lies with the owner and generally agents disassociate themselves with any legal questioning as they claim they are simply acting on behalf of owners. One arrangement in our building appears to be an exception – the owner leases to the real estate agent for 12 months and the agent short term lets (3 days minimum). Who is breaking the law in this instance?

With the current efficiency and ready access to the WEB for both agents and potential clients there is very little difference between traditional accommodation providers and online platforms – they are now one and the same. The real issue is that both traditional and online managing agents have identified the increased profits to be made from managing short term holiday rentals, even if the owners, and certainly any longer term renting or owner occupying neighbours do not see any advantages, and for the latter many distinct disadvantages

Recommendation 1 : A compulsory reference/registration system be established to ensure any advertised accommodation in NSW includes a reference to confirm the building hosting the accommodation is legally entitled to offer that type of accommodation.

This referencing system should be established by the State Government and administrated by local councils based on DA approvals provided by Council. Owners and occupiers in a building along with short term tenants will know at a glance if their accommodation is legal or not.

c) The growth of short-term and online letting, and the changing character of the market. There is no doubt the proliferation of short term rentals, often illegally conducted, is changing the character of the market. In our area we have seen at least one major hotel, and several commercial buildings converted to residential accommodation.

The apparent shift from Hotel style to longer term rentals is not what it might appear as many of these new dwellings will be advertised as short term serviced apartments and effectively take the place of the conventional hotel supplied beds – in many cases without the safeguards and protections for tenants from legislation that has come with many years of experience with this type of accommodation. This shift will continue even though the infrastructure of the new building may not necessarily meet the legislative requirements of the hotel style serviced apartments they replace (eg up to date occupancy roll, fire services, insurance, etc).

Recommendation 2 : The foyer of any Strata Title accommodation building should have a notice (on the legally required notice board) indicating the status/registration of the building for the type of accommodation approved by local Council

e) Regulatory issues posed by short-term letting including customer safety, land use planning and neighbourhood amenity, and licensing and taxation.

When owners buy into a building they expect the zoning and any Council consent or otherwise to be recognised and adhered to by the building owners (Owners Corporation). If it isn't they should expect that Councils will enforce the conditions they impose and legally force Owners to abide by the law through court orders – as we are all required to do in other aspects of our lives

Our personal experience is that Councils, for many reasons, find it difficult to enforce their DA conditions with action, and agents and owners alike thumb their noses at anyone expecting the law to be enforced. In our particular situation, approaches to the Office of Fair Trading, the local Council, and Law Access NSW (legal Aid) have all failed to stop the illegal operation of lot owners.

Recommendation 3: A regulatory framework be created to provide specifications of infrastructure requirements for different types of accommodation, such as fire and other services, to legally define each type of accommodation. To the extent this already exists ensure it is applied to all accommodation types

The conduct of owners and their agents who thumb their noses at the law and continue to operate illegally create a number of very significant issues for other owners in their building. Buildings are designed and built under an approved Development Application (DA) which ensures the appropriate infrastructure exists to support the approved type of accommodation.

Traditional short term accommodation, such as hotels, motels, guesthouses etc have stringent legislated requirements for guest safety, eg fire exit signage, disabled access, and the presence of onsite managers, concierge etc. There are very different requirements for traditional longer term accommodation buildings which are built to a different classification.

The class of building is a key factor in its approval and, as an example, the fire systems within the building vary considerably between different classes. Many owners do not realise that the implications of illegally operating serviced apartments may include voiding their (and their neighbour's) insurance.

An insurance policy designated for residential accommodation makes certain assumptions about included infrastructure, if, to continue the example above, the fire services are not at the more

stringent level required for serviced accommodation then an insurance policy may not provide the cover an owner might expect, or may be altogether void.

If Councils do not take the legal steps to enforce their determinations, another body (such as the Office of Fair Trading or a new body) should be tasked with this responsibility.

Recommendation 4: An existing, or new body be charged with the responsibility for providing substance and legal recourse to those affected by illegal operators, based on the established regulatory framework, to ensure individuals and organisations breaking the law might be prosecuted where appropriate.

When an owner, in their pre purchase inspection, is informed by Council that consent has not been granted for short term rentals in their building, they should not expect to see a hotel style service cart and to battle suite-case wielding tenants day after day in their foyer and lifts, and more importantly discover their insurance policy does not fully cover their building. But this is what is happening – and will continue to happen across the state if nothing is done.

When an owner has done their homework and confirmed that serviced apartments are not permitted in their building it should not be easy for other owners to change these conditions. Any changes should be defined as requiring a Special Resolution (under any NSW Strata Schemes Management Act) and therefor 25% of owners can reject such a change – this needs to be specifically imbedded into the ACT.

There are several serious omissions in both the current ACT and the bill recently passed for the new revised ACT of 2015. An example of this is the signatures required on the proxy form used to give a vote to a third party where owners are not able to attend a meeting (where there are 2 or more owners of a lot). Logic and legal process would suggest all owners should be required to sign such a proxy form, but the Strata Schemes Management Act 1969 is silent on this, and the proposed 2015 version has a very confusing clause (Schedule 1. 23 (4) and (5)), so it becomes a legal opinion as to the acceptance of proxies without the signature of all owners. Silence or confusion on such an issue is not in the interests of any party (except possibly lawyers).

In general, even though it is a 'legal' document an Act such as the *Strata Schemes Management Act 2015* should be unambiguous and clear in its meaning to an educated person, it should also not be silent on key issues.

The number of Strata based apartments in NSW is growing rapidly, the issues being raised today are significant but are the tip of the iceberg that will exist only a few years from now if no action is taken.

J.C Scott

6th November 2015

K.J Scott