

Black Economy Division  
The Treasury  
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Dear Treasury

## **SUBMISSION AUSTRALIAN TAXATION AND GLOBAL PLATFORM COMPANIES**

The Owners Corporation Network (OCN) is the peak body representing strata owners and residents and Owners Corporations across NSW. The OCN is regularly call upon by Government, Parliament, Local Councils, academics and the media for comment on strata related matters. This submission in made in response to the Treasury Consultation paper *Tackling the black economy, A sharing economy reporting regime, January 2019*.

### **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.<sup>i</sup> The policy removes from Local Councils their power to prohibit STL via a Local Environmental Plan. The only restriction will be a 180 day per annum cap on “Un-hosted” STL in premises located in the Greater Sydney Area. In all Local Government Areas outside of the GSA the ability to use a residential dwelling for STL purposes is unlimited unless a Local Council is successful in obtaining State Government approval to lower the limit to no less than 180 days for Un-Hosted STL.<sup>ii</sup> There is to be no limit on “Hosted” STL anywhere across the entire State of NSW.

These major changes to the NSW planning system release all residential dwellings to the tourist and visitor accommodation market and have been driven by the growth of rental broker, Airbnb. Numerous other platform businesses have followed Airbnb, such as Expedia, Booking.com, MisterB&B, Tripping, Gumtree, Gayshare, Flatmate Finder, Trip Advisor to name afew. In addition, there are numerous unlicensed property management, localised platforms, and agents have entered the residential tourism market. There are over 64,000 properties listed on the Airbnb platform alone, and, over 60% of these are for whole properties. The total volume of STL use of residential premises for tourism and visitor purposes is unknown.

While many “Hosts” are in fact commercial operators, platform businesses like Airbnb have also encouraged thousands of non-professional “Hosts” who do not see STL as a commercial activity with taxation implications and regulatory obligations. This misunderstanding is resulting in the loss of tax revenue and having adverse impacts on local communities, licensed tourism businesses, and Owner Corporations that bear the cost administration and management of residential strata communities.

The OCN is concerned that if a federal reporting regime only applies to major platforms, like Airbnb and Expedia, that the Australian Tax Office, and, therefore the Australian public, will be left with an incomplete revenue gathering regime. There is now a plethora of international and domestic businesses that have moved into the space opened up by their global multi-billion companies. The

overwhelming impact of their presence, and, the unsustainable violations of planning and taxation laws means that multiple regulatory and enforcement tools are needed for there to be an effective comprehensive response.

### **NSW Short Term Letting Register**

In the case of NSW, the OCN argues that the uncontrolled growth of STL via the global platforms has created the imperative that all residential premises used for STL should be registered at the State level. The alternative is for Local Councils to introduce registration at a local level to fund their enforcement activities under proposed amendments to the NSW State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This is also the position of other major stakeholders, including many local traditional tourism and holiday letting providers

The requirement to register the residential 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.

Importantly, registration of all residential premises used for STL would enable:

- local councils, fire, and health authorities to identify premises and enforce regulatory standards, including for public safety, and the 180-day cap (or another cap that applies to a particular area).
- fire safety authorities to prioritise audits of residential apartment buildings where there is a risk of overcrowding and high STL activity is present;
- Owner Corporations to enforce by laws and reduce risks to other residents;
- Owners and hosts to be identified;
- illegal activities such as brothels and drug dealing to be investigated.

### **The Taxation Gap – the Black Market in Residential Tourism**

In our discussions with NSW Government, OCN has taken the point that there is serious international concern that internet platform businesses are facilitating a black-market in goods and services.<sup>iii</sup> In particular, the 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.

In NSW, OCN is a strong advocate of a Short Term Letting Register to support Federal and State agencies to assess income tax, and apply land tax and capital gains tax more effectively. Properties owned by foreign non-residents will be more easily identified and the collection of the annual vacancy fee can be facilitated through the Register.<sup>iv</sup> The Federal Government will also be better able to investigate and assess the policy implications of permitting negative gearing being diverted to subsidise tourism businesses rather than increase housing supply.

### **Stakeholder Views**

It is regrettable that at the time of writing it is only the global platform Airbnb which is opposed to registration systems in Australia. OCN believes that the business model of this company has been based on skirting residential zoning laws, facilitating illegal sub-letting by residential tenants without consent, and encouraging the view that all STL is ‘innocuous’ activity of ‘mum and dad’ owners. The creation of a registration system would ensure that proper data is available to federal, state and local

government. It appears that the company is opposed to any measures that provide public transparency and accountability of their own business or that of their Hosts based on claims of privacy. It has publicly opposed a Short Term Letting Register in NSW, which it claims is expensive red tape promoted by lobby groups with a vested interest.<sup>v</sup> In contrast, domestic holiday letting businesses, real estate agents, local councils, and, Expedia, have all supported a Short Term Letting Register and ID number to be used in all advertising. It is good public policy, and, should be adopted without contention in NSW and all other State and Territory jurisdictions.

In addition to regulatory requirements, 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 and provide an avenue for targeted education.

Importantly, a NSW Short Term Letting Register will support Federal and State taxation authorities to collect the revenue that is currently being lost, and, ultimately offset the externalised impacts that residential tourism is having on local communities.

The registration of premises used for STL is common in comparable jurisdictions for regulatory purposes. The “industry” cannot regulate itself. There will be no compliance with regulatory standards or with taxation obligations without real enforcement. OCN believes that the public benefit to be derived from a state based Short Term Letting Register far outweighs the small cost to the thousands of “Hosts” who have chosen to be part of this “industry”. The register is an initiative that should be supported by both Federal and State taxation authorities.

If you have any question please do not hesitate to contact Karen Stiles, Executive Officer, on 02 8197 9919.

Yours sincerely,

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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. It is now litigating Paris city council to oppose registration system.