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MEDIA RELEASE

Short Term Holiday Letting Proposals will increase costs and hurt tourism

The Australian Taxpayers' Alliance, Australia's leading grassroots organisation representing Aussie taxpayers with over 50,000 members nationally, said today in its submission to the New South Wales Governments Options for Short Term Holiday Letting regulation that the negative impacts of some of the legislative proposals are far greater than any perceived benefit and the Government should reconsider its approach.

"Punitive measures such as new taxes, draconian limits on how long Australians can lend their home, mandatory development consent or a licensing regime to regulate what citizens can or can't do with their own home will hurt the sector, cost jobs and harm businesses while driving tourists to other states and impinging upon legitimate private property rights" said Executive Director Tim Andrews. "There is no reason to regulate for the isolated incident or the exception, and instead of punishing this sector the Government should be rewarding it for its positive contribution to the economy and tourism

"Short Term rental provides a much-needed addition to the tourism accommodation market, and some of these proposed options could give tourist the impression that the welcome mat has been taken in. This whole debate has focussed far too much on isolated incidents rather than the great majority of bookings which contribute to the economy and do not cause any negative impact"

"In particular, these proposals will have a serious detrimental effect on regional tourism in NSW. Short Term rental is vital in regional areas, in particular, those places that require accommodation stock numbers to be able to scale up for festivals and events. People should not have to undertake burdensome and costly red tape to rent out their homes once or twice a year. The impact of these options could see people choosing not to offer the accommodation which could be drastic for regional economies and events and festivals outside of the cities. "

"Private property rights and the concept that your home is your castle is at the very foundation of Aussie society. These proposals go directly against this fundamental principle. The small number of complaints regarding Short Term Rental Accommodation have been taken out of proportion by the government, and we urge the government against giving too much credence to a small group of professional complainers who would likely complain about their neighbours regardless of who they are.

"We strongly urge the government to reject the heavy handed over-regulation options discussed in the Options Paper & support tourism, jobs, and holidaying families"

A full copy of the submission may be downloaded at http://www.taxpayers.org.au/sthl_submission

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October 30, 2017

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RE: Short-term Holiday Letting (STHL) in NSW: Options Paper

Joint Comments of The Australian Taxpayers' Alliance (ATA) and MyChoice Australia (MC)

Introduction

1. We thank the NSW government for the opportunity to provide comments on the above-mentioned Options paper on potential regulations of the Short-Term Holiday Letting (STHL) sector. The ATA and MC are deeply concerned by many of the proposals canvassed in the NSW government's options paper and their negative implications for the STHL sector - a sector which has driven jobs, growth and consumer choice in Australia while allowing Australians to supplement their household income.
2. The ATA is a 50,000 member non-partisan grassroots taxpayer advocacy group which stands for the principles of individual freedom, civil liberties and competitive enterprise. We oppose unfair and burdensome regulations which hurt Australian consumers, jobs and businesses while threatening our economic prosperity. MC is our autonomous affiliate organisation focused on issues of consumer choice.
3. Renting rooms or whole properties for short periods of time has been common practice in Australia for over a century, especially in tourism-dependent regional economies in NSW where quality accommodation options continue to be limited.
4. The practice has grown in recent years due to the rise of the 'sharing economy' whereby individuals allow other persons to use underutilised personal capital and/or assets for a fee, often through innovative technological platforms.
5. Importantly, the role of these platforms has been to simply facilitate this practice by making it transparent and more efficient, thus providing greater protections for both the property owner and guest.
6. This facilitation and the availability and access to information connoted by the platforms also drives down transaction costs, leaving Australian and foreign holiday-makers with more spending money that can go towards patronising local establishments and/or services.
7. Governments also benefit from these facilitated transactions due to income tax revenue generated by the passive income – revenue which would be curtailed by any heavy-handed regulatory approach.

8. It is submitted that punitive measures such as new taxes, draconian limits on how long Australians can lend their home, mandatory development consent or a licensing regime to regulate what citizens can or can't do with their own home will hurt the sector, cost jobs and harm businesses while driving tourists to other states and impinging upon legitimate private property rights.
9. A number of these measures are also unfavourable for the taxpayer. They will be costly to enforce and often represent a duplication of resources whereby government agencies compensate for failing to address noise ordinances, the existing framework of laws and by-laws dealing with neighbourhood disputes or other laws which already apply to STHL and any other forms of rental accommodation by singling out STHL for additional measures. **Diverting invaluable public resources to policing STHL bans and negotiating petty arguments between neighbours, instead of enforcing laws already on the books, fails to improve neighbourhoods and connotes irresponsible spending of taxpayer funds.** For example, the city of Santa Monica, USA has imposed an STHL ban whereby its own estimate for the cost of enforcement is \$410,000.¹ Notably, **these funds will be spent punishing private property owners for the legitimate exercise of their right to use their own home rather than singling out those complicit in illegal or undesirable activities within the community.** It is unconscionable for the NSW government to consider expending taxpayer funds which could instead go towards policing resources for genuine crimes or genuine threats to the community.
10. It is submitted that sensible, non-coercive and community-focused options such as an industry code of conduct and regulation through strata by-laws offer a more sensible and less damaging framework for the sector in order to address the government's concerns and those of relevant stakeholders.

STHL and traditional accommodation

11. The ATA and MC note that STHL discounts traditional accommodation providers such as caravan parks, hotels, hostels and motels. We note that the NSW government's options paper, in attempting to justify the need to regulate STHL, references the sector's impact on "*broader industry in general*",² i.e. the capacity for STHL to threaten the profitability of alternative accommodation options by providing competition. It is submitted that this is a positive impact which ought to be welcomed. A thriving and competitive accommodation market where consumers can choose between both traditional and non-traditional options such as STHL is desirable and ultimately results in growth to the tourism sector as well as reduced costs for Australian holidaymakers already burdened by high costs of living. It is further submitted that concerns raised by traditional accommodation providers are likely to be driven by vested interests in maintaining market share through regulatory approaches which are favourable for them by imposing burdens on the competition. This is not relevant grounds for the regulation of the sector. It is therefore submitted that the NSW government should address any concerns of regulatory neutrality by reducing the regulatory burden placed on the traditional accommodation sector rather than imposing more regulations on their competitors.

¹ Kristen Lepore, "How Santa Monica Will Enforce Its Airbnb Ban," 89.3 KPCC Southern California Public Radio, <http://www.scpr.org/news/2015/05/18/51728/how-santa-monica-will-enforce-its-airbnb-ban>

² Anthony Roberts and Matt Kean, 2017, Short-term Holiday Letting in NSW, Options Paper. 4

12. Where perceived issues of consumer protection or trust are raised, we note that STHL platforms, like other sharing economy platforms, provide extensive and real-time updated information including customer satisfaction ratings, accommodation descriptions and written reviews of the properties offered by individuals on the platform. Similarly, customers receive ratings from owners and there is a strong reputation-based incentive for both parties to transact in good faith that might even be absent for transactions involving many traditional accommodation providers. In any case, it is submitted that these perceived issues connote the need for an accommodation market that offers both traditional and alternative accommodation options as consumers are able to choose the option they perceive to be trustworthy. This rationale is hence insufficient grounds for the imposition of regulations on STHL platforms.

STHL platforms, social responsibility & public profile

13. STHL in Australia is facilitated mainly by large, publicly established platforms including Airbnb, Stayz, HomeAway and Owners Direct. It is submitted that the public profile and social responsibility codes of these large platforms will make non-coercive, conciliatory regulation options more effective as it is in the interest of the platforms to work with local, state and federal government in order to address community concerns.

Size and scope of the STHL sector

14. A 2017 report commissioned by Expedia, found that the STHL sector in Australia is worth nearly \$6 billion and supports over 40,823 full-time jobs, mainly in the tourism sector.³ Notably, this figure includes the agglomeration of multiple part-time and/or casual jobs. As a result, the number of workers whose employment and income are dependent upon the STHL sector is likely to be far higher. Damaging, punitive or burdensome regulations would put the prospects and employment of these workers at risk.
15. STHL's beneficial economic and job-creating indirect impacts are consistent with international experience as well. In 2013, visitors to Coachella Valley, California, booked over a quarter-million nights at short-term rental homes, pouring more than \$272 million into the local economy and creating 2,500 jobs.⁴

STHL and the regional economy

16. Over half of the full-time jobs created by the STHL sector in Australia are within regional Australia where the tourism sector is a critical component of the economy. These provide locals with opportunities for further growth, employment and social mobility which normally require relocation to larger urban centres. It is submitted that regulations which threaten the growth, access or viability of STHL services will put these jobs and opportunities at risk and could hence severely damage NSW's tourism economy and regional economies while driving holidaymakers to other states and territories.

STHL and housing affordability

³ ACIL ALLEN CONSULTING (2017), SHORT TERM RENTAL ACCOMMODATION: ECONOMIC CONTRIBUTION ANALYSIS, MAY 2017

⁴ Xochitl Peña, "Vacation Rentals Boost Coachella Valley Economy by \$7M," Palm Springs (CA) Desert Sun, November 2, 2014, <http://www.desertsun.com/story/money/business/tourism/2014/11/02/coachella-valley-vacation-rental/18362665>

17. Claims that STHL adversely impacts the supply and availability of affordable housing to a significant degree are unsubstantiated. Conversely, it is likely that overregulation of STHL will adversely impact future supply and availability of affordable housing.
18. In rural or regional areas where affordable housing is not a significant concern and STHL is vital to ensuring sufficient availability of visitor accommodation, the potentially severe negative impacts of STHL regulation are evident. However, dire implications also exist for metropolitan regions such as Sydney.
19. Short-term letting of parts of a residence allow renting families and individuals to afford the cost of living in both metropolitan and regional areas.
20. Hotel developments often compete for the same scarce urban land as multifamily housing. Overregulating STHL would not address unaccommodated travel demand and could adversely impact future housing stock.⁵ Conversely, a thriving and robust STHL sector supports the creation and supply of housing options which simultaneously cater for both tourists and families seeking an affordable residence whereby the passive income generated from visitors enhances rather than undermines affordability for the resident renters.

STHL and consumer choice, diversity of options

21. In the case of STHL pertaining to whole properties or properties which are not the primary residence of the owner, STHL provides important utility by offering a diversity of accommodation options which traditional accommodation providers are unable to produce, and which cater to individual tastes and needs. For example, traditional accommodation providers may be able to offer hotel or hostel rooms of varying sizes, yet cannot supply options ranging from large mansions to treehouses to historical buildings to the degree that STHL platforms are able. Similarly and moreover, the diversity of STHL options cater to visitors with special needs and/or disability, pets, large families etc. to a far greater degree than traditional accommodation providers. Overregulation of STHL or regulations which undermine STHL in favour of traditional accommodation will undermine these important benefits.

STHL and decentralised accommodation options

22. Hotels, hostels and other traditional accommodation providers tend to concentrate in the high-traffic, dense urban areas within cities or in specific areas regarded as 'tourist spots' because the economies of scale necessary to render these providers commercially viable require these locations. STHL providers hence enhance diversity of accommodation options by providing accommodation in parts of cities or towns which traditional providers are unable to serve, encouraging more options even in areas where a single or few traditional accommodation providers may be operational. This has immense benefits for the local economy as visitors using STHL services are likely to patronise shopping and recreational establishments in proximity to where they are staying. Overregulation of STHL would hence compromise the local economy of these regions otherwise neglected by visitors or tourists.

⁵ ECONorthwest, Housing Affordability Impacts of Airbnb in Portland, Feb 2016. Link: <https://www.airbnbaction.com/wp-content/uploads/2016/10/PDXAirbnbAffordability10-19-2016-FNL-2.pdf>

These positive impacts of STHL were noted by an independent study in the city of Portland, Washington, USA.⁶

23. A 2017 Deloitte report investigating Airbnb, found that a majority of properties on the platform were outside tourist areas. It also found indirect contributions of \$50 million Australia-wide through transactions facilitated between hosts and guests on the platform.⁷

Typical STHL host is not a commercial enterprise. Families seeking a passive income through unused capital will be the most affected by regulations.

24. A 2017 Deloitte report examining the Airbnb platform found that the median income for Australian hosts was \$4920 AUD in 2015-16 – a modest amount indicating that the typical user of STHL platforms isn't a commercial enterprise operator. It is likely that families and individuals seeking a passive income to facilitate their own cost of living will most severely be impacted by STHL overregulation in Australia.⁸

Case study: Jerome, Arizona USA

25. Draconian regulation of STHL will hurt lower and middle-income earners seeking passive income the most, whilst favouring large multinational hotel chains.
26. In 2012, Glenn Odegard bought a century-old home in historic Jerome, an old Arizona mining town known as "America's Most Vertical City" because of its steep streets and 5,200-foot elevation. Founded in 1876, Jerome was a copper boomtown with a peak population of 15,000 in the 1920s, but since the mine's closing in 1953, the population has dwindled to about 450. The remaining residents have sustained the town by transforming it into a tourist destination with ghost tours, art galleries, bed-and-breakfasts, restaurants, bars, and shops. Glenn tried to contribute to that restoration by resuscitating a home that had been abandoned and left vacant for 60 years after a landslide filled it with rocks and mud. Intending to offer it as a vacation rental, Glenn lovingly restored the dilapidated house to its original historic condition. His successful efforts earned the home a feature in Arizona Highways magazine and a spot on the Jerome Historic Home and Building Tour. Yet despite issuing the relevant permits and initially embracing Glenn's home renovation, town officials decreed he could no longer use the home as a vacation rental. Under the town's newly announced ban, Glenn and other homeowners face fines of \$300 and up to 90 days in jail for each day they allow paying guests to stay. His "reward" for the investment of his time, money, and labour was to be considered an outlaw.⁹

⁶ Ibid.

⁷ <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-airbnb-economic-effects-in-australia-010517.pdf>

⁸ Ibid.

⁹ Sandefur & Sandefur, "Protecting Private Property Rights: The Property Ownership Fairness Act" [report] Goldwater Institute, Feb 2016 http://goldwaterinstitute.org/wp-content/uploads/cms_page_media/2016/2/9/Final%20Property%20Rights%20paper.pdf

Comments on specific regulations

Registration – to manage safety and amenity issues/to monitor property use

27. A registration or licensing regime to lend a room or full property is contrary to long-standing private property rights which have been respected in Australia for centuries.
28. This regime disproportionately favours commercial STHL practicing property owners over individuals or families who have a room or house spare and would greatly benefit from quick, passive income by lending it out. Licensing and registration adds an unnecessary and burdensome layer of red tape preventing Australian families from sharing their private, unused capital with economy-stimulating visitors in a mutually beneficial way. For example, a family that has a spare room in their home for a month due to temporary circumstances will not find the burden and time of registration to be worthwhile and the opportunity might not be capitalised upon in time given the time required to register as well as any fees involved. Conversely, those seeking to operate their own STHL enterprise will not be burdened by a regulatory regime to the same extent as any time or costs involved will be covered in the long-term.
29. Licensing and registration also connotes a significant bureaucratic layer which calls cost and resources that will deplete public revenue and will be paid for by taxpayers. In turn, the resulting bureaucracy will inhibit the cost and time efficiency of STHL services, resulting in lesser government revenue from the tax paid on passive income generated through STHL. **These regimes are unethical and anathema to fiscal responsibility and the interests of Australian taxpayers.** For example, the city of San Francisco has established an 'Office of Short-Term Rentals' paid for by additional fees imposed upon San Francisco's ratepayers.¹⁰ This option cannot be justified as it imposes additional bureaucracy on the basis of dealing with alleged negative impacts that are already policed under existing laws pertaining to public nuisance, pollution, neighbourhood disputes etc.
30. Furthermore, there is no case for such burdensome regimes. Safety and amenity issues in a community are best enforced by local councils, police who receive complaints and are responsible for enforcing the law or by STRATA associations where the terms of STRATA use are being violated or the amenity of the STRATA community is affected. A licensing regime is simply a burdensome overreach into an already regulated area.
31. Notably, statistics released by Airbnb in 2014 showed that the average age of a guest in Sydney was 40 – falling outside the demographic of 'noisy partying college kids'¹¹. Airbnb properties, as opposed to single hotel rooms, provide immense utility for Aussie family vacationers.
32. Moreover, even if the existence of the abovementioned issues to the extent of requiring regulation is assumed, there is no rationale for imposing a licensing regime where STHL platforms are willing to work with governments, including local governments, to implement voluntary codes of conduct or monitoring/reporting regimes.

¹⁰ <https://shorttermrentals.sfgov.org/>

¹¹ <https://www.airbnb.com/press/news/new-study-airbnb-community-contributes-aud-214-million-to-sydney-and-its-suburbs-brings-tourists-to-new-neighbourhoods>

Development approval

33. The utility and efficiencies afforded by STHL options exist precisely because they do not require development approval in the manner that traditional accommodation options do.
34. It is against legitimate, longstanding private property rights to utilise the family home to require development approval for the private use of rooms. This represents local government overreach into private affairs.
35. Under the status quo, development approvals are required in specific situations where there is a foreseeable negative externality to the community such as the local amenity being affected by external modifications to the façade of a property or, as an extreme example, the use of private property as a storage facility for dangerous nuclear waste. The typical STHL user is a family or individual seeking passive income by letting a room or dwelling that is spare – commercial STHL operators are in the minority (see above). Development approval hence cannot be justified from either a pragmatic or principled standpoint.
36. Requiring such approvals would also be anathema to the interest of ratepayers whereby council time and resources will be required to process approvals which are currently not required.

STHL Ban or other restrictions such as limits on length of stay / number of days a year

37. This option is fundamentally immoral as it unduly impinges on longstanding private property rights. The ATA and MC accept that there are legitimate grounds for the government to enact laws or policies that limit the absolute exercise of individual prerogatives. It is submitted that punishment, prevention or deterrence of conduct which impinges upon the legitimate rights of another individual is one such ground. In this regard, government intervention which addresses theft by paying for police resources or addresses dangerous/reckless driving-related crimes through confiscation of the cars of offenders can be justified as these laws punish people for actions which were illegal to begin with. Similarly, a law which punishes a property owner on an STHL platform for carrying on STHL in a manner which actually results in violations of noise or pollution ordinances is justified as well. However, STHL bans or restrictions on length of stay instead punish and prevent the very practice of STHL itself for the sake of punishing or preventing conduct engaged in by a miniscule minority of STHL practitioners whereby major STHL platforms already have internal mechanisms addressing such conduct and existing by-laws and ordinances already address such conduct as well. They therefore are not morally justifiable.
38. Another grounds under which government sometimes intervenes to limit the exercise of private property rights is for 'the public benefit'. However, it is submitted that in such instances the threshold which justifies intervention is significantly higher given the implications for draconian exercise of government powers. For example, Australia's constitution permits the acquisition of private property provided (amongst other conditions), that compensation is provided to the property owner for the deprivation of their legitimate liberties 'on just terms'.¹² However, in the case of a ban or restrictions on STHL, the options paper remains silent on whether fair compensation will be provided to existing STHL property providers, many of whom rely on the passive income to even afford to live in their current residence. Though ATA and MC accept that an STHL ban or restriction may still be legally valid as government has not 'acquired' the property rights it is restricting

¹² Australian Constitution, Section 51(xxxi)

(whereby this is a question of law for our courts), it is submitted that the moral basis for the constitutional provision is defeated by the notion of an STHL ban or restrictions on STHL and that such bans or restrictions should not be considered as they are bad policy devoid of sufficient moral justification whereby a family's right to use their own home is impinged upon unreasonably.

39. The following points will deal specifically with the proposal to **limit stay length**. There is no evidence that limiting stay length, even if successfully monitored and enforced at substantial cost in taxpayer funds, will have any significant effect on the availability or supply of rental residential properties. STHL's utility lies in the ability to provide short stays whereby it is more cost-effective for long-term renters to seek traditional rental properties under the status quo.
40. There is no ethical or pragmatic basis for imposing such limits simply because they may currently be imposed on traditional accommodation. STHL properties are not typically located in tourist areas where traditional options are concentrated (see above). Non-tourist areas benefit significantly more from visitors who engage in longer-term stays than the average traditional accommodation stay as the traffic of visitors through these areas is far short of that found in tourist areas. Limiting stay durations will hence undermine the economic benefits of STHL for these communities and will only increase any concerns about a regular influx of new individuals within an existing community.
41. Moreover, limits on stay lengths as a means of competition neutrality between STHL and traditional accommodation is an issue best addressed by removing or relaxing the regulatory barriers applied to traditional accommodation rather than simply imposing the same on competitors such as STHL providers.
42. Limiting number of days a year is pragmatically and morally undesirable for the same reasons. Furthermore, limiting this figure will only decrease the passive income of Australian families renting a spare room or temporary property, diminishing income tax revenue in the process. This will also likely undermine the economic benefits of visitors to local businesses during off-peak visitor periods where these businesses already face tougher conditions than peak visitor periods.

Strata By-laws

43. Under the status quo, by-laws prohibiting STHL remain illegal. This is because they infringe on legitimate private property rights.
44. However, by-laws to manage visitor behaviour or provide compensation in the event of legitimate grievance resulting from STHL use, are legal and offer a desirable and pragmatic way to enforce existing laws governing negative externalities such as noise or pollution. This is because they support the property rights of members within a Strata community as opposed to undermining those of the individual property owner. A targeted solution which empowers Strata associations to deal with legitimate grievances in rare cases where they arise, is more desirable than a draconian blanket measure such as Strata by-laws impinging on private use of one's own home.

Code of conduct, education, monitoring/reporting

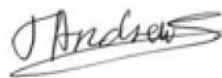
45. The ATA and MC support these voluntary and cooperation-based measures which provide rights-respecting and targeted ways to deal with any legitimate community concerns or grievances arising from STHL use.
46. A voluntary industry code of conduct is likely to be effective for the STHL industry due to the market share domination of STHL by large, high public profile companies that already implement individual codes of practice. An industry code could be developed with government consultation at all levels (local, federal state) and will balance the interests of all stakeholders without unduly burdening consumers or hosts.
47. Education through advisories or videos can be delivered to prospective visitors or hosts through STHL platforms due to their technology-based and visual nature. This will minimise government resource burden as government need not invest in its own education programs since the cost can be borne by the private sector.
48. Monitoring/reporting regulations or best practice can be incorporated into an industry code of conduct.

Conclusion

49. Based on the abovementioned evidence and the concerns of our stakeholders, the ATA and MC recommend the following regulations for STHL:
 - An industry code of conduct developed in consultation with relevant stakeholders, governments and STHL platforms.
 - Additional regulation through Strata by-laws which do not unduly impinge on private property rights to lend or let one's own home or room.
50. The ATA strongly urge the government to reject all proposals for registration, fees, and restrictions as detailed in the options paper.



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