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MISINFORMATION ABOUT COVID-19 LAWS CLARIFIED

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There have been recent articles published in the press stating that short term accommodation arrangements through Airbnb have been banned. There has also been conflicting information published about whether Covid-19 lockdown laws require an owners corporation to close its recreational facilities such as a swimming pool and gym. In this short article we answer your questions about those issues and clarify the uncertainty surrounding them.

Is it now illegal to provide short term accommodation arrangements through Airbnb and other similar platforms?

No. There is currently no law in New South Wales which prohibits altogether short-term accommodation arrangements that are organised through online platforms such as Airbnb and STAYZ.

On 30 March 2020 the Minister for Health and Medical Research made an order under the *Public Health Act 2010* which prohibits a person leaving his or her place of residence without a reasonable excuse (**order**). This order commenced on 31 March 2020 and it is intended to help stop the spread of Covid-19. But the order does not ban short term accommodation arrangements through Airbnb. Indeed, the order says nothing about short term accommodation arrangements at all.

However, the order does make clear that person must not, without a reasonable excuse, leave his or her place of residence. So this means that it would be illegal for a person to move into an apartment under a short-term accommodation arrangement organised through Airbnb unless the person had a reasonable excuse for doing so.

The order contains a list of reasonable excuses for a person leaving his or her place of residence. They include moving to a new place of residence or between different places of residence of the person. So if a person intended to move into an apartment as their new place of residence and organised to do so through Airbnb that would be lawful.

In most cases, a person will not be able to genuinely say that an apartment which he or she has organised to move into through an online platform such as Airbnb or STAYZ for short term accommodation is a new *place of residence*. But there will be some circumstances where a person will move into an apartment via a booking made on Airbnb for the purpose of moving to a new place of residence, albeit those circumstances will be limited (e.g. a person moving into a new apartment on a short term basis to live in the apartment because it is situated close to a new or temporary



Does an owners corporation have to close recreational facilities such as a swimming pool and gym?

No. There is currently no law in New South Wales which requires an owners corporation to close recreational facilities that are situated on the common property of its strata scheme such as a swimming pool and gym.

The order makes it illegal for a person to participate in a gathering in a public place of more than two persons. It is doubtful that a swimming pool or gym located on the common property of a strata scheme is a public place.

Even if recreational facilities of that type are a public place, there is nothing in the order which requires them to be closed. Further, the order still permits gatherings in a public place of more than two persons in a variety of circumstances including gatherings for the purposes of work or by members of the same household.

The order does prohibit indoor recreation facilities such as indoor pools and gyms remaining open to members of the public. But that does not apply to outdoor pools. Nor does it apply to owners or occupiers of lots in a strata scheme who can not be considered members of the public who would use indoor recreational facilities in a strata scheme.

The order also requires public swimming pools and outdoor gymnasium equipment and playground equipment in a public place to be closed to members of the public. But again, that does not require private pools to be closed.

This does not mean that an owners corporation should ignore the COVID-19 pandemic and keep its recreational facilities open. That is the decision each owners corporation will need to make based on its own particular circumstances and the desire of its stakeholders to put in place measures to help avoid the spread of COVID-19. Many owners corporations have closed their swimming pools, gyms and other recreational facilities and it's difficult to criticise them for doing so. But the way matters currently stand, there is no law that requires those facilities to be closed.

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JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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