

# **SHORT TERM HOLIDAY LETTING IN NSW OPTIONS PAPER SUBMISSION 2017**

Submission from  
The Property Owners Association of NSW

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*The Property Owners Association of NSW (POANSW) is the peak industry body, and the only representative of residential property owners in NSW. It is comprised of interested industry members and practitioners who financially support the organisation. Unpaid volunteers with relevant industry expertise and experience undertake this submission along with all of the work that POANSW does.*

*This submission has a succinct focus on the issues surrounding Short Term Holiday Lettings, which are key in going forward and maintaining a healthy balanced property and accommodation market, and overall NSW economy. A more comprehensive submission would have been achieved if the POA was funded, in the same way as other industry bodies, such as The Tenants Union of NSW (TUNSW).*

*Current legislative framework directs that funds accrued, as interest on residential bonds in NSW should be allocated for the education, and assistance of both tenant and property owner organisations. Unfortunately this is not the case, despite stipulations within the legislation. The TUNSW receives government financial support in the order of millions of dollars each year, from interest earned on Residential Bonds, as allocated by the Rental Bond Board, where TUNSW have a seat, and assist in directing funds, as well as being a major recipient of the same.*

*These funds are, in general, not used for community projects or to advance the rights of community members, but for one-sided political lobbying promoting an adversarial relationship between tenants and property owners with a negative impact on the rental market.*

*Fair Trading NSW use POANSW services, by referring property owners who enquire for advice to the POANSW at no cost to the NSW Government. For less disputes and more understanding of relevant legislation, this service should be increased.*

*All market participants, including tenants, short-term holiday letting, owner-occupiers and investors, are best served when there is healthy availability of residential rental accommodation. Government is best served when prevailing conditions support and promote the providers of accommodation to enter and remain in the market as long-term accommodation providers and landlords. The Government's role of legislation aims to create a fair balance.*

*While there is one-sided funding, resulting in disempowerment of the voice of property owners, the government does not have access to full information. This impacts seriously on effectively addressing rental shortages and affordability issues.*

*Our review of the Short Term holiday Letting options, and their impact on the residential market is subject to resource and funding limitations for the time being.*



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## Short Term Holiday Letting – Where Are We At?

Short Term Holiday Lettings has always been an element of the fabric of the Housing Market in NSW. Holiday homes in regional areas, along popular coastal holiday strips, alpine regions and inner-city hub locations, has indeed always formed a small part of the housing market in NSW for decades.

This sector has in general, always remained somewhat unregulated, and fallen outside of the jurisdiction of residential tenancies legislation, the framework of various hotel legislation, boarding house legislation, and in many cases, even planning codes and land use legislation.

In the past 5 years, there has been an explosion in the volume of short term holiday lettings, as a variety of online booking platforms have made access to, and vetting of, customers a much easier exercise. The number of listings in Sydney on just one of the platforms, AirBNB, has surged in the past year to well over 20,000.

In 2016, a NSW Parliamentary Committee was formed to investigate the adequacy of the current legislative framework surrounding short-term holiday letting, their findings were released in April 2017, and the following recommendations were made:

1. The Committee recommends that the NSW Government amends:
  - a. The Standard Instrument - Principal Local Environmental Plan to include a definition of short-term rental accommodation in the category of tourist and visitor accommodation
  - b. The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to allow short-term rental accommodation.
2. The Committee recommends that short-term letting of rooms in any property where the landlord or host is present be permitted as exempt development.
3. The Committee recommends that short-term letting of a principal place of residence be permitted as exempt development.
4. The Committee recommends that short-term letting of empty properties be permitted under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as:
  - a. exempt development where the development does not exceed applicable impact thresholds; and
  - b. Complying development where the development exceeds applicable impact thresholds.

5. The Committee recommends that the NSW Government investigates, in consultation with advocates for traditional accommodation operators, the impact of the growth of short term rental accommodation on their industry, and identifies opportunities to reform current regulations.
6. The Committee recommends that the NSW Government participates in the management of the Holiday and Short-Term Rental Code of Conduct to ensure that it has a broadly based management structure, including community representation, and increases its industry coverage.
7. The Committee recommends that the NSW Government develops a compliance system for short-term rental accommodation under the Environmental Planning and Assessment Act 1979 which considers:
  - a. The use of the investigative powers in Division 1C of the Act
  - b. Streamlined development assessment (Complying Development Certificates)
  - c. The Holiday and Short-Term Rental Code of Conduct
  - d. 'Party house' provisions.
8. The Committee recommends that the NSW Government prepares advice to councils and the community outlining the changes which will apply to short-term rental accommodation, and implements a communication and monitoring program.
9. The Committee recommends that local councils be responsible for communicating with all landowners about their rights and obligations.
10. The Committee recommends that the NSW Government consider amendments to strata regulations to give owners' corporations more powers to manage and respond to adverse behaviour resulting from short-term letting in their buildings.
11. The Committee recommends that the NSW Government review the impact of short-term letting in the strata environment after no later than three years.
12. The Committee recommends that the NSW Government implements a program to collect data on the holiday industry generally, and short term letting in particular, to assess the

economic contribution of short-term letting and its impact on housing affordability and community viability.

The NSW Government generally supports the findings and recommendations of the Parliamentary Inquiry, as does the POANSW.

The NSW Government has now released an Options Paper, in which details are provided for a number of potential options to regulate the Short Term Holiday Letting market. This submission has been made to address some of the potential options, and provide further information from the POANSW on impacts and potential pitfalls that should be addressed.

The supply and management of Short Term Holiday Lettings should be regulated so that it can best meet the needs of the NSW community, and be delivered and managed in a balanced manner.

## Short Term Holiday Accommodation – The Positives and Negatives

The Short Term Holiday Accommodation market in NSW, presents a mixture of opportunities and challenges. Some of which are set out below.

| Opportunities  | Challenges   |
|--|--|
| STHL contributes some \$31.3billion to the NSW economy annually (from the Options Paper)   | Impacts on surrounding neighbours must be managed and minimised. Including noise, waste traffic, etc.  |
| STHL provides a flexible way for owners to maximise the use of under-utilised assets – using a home when an owner is absent, or parts of homes that would otherwise be empty.  | Security and safety for both occupants and providers must be considered and managed.   |
| More stock necessarily reduces costs of accommodation, by providing additional supply to travellers and short-term occupiers.  | Building safety for occupants in the event of emergency must be considered. Arguably, fire and other emergency codes set out by the BCA for residential properties may be inadequate when used for STHL. |
| Reasons for use of this type of accommodation are varied, and this style of accommodation fills gaps in the supply side of property. Some users include business travellers, emergency accommodation, as well as typical holiday makers. | The challenges can be amplified in some strata schemes, given the proximity of lots.   |

Overall, it is the view of POANSW that the benefits and opportunities presented by the STHL market, are vast and, in many cases, yet to be truly seen. A healthy STHL market adds to the economic fabric of the state, the housing/accommodation options available, and provides employment and economic activity.

Many of the challenges are of a type that can be overcome with sensible policy and regulation.

Anecdotally, there has been significant focus on issues such as noise, waste and parking, however, the evidence shows that these issues are not typically exacerbated by STHL arrangements, and in actual fact, the bulk of noise complaints, and other similar complaints in NSW are made in relation to typical residential premises used by long term occupants – both owner occupiers and residential tenants.

The greater challenges that must be addressed urgently are those focused on building and occupant safety. Buildings that are currently designed to house long term residents, who are familiar with their layout and facilities, must be adapted to suit STHL arrangements, where occupants may be unfamiliar with building layouts, exits, and other features.

Fire detection and suppression, and appropriately marked and accessible emergency egress for occupants unfamiliar with the buildings should be at the centre of new regulations in this space.

This submission will go into some high level detail of what POANSW believes could be an appropriate solution for this sector.

## Industry Regulation – What would it look like?

The POANSW has formed the view that formal regulation of the STHL market through a mixture of the current planning system and a new *Short Term Holiday Letting Act* would be a desirable path for the regulation of STHL.

Ultimately, there are two distinct areas that need to be regulated:

1. The use of premises as a STHL.
2. The ongoing Management of premises as a STHL.

Each of the two areas above have been addressed in the below sections of this submission.

## Regulating STHL as an Approved Use

The POANSW believes that the most efficient regulation to provide STHL as an approved use in any premises is through the current planning system.

The first challenge however, is to develop a definition of what STHL actually is. There have been a number of attempts to define STHL, many of which have led to further confusion within the industry and within Government. The POANSW is supportive of the most simplistic approach, which is for STHL to be any residential premises, or part thereof, where the stay is too short for The Residential Tenancy Act 2010 to apply. Section 8 of The Residential tenancy Act 2010, specifically says that:

*“This Act does not apply to.... (h) An agreement made for the purpose of giving a person the right to occupy residential premises for a period of not more than 3 months for the purpose of a holiday”*

The definition of STHL should therefore be:

***Short Term Holliday Letting is as a dwelling, or part of a dwelling, that provides short-term accommodation of less than 3 months, for the purposes of a holiday.***

Based on the above definition, POANSW would strongly advocate that STHL be permitted in any premises that are currently approved for residential use via either exempt or complying development pathways. POANSW advocates for a staggered system of exempt and complying development approvals, depending on the intensity of the STHL use, as follows:



| Number of Guests Per Night | Number of nights per year used as STHL |           |           |
|----------------------------|--|-----------|-----------|
|                            | 0-30                                   | 31-90     | 90+       |
| 1-6                        | Exempt                                 | Exempt    | Complying |
| 7-10                       | Exempt                                 | Complying | Complying |
| 11+                        | Complying                              | Complying | Complying |

Regardless of which approval pathway is used, the additional planning requirements that should be adhered to (and certified for the purposes of a complying development), when being used as a STHL is:

*An appropriate level of fire safety to make a dwelling safe for STHL use, as certified by an appropriately qualified professional. Fire safety measures may include fire blankets near cooking appliances, clearly marked exit plans, and smoke detection/fire suppression equipment.*

A system of complying and exempt development under the existing planning regime would be adequate, in the view of the POANSW, to address the issues associated with the STHL market.

## Regulating Operations via New Legislation

The second element to the provision and regulation of STHL in NSW is the day-to-day management of STHL in the state.

POANSW believes that an industry Code of Conduct would be ineffective, as is explained in the following section of this submission.

POANSW would like to see the introducing of new legislation that provides a framework for short-term holiday letting in NSW. This Act would apply to all STHL in NSW as per the above definition. The Act should cover at least all of the following areas:

- Guest behaviour, and in what circumstances a guest could be asked to vacate a premises – antisocial behaviour, criminal activity, etc.
- What rights an operator or provider of STHL accommodation has to claim for any damages of guests.
- Limitations on the rights of guests of STHL to invite additional guests of their own during their stay.
- Rights for STHL providers to place obligations onto guests to comply with a strict set of rules, relating to quiet enjoyment, rubbish management, etc. And, powers for providers to remove guests that do not comply with those rules.

- An expansion of the jurisdiction of NCAT to cover agreements made under this new legislation as a consumer/business matter (rather than as a tenancy matter).

POANSW is of the view that a new and targeted piece of legislation coupled with an approval system, which form part of the current planning system would provide a good base for industry regulation. It would protect operators, guests, neighbours and the community.

## Industry Code of Conduct – Would it Work?

One suggestion that has been detailed within the NSW Government Options Study is the development and implementation of a Code of Conduct for Short Term Holiday Lettings in NSW.

It is important to remember that as the STHL market matures in NSW, we have witnessed a change, driven by tech based management platforms such as AirBNB. The industry has morphed from a professionally dominated industry, with qualified and licensed real estate agents at the centre, into a cottage industry dominated by individual property owners and tenants, who have no professional training.

It is the view of POANSW, that the development of a professional Code of Conduct for STHL operators would in fact simply add costs and complexity to the STHL industry, it would be difficult to enforce, and overall, is unlikely to be adhered to by operators.

The POANSW has formed the view that an industry Code of Conduct is unlikely to be a useful component in the regulation of the STHL industry.

## Conclusion

POANSW is strongly in favour of regulating the valuable Short Term Letting market in NSW. The form of the regulation would ideally be split into two components:

1. Existing approved residential dwellings could be used as STHL premises subject to complying a exempt development controls under the existing planning regulatory framework.
2. The ongoing management of STHL premises should be controlled via a new legislative instrument that is tailored to the industry.

The above system, if properly developed, and implemented, may provide adequate regulation within the currently unregulated STHL industry that would give comfort to guests, providers, neighbours and communities, while still providing an important economic boost to the NSW economy that will surely grow in size and importance in years to come.

POANSW would welcome further involvement in the development of any regulation within the STHL industry.