

10th November 2017

Director, Housing Policy
Department of Planning and Environment
GPO Box 39, Sydney NSW 2001

Submission to Short-term Holiday Lettings Option Paper

The Tenants' Union of NSW is the peak non-government organisation representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in housing and tenancy law. We are the resourcing body for a state wide network of Tenants' Advice and Advocacy Services. Collectively these organisations assist around 30,000 tenants each year.

In this submission we will focus primarily on the need to ensure that regulation of short-term letting is sensible, effective and does not place unreasonable burden on tenants. To this end, we will focus our response to questions 6 and 9.

We have previously published research examining the impact of Airbnb on rent levels and supply in NSW.

Question 6

Please indicate below which impact(s) are you most concerned about and how do you believe these could be managed.

We acknowledge the variety of impact short term holiday lettings may have on neighbours and are confident that other submissions will adequately cover potential responses to this.

The Tenants' Union is primarily concerned with the impact short-term letting may have on the availability and stability of homes for residential tenants in New South Wales.

Tenants may be negatively affected by short-term letting in two distinct ways:

- The tenants' eviction from their home in order for premises to be utilised as short-term letting
- A reduced availability of homes available for rent because a premises that would otherwise be used for residential tenancies is being used for short-term letting.

Eviction

Currently in New South Wales tenants can be evicted without the landlord needing to provide a reason. This can occur at the end of a 'fixed term agreement' (generally either 6 or 12 months) or during a 'periodic' agreement where no fixed term is specified. Further, if the notice document is properly prepared and served, the NSW Civil and Administrative Tribunal has no jurisdiction to disallow the eviction, except in very limited circumstances of clear retaliation.

Within an international context, this no grounds notice is an anomaly – a mere 5 countries allow such evictions. A consequence of this is that landlords with both genuine need to reclaim possession of the premises (for instance, for use as their home) and landlords with less genuine need use the same notice of termination.

Claire's Story

Claire had been living in her home on the coast just north of Wollongong for 6 years when her landlord knocked on the door one afternoon early last December to tell her she had to move out and handed her an eviction notice. He seemed coy about the detail, but said there had been a family crisis and he needed the flat back.



Claire was a little suspicious about this 'family crisis' as her landlords had recently renovated the neighbouring flat (which they also owned) and had started renting it out as a holiday let. Her landlady had also let slip in conversation she'd heard her property could get a lot more rent on the market these days.

When she asked her landlord for more information about why she was being evicted he refused to provide any clear reasons – and unfortunately legally he wasn't required to as he had given her a 'no grounds' termination. Claire knew that under current NSW tenancy legislation there was nothing she could do to challenge her eviction. She started to look for a new home.

"The landlord made out he was being incredibly generous giving me 90 days notice. But I'm a tenant who knows my rights and I knew he was bound by law to do this. And really he couldn't have picked a worse time to give me notice to quit. From December through to around Australia Day there is generally nothing nothing available around where I was because everything becomes holiday letting. The time I had to look for a new place was effectively cut in half."

Claire's story cont.

When Claire started looking for a new place to rent she found it very difficult to find anywhere in her local area. Or anywhere at all really.

"I found that the rental market had changed drastically in the six years since I'd last had to look. There were not many places and what was available was very expensive.

Every place I looked at I would have had to fill in ridiculously long applications. I felt it was a gross intrusion of my privacy all the documentation and information I had to provide. And with the type of freelance work I do – it's not a regular pay packet coming in each week – I couldn't compete against couples applying for properties on double incomes. Real estate agents just didn't want to look at me, they didn't want to know me."

Claire was eventually able to find a new rental property 15km away in Wollongong. She was relieved to find a place but felt she had been completely uprooted from her local neighbourhood.

"I wasn't only losing my home, they were divorcing me from my community and all the people I'd formed relationships with where I had lived."

A few weeks after moving out her curiosity got the better of her – Claire looked up her old home's address on AirBnB:

"And sure enough there it was – for \$259 a night! They didn't waste any time. I suspect it was probably on AirBnB two weeks after I moved out, if not less."

We are aware of other cases where a tenant has been evicted from their home and the premises subsequently placed on a short-term letting site. Indeed for many years this has been a too-common experience in coastal areas where tenants are offered only 6 month agreement to cover the winter periods and evicted so that the property owner could utilise the premises for short-term lettings over summer. This practice appears to have expanded in recent years but is not a new experience.

The Tenants' Union strongly recommends the amendment of the *Residential Tenancies Act NSW 2010* to replace no grounds notices with an expanded list of permitted grounds for termination as per our recommendations to the recent statutory review of that Act. Pending the resolution of enforceable planning requirements for short-term holiday lettings then an acceptable permitted ground for termination of residential tenancy agreements may be that the property has been approved by some rigorous process by a local government authority for permanent conversion to short-term holiday letting. This may not address the frustration and upset a tenant may feel at being evicted, but the tenant will be able to test that the process has been followed if the landlord proposes to evict them on these grounds.

The Tenants' Union also recommends the implementation of an exit survey at the end of residential tenancies (attached to the return of the rental bond) that amongst other

information captures the reason for the tenancy ending. From the perspective of regulation of short-term letting this will allow for greater transparency and measurement of change-of-use between residential tenancies and short-term lettings.

Supply

A large amount of research, including the Tenants' Union's own, has been focussed on the impact Airbnb and other short-term letting platforms may have had on the supply of housing, and particularly residential tenancies. It is true that the evidence so far has not measured a concrete impact on the supply of residential housing. However, from our own analysis and others we are led to believe the effectiveness of this research has been hampered by a lack of available data to analyse. For instance, while it is possible to know how many listings are on a particular platform, it is not possible to know whether the listing is made by the owner of the property or the tenant or what the alternative use of the listed property might be. It is therefore difficult to ascertain its impact on the residential tenancy market.

We support the suggestion made in the options paper that this can be rectified by ensuring greater information is collected by the short-term letting platforms and provided publicly.

Question 9

Should owners' corporations be given the legal ability to prohibit or restrict STHL? If so, how and under what circumstances?

The Tenants' Union supports the ability for communities including those of strata schemes to make decisions concerning whether residents of the community can use their homes for short-term holiday lettings. We note that currently tenant residents of a strata scheme have no vote in such a decision, for instance a vote at a general meeting of the owner's corporation to amend the by-laws as prescribed by the *Strata Schemes Management Act 2015*.

Tenants make up more than 50% of residents of strata schemes in New South Wales. It would be deeply undemocratic to exclude half of the population from voicing their opinion, whilst allowing people who do not live in the community to make decisions. It would be even more undemocratic to do so under the pretense of allowing communities to self-determine the kinds of community they desire in their building or complex.

Allowing a strata corporation to make this decision may result in situations where a clear majority of the actual residents oppose short-term lets in their community, but absentee owners of the corporation are able to influence the outcome in favour of short term lettings. Of course the reverse may also occur.

The *Strata Schemes Management Act 2015* introduced measures to ensure that any fines issued as a result of breaches of by-laws are kept by the owners corporation. This should

assist owners corporations who may previously have declined to address issues because of the legal costs involved in doing so.

We note further that whilst a breach of by-laws represents a fine to an owner of a lot, it also constitutes a breach of a tenants' agreement that can result in the tenants' eviction. Added to a tenants' general insecurity of tenure, and lack of meaningful representation in the strata community, this lop-sided approach to regulation means that tenants have been targeted under by-laws where an owner is permitted to continue to breach the same by-laws in the name of building harmony.

The Tenants' Union therefore prefers the management of issues such as noise and building cohesion to be carried out within the current framework of by-laws. It has not been demonstrated that the current powers of strata corporations are inadequate for dealing with issues within buildings.

We recommend that tenants as interested residents within the strata scheme be more meaningfully included in Strata Management Committees and given the ability to vote on non-financial matters concerning the management of the community.

Summary of Options

Our expectation is that an approach combining several options outlined in the paper will be necessary to achieve sensible reforms. These likely include enforcement a level of licencing and planning permission for commercial operators, location sensitive planning by local government and a level of self-regulation by short-term holiday letting platforms. The Tenants' Union notes that whatever option is ultimately chosen, it will need to be supported by a motivated, resourced and active regulating body. The international experience of various other jurisdictions in responding to the rise in visibility of short term holiday letting suggests that regardless of the intent of the regulation, enforcement of the regulation is the key to its success.

To discuss this submission further, please contact:

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