Submission No 1

ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY LETTING IN NEW SOUTH WALES

Name: Mr Steve Hoare

Date Received: 16/09/2015

SUBMISSION: NSW PARLIAMENTARY INQUIRY INTO THE ADEQUACY OF SHORT-TERM HOLIDAY LETTING IN NSW

Personal Declaration

I have an ownership interest in a residential resort apartment that meets all the legal requirements for dual use as a 'serviced apartment' for hotel style lettings – ie, commercial use. The apartment is located in the 'Salt Beach' resort precinct on the Tweed Coast (Tweed Shire Council local government area).

I am also a professional economist with a wealth of experience in public policy reviews/ inquiries/reforms.

Comment

With respect, I believe that the terms of reference set for this Inquiry have missed a paramount consideration, namely: -

- The Commonwealth Government's *Building Code of Australia Act* which applies uniformly to all State/Territory/Local Government constituencies.

Please read the recent Victorian Supreme Court decision VSCA 365 to understand the importance of this national Law to your Inquiry.

It is clear that some Class 2 apartments are being used for 'commercial' lettings, in competition with Class 3(b) apartments (that have been constructed to meet Building Code requirements for 'commercial use'). The latter meet all the customer safety, land use planning, neighbourhood amenity, licensing and taxation requirements for 'commercial' use; the former comply with none of these Inquiry issues.

It is also clear that some residential houses that do not meet Building Code requirements for commercial (boarding house/hotel accommodation) use are being let in direct competition with 'commercial' premises that fully comply with the Building Code. Accordingly, investors in *bona fide* commercial premises (under the Building Code) are bearing a 'sovereign risk' that is unintended, but very real and that is 'biting them on the bum'.

However (and despite my declared self-interest), I am certain that it would not be in the best interests of anyone to bring down the guillotine on short-stay letting of premises that do not meet Building Code construction specifications for 'commercial use'.

In my opinion, the answer to the problem lies in NSW Residential Tenancy Law. You will see that this Law does not define "short-stay letting". As far as I am unaware, this term is not further defined in any law, regulation or rule at any level of Government. NSW Tenancy Law gives many important protections to tenants that include specification of a commencement date and end date to the tenancy/letting period. This

ensures that a tenant can never be held as ‘permanent occupant’ captive of a landlord.

The problem in the case at hand is that in protecting tenants, NSW law-makers have never addressed the question of imposing a minimum tenancy period on owners of residential use only premises. This is the loop-hole that is being exploited to create the toxic ‘sovereign risk’ to *bone fide* tourist accommodation investors, and the breaches of the Inquiry issues cited above.

Conclusion/Recommendation

I submit that the solution is elegant in its simplicity. You should recommend that the Residential Tenancy Law be amended to provide a minimum letting period of, say, 7 days for all properties that have ‘residential only’ title rights.

This would allow holiday makers who do not have a ‘pocket’ for an extended stay at hotel rates to come to the Tweed Coast, boost the local economy - and not pose a sovereign risk to *bona fide* investors (such as myself), or compromise any of the Inquiry issues, or breach Commonwealth legislation.

Contact Details

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