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IS A CHANGE IN THE AIR? SHORT TERM LETTINGS: CLARIFYING THE CONFUSION

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**IS A CHANGE IN THE AIR?
SHORT TERM LETTINGS: CLARIFYING THE CONFUSION**

Is the NSW Government about to change the law to legalise short term lettings in apartment buildings? If you believe some, change is almost certain. But is that really true?

1. Introduction

There has been considerable recent media coverage concerning proposed changes to laws regulating short term lettings in apartment buildings in NSW. Many in the media are saying that owners corporations are going to lose the right to prohibit short term lettings in their buildings. Is that right? What does the NSW Government really have in store for short term lettings?

2. Background

On 9 September 2015, the NSW Parliament requested that the Committee on Environment and Planning hold an inquiry into the adequacy of the regulation of short term holiday letting in NSW.

The inquiry was conducted in late 2015 and in the first half of 2016. The inquiry received 212 submissions from interested parties across NSW. The inquiry also held a series of public hearings earlier this year.

At those public hearings, the inquiry received evidence from key stakeholders in the regulation of short term lettings in NSW. This included evidence from:

- Local Councils and the NSW Department of Planning & Environment;
- major accommodation providers in the holiday letting industry such as Stayz, Airbnb and Tourist Accommodation Australia;
- the insurance industry;
- the Real Estate Institute of NSW;
- owners corporation networks representing people who live in strata properties and strata residences themselves.

3. The Report

On 19 October 2016, the Committee on Environment and Planning tabled in the NSW Parliament its report on the adequacy of the regulation of short term holiday letting in NSW. The report is detailed and runs for 100 pages.

The report contains 12 recommendations. Relevantly, the report recommends that:



- short term letting of rooms in any property where the landlord or host is present be permitted as exempt development (i.e. development that does not require any planning approvals);
- short term letting of a principal place of residence be permitted as exempt development;
- short term letting of empty properties be permitted as:
 - exempt development where the development does not exceed applicable impact thresholds; and
 - complying development (which must be approved by a Local Council or an accredited certifier) where the development exceeds applicable impact thresholds;
- the NSW Government amends *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to allow the above changes to be made concerning short term rental accommodation;
- the NSW Government amends planning legislation to introduce a holiday and short term rental code of conduct;
- the NSW Government considers amendments to strata legislation to give owners corporations more powers to manage and respond to adverse behaviour resulting from short term lettings in their buildings.

4. Comments

The NSW Government's response to the report is due by 19 April 2017. In other words, all that has so far occurred is the following:

- a Parliamentary Committee has conducted an inquiry into the adequacy of the regulation of short term holiday letting in NSW;
- that inquiry has concluded;
- the Committee has delivered a report containing recommendations for changes to the laws regulating short term holiday lettings;

NSW Government is due to respond to that report by 19 April 2017.

This means that, at present, no changes to the laws concerning the regulation of short term holiday letting in NSW have been made and it does not appear that any changes to those laws will be made until, at the earliest, after 19 April 2017.

Indeed, the likelihood is that there will be no changes to the law concerning the regulation of short term holiday letting in NSW until well into 2017.

5. What will Happen?

It is very difficult to predict the response of the NSW Government to the report of the Committee.

It may be that the NSW Government will accept all of the recommendations contained in the report and seek to amend the laws regulating short term holiday letting in NSW to adopt all of the recommendations.

However, it may be the case that after further public consultation, the NSW Government elects to only adopt some (but not all) of the recommendations contained in the report.

6. Conclusion

For these reasons the jury is still out and it is simply too early to state with any confidence exactly what (if any) changes will be made to the laws regulating short term lettings in NSW.

Once the Government releases its response to the report, the position will become much clearer.

One thing is, however, currently clear. It is too early to say that owners corporations will lose all power to prohibit or even control short term lettings in their buildings.

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About JS Mueller & Co

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for almost 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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