Submission No 54

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

Name: Name Suppressed

Date Received: 30/10/2015

[redacted]

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SUBMISSION: Inquiry into the Adequacy of the regulation of short-term holiday letting in NSW – by [redacted]

I am a resident of Byron Bay – a small coastal country town with a permanent population under 5,000 and more than ten times the number of bedrooms located on land zoned residential than there are permanent residents; which effectively should result in Byron Bay having among the cheapest residential rental prices in Australia. However, the majority of those bedrooms on residential land are rented to tourists – for upwards of $50 per bed per night - minimum two per room = $700 per week (and that is at the cheap end of the unlawful "holiday letting" market).

In Byron Bay, even the Crown Land caravan parks (once affordable accommodation option – pitch your tent for less than $120 pw) have been unlawfully morphed into "tourist and visitor accommodation" ONLY - "tourist parks" (that exclude local residents – via cost and stay limits). During "schoolies" the price is $50 per night with max of four to a site = $200 per night to pitch a tent.

Despite residing in a coastal country town where accommodation located on Crown Land (Rest and Recreational Reserve) and Residential Land is abundant, I have been a car-feral (sleep in my car) since 10 January 2010; because both the State Government and Local Government have decided that profiteering from providing accommodation to tourists (including foreign nationals) takes precedence over the Human Rights of local residents to have access to residential accommodation – i.e. a HOME - at an affordable price (rather than being faced with residential rental prices that are more than 100% of the majority of local's incomes).

Note: In Byron Bay and Byron Shire, ***"short term holiday letting"*** is incorrectly used to describe all ***"holiday letting"*** within Residential Zones – including persons who are not resident of subject residential property letting the residential premises as "tourists and visitor accommodation" – i.e. for Commercial purposes. The majority of ***"holiday letting"*** within Residential Zones is not – in reality - ***"short term"***. Whilst the individual stays by "tourists

and visitors" may be ***"short term"*** (1-6 weeks), the vast majority of ***"holiday letting"*** within Residential Zones consists of consecutive ***"short term"*** stays that accumulate to far more than 90 days per year (up to 365 days per year); thus deprive local residents of the ability to rent (and purchase) the residential premises being unlawfully used as "holiday letting" for a legitimate purpose – to be used as a permanent residence (i.e. a home). The majority of "holiday letting" within premises Residential Zones is not legally ***"holiday letting"*** - because the residential premises are never occupied by a RESIDENT *(owner/occupant or tenant or other form of permanent occupant who qualifies as a resident)* – rather constantly occupied by "tourists and visitors" (with some larger residential premises also being occupied by live-in employees of the owner and/or business operator unlawfully using residential premises for "tourist and visitor accommodation"). The majority of "holiday letting" is unlawful – no resident in residence - and deprives local residents of access to those residential rental properties – thus the ability to acquire their human right to have a HOME.

In relation to lawful ***"holiday letting"***, ***"short term"*** is supposed to be less than 90 days per year and ***"holiday letting"*** is supposed to refer to the practice of a **RESIDENT** letting his/her HOME for no more than 90 days per year – **not** the unlawful practice of owners of premises within Residential Zones - who are not a permanent resident at the subject residential premises - and/or operators of Commercial "tourist and visitor accommodation" using premises within Residential Zones for Commercial purposes – i.e. the type of "tourist and visitor accommodation" that is prohibited within Residential Zones.

Incorrect application of language – by Councils *(especially Byron Shire Council)*, Real Estate Agents and Offenders - is used to negate legislation.

Whilst the term ***"holiday letting"*** actually refers to the lawful practice of a permanent RESIDENT (owner who resides at the premises/tenant/occupant – other than employee of business operator) renting his/her HOME (*primary place of residence*) during the holiday season - for no more than 90 days per year, Byron Shire Council and persons profiteering from unlawful use of Residential premises for Commercial purposes employ the term ***"holiday letting"*** as a camouflage euphemism for all forms of "tourist and visitor accommodation" – not just lawful ***"holiday letting"*** or lawful ***"bed and breakfast"*** – in order to justify the unlawful (and immoral) practice of operating Commercial "tourist and visitor accommodation" within Residential Zones (i.e. hotels, motels, tourist 'service apartments', holiday resorts, backpacker hostels, "holiday houses", etc – never occupied by a permanent

resident). Consequently, legislation needs to be worded in a manner that prevents pretence by Council and persons profiteering from unlawful "holiday letting" that they cannot comprehend the difference between lawful "holiday letting" (a resident renting his/her HOME during the holiday season for no more than 90 days per year) and lawful "bed and breakfast" (a resident owner conducting a **home business** tourist and visitor accommodation) and the unlawful and immoral practice of using Residential premises for Commercial purposes ("tourist and visitor accommodation" that is not a resident letting his/her Home) – depriving local residents of access to Residential premises (a home).

Legislation relating to "holiday letting" should include definitions:

Home: the place where one lives permanently; primary place of residence.

Resident – person (owner, tenant, occupant) who has resided, or intends to permanently reside, at the residential premises for an extended period of time *(6 months or more)* and considers the residential premises to be their home - primary place of residence.

Owner/Resident: person who owns the residential property and uses the residential property as his/her permanent place of residence.

Live-in employee – a person who resides at a premises consequent of being an employee of a business operated at that premises.

**Note: In relation to renting "tourist and visitor accommodation" within Residential Zones, a person who is a live-in employee (or agent of the landlord) is not deemed to be a Resident (owner/tenant/occupant) with entitlement to engage in "holiday letting" or operate a "bed & breakfast" business within a Residential Zone.*

Bed & Breakfast – "tourist and visitor accommodation" HOME business operated from primary place of residence of OWNER/RESIDENT of the subject premises – with Council approval and subject to relevant conditions.

Holiday Letting – the practice of a RESIDENT (owner/resident or tenant or other lawful occupant – not employee or agent of non-resident owner) renting his/her HOME (primary place of residence) to visitors during the holiday season; for maximum of 90 days per year.

Tourist and Visitor Accommodation: all accommodation for non-residents that are not a lawful "bed and breakfast" approved by Council or lawful "holiday letting" (resident renting his/her home for no more than 90 days per year); including hotels, motels, 'serviced apartments', tourist resorts, 'holiday resorts', 'holiday houses', backpacker hostels, "bed & breakfast" operations that are not owner/resident operations with Council approval and all other forms of non-resident accommodation.

Local Government should retain responsibility for dealing with complaints relating to lawful ***"holiday letting"*** (residents renting their homes for no more than 90 days per year) and lawful ***"bed and breakfast"*** operations (owner/resident operating a HOME business). As with any residential premises, the onus is upon the resident participating in lawful "holiday letting" and lawful "bed and breakfast" home business to take responsibility for the conduct of their "guests" – including evicting "guests" who engage in behaviour that causes a disturbance to neighbours. As is the norm for any resident, if the "guest" (be it a paying "guest") refuses to leave the residential premises at the request of the lawful resident of the premises, the resident has a right to call the Police for assistance in removal of the "unwanted guest". State government should also legislate Council (Rangers) with authority to issue 'on the spot' fines to offending "visitors" and – if necessary – demand that the "visitors" leave as soon as practical and safe to do so (i.e. tell offending visitors to 'go home'). In the event that the conduct of the "guest" necessitates immediate removal from the premises, Council Rangers should call the Police to evict the offending "guest".

Current legislation totally INADEQUATE – because nobody upholds the Law.

Whilst Local Government (Council) is supposed to take action against persons using Residential Zones for Commercial purposes – unlawful "holiday letting", the fact is that Council refuses to take action. The excuses put forward by Byron Shire Council range from falsely declaring that it would cost Council $50,000 per property to take legal action against Offenders - to declaring that the legislation definitions of "holiday letting" are too vague to enable Council to take action – to declaring that Council is doing the rest of the Shire a bit favour by permitting Residential Zones in Byron Bay to be used for unlawful "holiday letting" – because that protects the remainder of the Shire from unlawful "holiday letting". The logic (rather lack of) being applied – if Council permits the Landlord millionaire pirates to pillage Byron Bay – they will take the rest of the Shire. The residents of Byron Bay – like

the entire town – has been sacrificed to the Gods of Tourism (Greed and Depraved Indifference).

The State Government refuses to take action. Department of Land and Environment declares unlawful "holiday letting" in Residential Zones to be Council's responsibility; and the Office of Minister for Local Government refuses to take action relating to Council failing to take action – recommending that complainants address their complaints to Council (even when content of complaint informs the Minister that complaints have been lodged with Council – and Council refuse to take action).

As Local Government (Byron Shire Council) has consistently failed to take appropriate action against Offenders – to the point that unlawful "tourist and visitor accommodation" dominates Byron Bay, and is a serious problem throughout Byron Shire, the State government should legislate that using Residential premises for commercial "tourist and visitor accommodation" is a Criminal Offence; because it is a Crime – including Crime Against Humanity and a covert form of Treason (manipulates the outcome of Local Government elections via purging a town of residential voters).

Unlawful "holiday letting" destroys communities:

Unlawful "holiday letting" (using premises/land zoned Residential for Commercial "tourist and visitor accommodation") artificially inflates the cost of residential rental premises. In small town communities, the majority of local residents are financially disadvantaged. The consequent lack of affordable accommodation purges towns of local residents (including families with a long history of being residents of the town) – destroys communities – destroys families (including consequent of Mother's with young children suffering 'nervous breakdowns' because they are unable to find accommodation) – destroys lives; and occasionally takes lives (exposure to the elements, self-medicating with drugs and suicide due to not being able to rent a home – because all the residential premises are being rented to tourists).

Unlawful "holiday letting" costs the Taxpayers a fortune:

Federal and State governments 'pay the bill': consequent high rents and homelessness increases Centrelink benefits applicants; Housing NSW "clients" – including need for

expensive emergency accommodation; DoCS investigations and interventions 'stealing' the children of the homeless); Medicare and State hospital expenditure; and Police and Council Ranger workload.

Unlawful "holiday letting" Council contributions and Income Tax Avoidance:

Note: the majority of "landlords" and/or "business" operators unlawfully renting residential premises (that should rent for $250pw) as "tourist and visitor accommodation" (actually rent for $2,500+pw) do not pay Council contributions and/or TAXES associated with operating a Commercial tourist accommodation business – including income TAX. No doubt, the Offenders are only declaring income associated with renting "residential" premises – not the real income generated unlawfully renting residential premises as "tourist and visitor accommodation".

Unlawful "holiday letting" causes homelessness.

In Byron Bay, population of approximately 5,000 persons – and estimated 1,000 persons live as "ferals" in 'third world' camps in the sand dunes and swamplands; and they are constantly hounded by the Police and Council Rangers.

The more fortunate homeless sleep on the floors and couches of friends and family. Others (such as myself) are "car-ferals" – sleep in their vehicles. The Local Area Commander of Byron/Tweed Police [redacted] declared (including in writing on Police letterhead) that sleeping in vehicles in Byron Bay is "illegal" under legislation by Byron Shire Council.

Yes, I know – no Council in NSW can pass legislation and sleeping in a lawfully parked vehicle is not illegal. However, if a car-feral does not obey corrupt cops, the cops issue bogus traffic infringement notices – and the Office of State Revenue (State Debt Recovery Office) illegally declares the Accused to be guilty until the Accused files in Court and proves that he/she did not commit the alleged Offence. Local Court Magistrates back Police – even when there is no evidence of Offence being committed because the Police stop and detain behind Police vehicle - with vehicle camera turned off and personal voice recorder turned off. The name of the game is – get out of Byron Bay or the cops will issue bogus traffic infringements notices until the car-feral is either bankrupted by fines and/or loses his/her driver licence.

The relevance of Police harassment to unlawful "holiday letting" being: this is an example of the price human beings who have been made homeless - consequent of unlawful "holiday letting" - pay; being bullied out of town by corrupt cops. The Police also raid the camps of the homeless and slash their shelters (tents, tarps etc) – and deny all; taking for granted that the homeless living in sand dunes and swamplands do not own an iPhone with 10 mega pixel camera.

Unlawful "holiday letting" purges coastal country towns - that are deemed to be 'tourist towns' - of local residents – thus residential voters.

Consequent of being a Candidate for the Office of Mayor (Byron Shire – 2012) – attempting to obtain votes of local residents, it became apparent that the majority of persons working in Byron Bay did not reside in Byron Bay; and that many of the residential premises did not provide the opportunity to obtain a residential vote from a resident – because there was no residential voter for the Residential properties being unlawfully used for Commercial "tourist and visitor accommodation".

Using LTO maps, combined with conducting ground recon and obtaining information from the Internet, Electoral roll *(which is inaccurate – not properly updated)* and Census *(which is inaccurate – premises with overt tourist accommodation signage are not included residential property stats – despite being on land zoned residential)*, I collated data to ascertain the percentage of Residential Zone land/premises in Byron Bay that is being unlawfully used for "tourist and visitor accommodation" (that is not a legitimate Council approved 'bed and breakfast' and/or less than 90 days letting of their home by a resident). Unfortunately, due to time restraints, I only managed to complete data relating to the "west bank" of Byron Bay (west of Jonson Street – main street of town). However, it was revealed that at least 90% of the land zoned Residential (2A – residential low density) on the west side of Jonson Street was/is being unlawfully used as "tourist and visitor accommodation".

In 2014, Council belatedly rezoned some of the 2A residential land within that area of Byron Bay to 3R (Residential - medium density) - in an attempt to make Council zoning closer reflect what had been illegally constructed on the land zoned Residential 2A (at time of construction). However, the belated rezoning from 2A to 2R and 3R does not negate the fact that majority of premises – including all the medium density buildings built within 2A zones

and belatedly rezones 3R – are being used for "tourist and visitor accommodation" – not residential.

The effect of Council permitting over 90% of the land zoned residential on west side of Byron Bay to be used for "tourist and visitor accommodation" (tourist resorts, bogus bed & breakfasts, backpacker hostels and "holiday beach houses") being: the entire 'west bank' of Byron Bay has been practically purged of Australian residents – thus residential voters.

*X-reference with NSW Electoral Commission stats – number of **residents** with address on west side of Byron Bay (bound by the ocean, Kendall Street, incomplete Wentworth Street (swampland at edge of town) and Butler Street who voted in Local government election.*

Effectively, unlawfully using residential premises as "holiday letting" permits the rich (many of whom are not residents of Byron Bay) to dictate who is elected to Council – thus what Council permits to occur in Byron Bay and Byron Shire. I would argue that, as unlawful "holiday letting" purges a town of residential voters, thus manipulates the outcome of Local Government elections, person participating should be charged with Treason.

Unlawful "holiday letting" removes residential stock from the market – thus artificially inflates the cost of purchasing a residential property – thus inflates the cost of renting a residential property. The consequent lack of *lawful* affordable residential properties for rent in Byron Shire has proved a breeding ground for new age Lords who rent substandard "unlawful dwellings"; and treat tenants as slaves.

Consequent of unlawful "holiday letting", despite the fact that there are more ten times the number of bedrooms located within Residential Zones than the number of residents of Byron Bay (population approximately 5,000), there is no affordable accommodation in Byron Bay. Renting a single bedroom residential property costs more than 100% Centrelink payments. Even employed local residents (who do not own a home) – and are prepared to pay the outrageous rents - find it difficult to find a residential rental property that is not being used as "tourist accommodation".

Many Byron Bay renting residents have been obliged to leave Byron Bay – due to being unable to afford tourism inflated residential rents. Renters of residential premises who desired to remain in Byron Shire became competition for local residents in need of residential rental accommodation in other villages – inflating the cost of residential rentals in villages such as

Bangalow, Brunswick Heads, Ocean Shores and Mullumbimby – pushing some of those residents further 'out into the sticks' in search of cheaper accommodation; including "unlawful dwellings" (caravans, cabins, shacks, sheds, garages and tents – or simply a "space") on rural properties that do not have Council approval).

With tourism – in particular the backpacker invasion – came unemployment for many local residents. Why hire an Australian citizen for award wages when you can hire a backpacker for half the cost or less. A local resident with a family to house and feed cannot compete with a young backpacker prepared to work 5 hours for a bunk bed in a dorm and three meals per day; and Centrelink payments are not enough to cover rents inflated by unlawful "holiday letting".

Families without a 'bread winner' – surviving on Centrelink payments – are the most vulnerable. Initially feeling fortunate to find any accommodation to rent, they soon find themselves easy prey to 'new age' landlords – navel gazing con artists who own properties in the hinterland and spin an income exploiting the needs of others – be it emotional needs (of the 'lost Souls' from the city) or residential needs (to find a place to call HOME). Landlords of "unlawful dwellings" often insist upon the tenant agreeing to provide free labour as a condition of tenancy. Tenants are not provided with leases – providing the Landlord with power to evict at a seconds notice – thus giving the Landlord power over the tenant; and thus causing the tenant to live in constant fear of offending the Landlord and consequently becoming homeless.

Families are preferred "tenants" of these land sharks, because parents will do anything to keep a roof over their children's heads – provide their children with a stable home – thus the ability to remain at the same school and maintain social networks.

Example:

Parents (two slaves for the price of one rental) with young child rented a furnished (easier to demand that the tenant without a lease leave immediately) one bedroom cabin – a good 30k+ from Byron – 'out in the sticks' - down a seriously potholed narrow dirt road – no shops – no transport - about 10k to the nearest village (shops) - for $300 per week.

The child slept in the bedroom and the parents used the lounge room as their bedroom. Socialising was conducted at the dining table in the kitchen. The cabin was located at the rear of the property to conceal it from prying eyes – Council and persons who may 'dob in' the landlord to Council. There was/is no vehicle access to the cabin. Tenants were/are obliged to park their 4 vehicle down the road (where the narrow road widens a little) – and walk to the only access to the cabin that tenants were/are permitted to use – a steep dirt path; because walking on the paved path to the cabin that ran past the "main house" (landlords premises) was prohibited because the footsteps of the tenants would be much noise for the landlord to tolerate. Only the landlord was permitted to use the paved path to cabin (other than when the tenants were coming to the "main house" to do work for the landlord).

The tenants – including the child – were obliged to access the cabin via a very steep dirt path – with protruding rocks – over grown with bamboo (more camouflage) – thus risk of snakes. The steep, dirt path became muddy and slippery when it rained – and it rains a lot in Byron Shire. During autumn fallen leaves made the path more slippery. The water supply was tank water; the cooking and shower was courtesy of a gas bottle purchased by the tenant; the electricity was whatever the landlord demanded as the tenant's percentage of the landlord's electricity bill. There were no locks on the cabin – thus it was impossible to lock the cabin and the landlord made inspections whilst the tenants were not home (including moving – consequent of closely inspecting their meager possessions). However, the "tenants" were poor and "had nothing worth stealing anyway" – so the tenants did not object. They considered themselves lucky to have found a place to rent.

At first the condition of being rent paying "tenants" was that the male tenant mow the lawns on the property (several acres). Then pruning the fruit trees was added. Then the landlord added the odd repair and lifting jobs. Then asked if the female "tenant" could help out in the house with a few chores – the landlord would pay the female tenant - $10 per hour. The aforementioned gave the landlord an excuse to simply 'drop in' on the "tenants" - unannounced - to "discuss" the chores to be done the following day – including a Sunday. The landlord would enter the cabin without knocking via the doors that could not lock the landlord out. The tenant's did not complain – because, most of the time, they liked living in the cosy cabin – far better than being homeless with custody of a young child.

On a particular Sunday, the female tenant was sitting at the kitchen table discussing person family business with a relative who had come over for Sunday lunch (the male tenant had

driven into the village to purchase additional food supplies), the visiting relative stop mid-conversation having noticed the landlord - standing on the porch immediately outside the screen door – listening to their conversation. Upon being seen, the landlord immediately entered the cabin (without being invited) and started discussing the work that the female tenant was expected to do the following day – abruptly putting an end to the conversation between tenant and her visiting relative until after the landlord departed. The landlord spent over an hour "discussing" a job that would take 30 minutes - thus net the "tenant" only $5. The "tenant" was in no position to demand that the landlord leave – nor object to the intrusion.

The tenants of "unlawful dwellings" were/are not usually provided with a lease. Despite a bond being collected – receipts are not usually provided for bond monies paid; nor were tenants provided with receipts for rent paid. When the tenant vacates an "unlawful dwelling", bonds are rarely refunded. The cost of leaving is forfeiting bond money – and possibly risking the landlord Defaming the tenant to ensure that the tenant will not acquire another tenancy – lawful or unlawful.

The landlord often claimed that monies owed for work done by the tenants would be deducted from the rent. The landlord proved to be very bad at arithmetic. After suffering much, the tenants decided to leave – after the landlord claimed that the tenants owned more rent than they did – consequent of the landlord failing to deduct or pay for extra work – heavy-duty work – that the male tenant had done.

For a while, tenants (and child) were obliged to reside in a caravan parked at a "primitive camping grounds" within Byron Shire. Fortunately, they scored another "unlawful dwelling" (small – but very nice - cabin for $300 pw). The parents (tenants) consider themselves fortunate to have found stable accommodation and have a good landlord. The male tenant said that he is happy to "help out" the landlord (who is not as physically capable as the male tenant) by volunteering to mow the large lawn area as part of being a resident of the rural property. The tenants are able to drive their vehicle all the way to the cabin and are permitted to have overnight guests at the cabin – just like any normal tenant. *And they lived happily ever after.*

Example 2:

Landlord of an "unlawful dwelling" – 'out in the sticks' - informed a female tenant with children that, if she wanted to keep the tenancy, her children would be obliged to share a room to facilitate Landlord accommodating a male in the resultant "spare room". The male stranger occupying the "spare room" created by the landlord shared the kitchen (including used the kitchenware owned by the female tenant) and the bathroom that was previously exclusively for use of the female tenant and her children. Fortunately, the male occupant of the "spare room" only posed a threat to privacy, cleanliness of the kitchen and bathroom and some of the kitchenware (which he damaged and did not replace). The female tenant immediately started looking for another place to rent and was able to find alternate accommodation.

Example 3:

Landlords of unlawful dwellings and even legitimate residential rental properties have been known to demand sexual favours from female tenants with children. The dark shadow of DoCS – should the tenant become homeless with small children – adds to the incentive.

Local CHILDREN are adversely affected by unlawful "holiday letting".

RECOMMENDATIONS:

1. Legislation should include clear definitions for "resident", "holiday letting", "bed and breakfast", "tourist and visitor accommodation".

2. Unlawfully using Residential premises/land for commercial purposes - "tourist and visitor accommodation" other than permissible RESIDENT renting his/her HOME for no more than 90 days per year or RESIDENT operating HOME business ("bed and breakfast") with Council approval - should be included in the Criminal Code.

Penalty: 10 Years imprisonment and $100,000 fine.

If the penalty appears harsh – then you have not been obliged to pay a millionaire 80%+ of your hard earned wages and/or provide slave labour to a landlord in addition to paying rent and/or sexual favours to a landlord in order to keep a roof over the heads of your children; nor suffered homelessness – including exposure to the elements, being assaulted, robbed of

every possession (other than clothes on you back) or raped – because the majority of residential premises are occupied by tourists; or been driven insane from the stress of not being able to find a home to rent; and/or suffered having your children being taken by DoCS because you could not provide your children with a HOME – because the majority of homes are occupied by tourists; or had a friend or family member commit suicide consequent of being made homeless and/or losing their job due to being homeless - because the majority of residential premises are occupied by tourists. If you had suffered the consequences of unlawful holiday letting, you would probably be of the opinion that 10 years imprisonment is too lenient.