



PARLIAMENT OF VICTORIA
Legislative Council
Environment and Planning Committee

**Inquiry into the
Owners Corporations
Amendment (Short-stay
Accommodation) Bill 2016**

Parliament of Victoria
Environment and Planning Committee

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Committee functions

The Environment and Planning Committee (Legislation and References) is established under the Legislative Council Standing Orders Chapter 23 – Council Committees and Sessional Orders.

The committee's functions are to inquire into and report on any proposal, matter or thing concerned with the arts, environment and planning the use, development and protection of land.

The Environment and Planning Committee (References) may inquire into, hold public hearings, consider and report on other matters that are relevant to its functions.

The Environment and Planning Committee (Legislation) may inquire into, hold public hearings, consider and report on any Bills or draft Bills referred by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Department allocated for oversight:

- Department of the Environment, Land, Water and Planning

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This report is available on the Committee's website.

Terms of Reference

Inquiry into the Owners Corporations Amendment (Short-Stay Accommodation) Bill 2016

On 9 November 2016 the Legislative Council agreed to the following motion:

- (1) That pursuant to Sessional Order 6, this Bill be referred to the Environment and Planning Committee for inquiry, consideration and report in relation to —
 - (a) undertaking proper consultation with peer sector economy providers, individuals and owners corporations short-stay letting providers;
 - (b) the impact on individuals, families, apartment owners and owners corporations of short-stay letting in apartment buildings;
 - (c) the adequacy of owners corporation rules in managing impacts on amenity, noting also the lack of adequate planning on the part of the building and construction sector to accommodate the impact of high intensity short-term lets;
- (2) the Committee will present its final report to the Council no later than 7 March 2017; and
- (3) the second reading of this Bill be deferred until the final report of the Committee is presented to the House in accordance with the terms of this resolution.

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Chair's foreword

I would first like to thank all of the Environment and Planning Committee staff, particularly Mr Matt Newington, Inquiry Officer and Ms Prue Purdey, Administrative Officer. I would also like to thank all those who submitted to the Inquiry. We received 108 submissions and heard from 13 organisations over two days of hearings.

One key finding of the Committee is that there was almost a complete lack of details and reliable information about the scale of the sector and its impact on others. Recent legal cases make it clear the current law is inadequate with owners' corporations unable to adequately regulate or manage on behalf of residents in apartment towers.

This inquiry was somewhat broader than a report on a Bill, given its terms of reference included: undertaking proper consultation with peer sector economy providers, individuals and owners corporations short-stay letting providers; the impact on individuals, families, apartment owners and owners corporations of short-stay letting in apartment buildings; the adequacy of owners corporation rules in managing impacts on amenity, noting also the lack of adequate planning on the part of the building and construction sector to accommodate the impact of high-intensity short-term lets.

What is clear is the Bill presented to Parliament by the Government did not address many of the key issues adequately. Many provisions in the Bill were confusing and ambiguous. Other matters raised with the Committee but clearly of concern to many apartment dwellers were not dealt with by the Bill at all. In my view the Bill will have to be substantially amended to address many of the issues raised in evidence and to strike a more appropriate balance between the rights of the peer to peer accommodation industry and the right of residents to quiet enjoyment of their own properties.

There is no doubting the growing importance and in particular the economic significance of the peer to peer accommodation sector and the aim of government regulation must be to ensure this sector thrives within a responsible framework that accords fairness and rights to those with whom it cohabits. Tourism Accommodation Australia (Vic) provided a useful set of definitions of short-stay accommodation types which provide useful definitions relied upon in the report. This is reproduced at Table 2.1.

In a national context the NSW Planning Minister, Anthony Roberts, has published an options paper to engage in broader consultation prior to regulating the short-stay accommodation sector in NSW. The Victorian Government, by contrast, has clearly not, on the evidence presented to the Environment and Planning Committee's inquiry, undertaken broad and adequate consultation. Clauses of the Bill were found to be unclear and ambiguous. The apparent failure to deal with many issues will also need close attention.

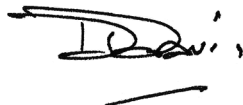
The Committee highlights that many of the key themes and issues raised in the NSW Committee Report are consistent with the evidence that was provided during this inquiry. At Section 1.7 the Committee discusses the NSW inquiry and the government response, and I note the NSW Government decision not to rush this issue due to its complexity and divisiveness.

The Victorian Government's review of consumer property law offers an opportunity to comprehensively and with full community consultation consider what powers owners' corporations should have to regulate short-stay accommodation in their building. If this approach is to be successful, people must be genuinely heard.

The Committee also heard evidence that pointed to serious safety concerns and the Committee has made recommendations responding to these legitimate concerns. It is not surprising perhaps that rising levels of violence and reported offences state-wide would be reflected in concerns about violence and disruption in the short-stay sector.

It is my firm view that residents have the right to live safely and securely in their homes whether these be detached houses in the suburbs or in large apartment complexes near the city. The legal position of short-stay accommodation and the ability of owners' corporations to manage these matters within their own complexes will require the Government to find a solution. Equally, Victoria Police will have to play a role and engage more fully.

The peer to peer economy is of growing importance but must be regulated properly to ensure that unintended and unforeseen impacts on others are properly and fairly managed.



Hon David Davis MLC
Chair

Findings and Recommendations

1 Purpose of the Bill and background

FINDING 1: There is inadequate and inconsistent data relating to the prevalence and locations of short-stay accommodation in Victoria. 8

RECOMMENDATION 1: That the Victorian Government investigates a mechanism to improve data collection on short stay accommodation. 8

2 Key issues raised

RECOMMENDATION 2: That the Victorian Government amends the Bill, where appropriate, to address:

- (a) the issues of affected parties as outlined in this report; and
- (b) the current review into consumer property law, to the extent that it relates to short-stay accommodation in Victoria. 11

RECOMMENDATION 3: That the Office of the Commissioner for Better Regulation reviews the regulatory imbalance between the short-stay and traditional accommodation sectors. 15

FINDING 2: Hosted accommodation, instances where owners are present in a dwelling, has little impact on the amenity and safety of other residents and should be embraced by government. 15

RECOMMENDATION 4: That, as part of its broader review of consumer property law, the Victorian Government considers the appropriateness of giving owners corporations of strata complexes power to regulate short stay accommodation in their building. 17

RECOMMENDATION 5: That, as recommended by the Tourism Accommodation Association (Vic), the Victorian Government investigates the costs and benefits of introducing a registration and compliance regulatory framework for commercial-residential short-stay accommodation providers where properties are listed for more than 90 days and a single owner, whether a person or an entity, has multiple listings. 18

FINDING 3: Unruly behaviour is confined to a minority of all short-stay accommodation guests, however instances where this occurs are real and must be addressed. 19

FINDING 4: There are apartment complexes where community safety has been negatively impacted by short-stay accommodation, causing residents to not feel safe in their own homes. 19

RECOMMENDATION 6: That the Victorian Government and Victoria Police examine issues relating to community safety in apartment complexes where short-stay accommodation is provided. 19

RECOMMENDATION 7: That as part of the state review into consumer property law, the Victorian Government and Victoria Police consider establishing protocols with owners corporations to manage violent and/or disruptive incidents in apartment complexes. 19

3 Issues raised on provisions of the Bill

FINDING 5: Some of the terminology used in the Bill’s proposed dispute resolution process is unclear and ambiguous, and could potentially lead to unreasonably high thresholds for owners corporations to pursue legal action at VCAT. 27

RECOMMENDATION 8: That the Victorian Government, in its review of consumer property law, considers the difficulty for owners corporations to properly regulate safety and amenity in their apartment complexes, in particular relating to short-stay accommodation disputes. 27

FINDING 6: It is difficult to quantify the extraordinary impact of short-stay letting on the wear and tear of common property. However there is anecdotal evidence to suggest this is occurring and is an issue for owners corporations. 33

RECOMMENDATION 9: That the Victorian Government, in its review of consumer property law, considers allowing owners corporations to levy fees on short-stay accommodation providers to cover increased maintenance and repair costs caused by their guests and the usage of these apartments. This should include a fair and equitable cap on the percentage of fees that may be levied. 34

Purpose of the Bill and background

1.1. Purpose of the Bill

The purpose of the Bill is to amend the *Owners Corporation Act 2006* to address problems arising from unruly parties in short-stay accommodation in apartment buildings.¹ It:

- defines inappropriate conduct that is ‘characteristic’ of unruly short-stay parties
- empowers VCAT to award compensation of up to \$2000 to each resident affected by unruly conduct of short-stay guests
- empowers VCAT to prohibit the use of apartments for short-stays if occupants have been found guilty of inappropriate conduct on three occasions in 24 months
- empowers VCAT to impose civil penalties of up to \$1100 for breaches of conduct
- makes owners and occupiers jointly and severally liable for any damage to property in the apartment building caused by occupants and for any penalties or compensation imposed by VCAT.

The Bill is intended to work in a complementary way with existing industry self-regulation.²

The Bill also defines short stay accommodation arrangements as a lease or licence for a maximum of 7 days and 6 nights and occurring in a Class 2 building affected by an owners corporation.

‘Class 2’ building is defined in the Building Code of Australia as ‘A building containing 2 or more sole-occupancy units each being a separate dwelling’. Traditional accommodation is typically considered a Class 3 building under the code, which is defined as:

A residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated persons. Example: boarding-house, hostel, backpackers accommodation or residential part of a hotel, motel, school or detention centre.³

1 Victoria, Legislative Assembly, 2016, *Debates*, vol. 7 of 2016, pp. 2014–16.

2 Ibid., p. 2016.

3 Building Code of Australia.

1.2. Legal status of short-stay accommodation in Victoria

Although unregulated, the short-stay accommodation sector is legal in Victoria. This was examined in a 2013 Supreme Court case⁴ and subsequent appeal.⁵

The cases dealt with short-stay accommodation being provided in apartments in the Watergate complex in Docklands. The City of Melbourne had issued building orders to the owners on the basis that using the apartments as short-stays contravened their classification as Class 2 buildings. This required the owners to undertake works to upgrade safety measures to Class 3 building requirements.⁶

The owners appealed the building order to the Building Appeals Board. The Board upheld the order as it found the use of apartments as short-stays had effectively changed their classification from Class 2 to Class 3.

The owners then appealed the Building Appeals Board's decision to the Supreme Court of Victoria.⁷ The Court ruled in favour of the owners as it found the use of a Class 2 apartment for short-stay accommodation did not, on its own, result in a change of use to Class 3. The Court dismissed the decision and referred the matter back to the Building Appeals Board.⁸ The ruling was appealed and upheld in the Court of Appeal.⁹

The matter was referred back to the Building Appeals Board where the parties came to a resolution on the basis that:

- the owners install a smoke alarm in each bedroom and affix an emergency evacuation plan to the rear of each entry door
- the City of Melbourne instructed the owners corporation to upgrade the exit signs in the corridors.¹⁰

The matter was again examined in the Supreme Court in 2016. The owners challenged a rule enacted by Watergate Apartment owners corporation that prohibited the use of apartments in the building as short-stay accommodation.¹¹

The Court found that owners corporations do not have the power to make rules prohibiting short-stays. In his ruling, Justice Riordan considered that Parliament did not intend to grant such extensive powers on owners corporations under either the *Subdivision Act 1988* or the *Owners Corporations Act 2006*. His Honour noted:

4 Salter v Building Appeals Board and Ors [2013] VSC 279.

5 Genco and Anor v Salter and Anor [2013] VSCA 365.

6 Lexology, 'Owners corporations cannot prohibit use of short term letting of apartments', viewed 28 April 2017, <www.lexology.com>.

7 Salter v Building Appeals Board and Ors [2013] VSC 279.

8 Lexology, 'Owners corporations cannot prohibit use of short term letting of apartments', viewed 28 April 2017, <www.lexology.com>.

9 Genco and Anor v Salter and Anor [2013] VSCA 365.

10 Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings, *Final report*, Victorian Government, Melbourne, 2016, p. 9.

11 Owners Corporation PS 501391P v Balcombe [2016] VSC 384.

- a review of the history of strata legislation indicated that the principal role of owners corporations was to manage and administer common property
- the relevant legislation does not disclose any intention to allow owners corporations to have the power to substantially interfere with owners' property rights
- a parliamentary intention to do so would need to be expressed in clear and unambiguous language.¹²

1.3. Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings

In February 2016, the Victorian Government established the Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings. The terms of reference required the panel to identify and examine options for addressing the issues that maximise the amenity of living in apartment buildings and minimise:

- interference with property rights
- any negative impact on the Victorian tourism industry, investment in Victoria and the Victorian economy generally
- divisiveness within owners corporations.¹³

The panel consisted of stakeholders from a property law specialist, government, the tourism industry and owners corporations. Secretariat support was provided by Consumer Affairs Victoria and the Department of Environment, Land, Water and Planning.¹⁴

The panel released its final report in 2016. This included discussion on 13 options to address the issues with short-stays in apartment buildings. These are listed in Table 1.1 below.

¹² Ibid.

¹³ Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings, *Final report*, Victorian Government, Melbourne, 2016, p. 17.

¹⁴ Ibid., p. 4.

Table 1.1 Options recommended by the Independent panel on short-stay accommodation in CBD apartment buildings

Option 1	Prohibiting short-stay accommodation in apartment buildings under the Building Act 1993 or the <i>Planning and Environment Act 1987</i>
Option 2	Self-regulation by industry through implementation of the Holiday Rental Industry Association's Holiday Rental Code of Conduct, with assistance from Tourism Victoria
Option 3	Alternative dispute resolution and mediation options to manage tensions between residents and short-stay apartment owners
Option 4	Strengthening the powers of owners corporations under the <i>Owners Corporations Act 2006</i> to deal with the conduct of short-stay occupants
Option 5	Amending the <i>Owners Corporations Act 2006</i> to allow owners corporations to make rules prohibiting or restricting short-stays
Option 6	Amending to <i>Owners Corporations Act 2006</i> to make apartment owners liable for the conduct of their short-stay occupants
Option 7	Empowering the City of Melbourne to specify residential apartment buildings as 'party house restriction areas'
Option 8	Empowering the City of Melbourne to penalise short-stay apartment owners for excessive noise regularly emitted from their apartments
Option 9	Restricting the number of short-stay apartments lettings
Option 10	Registration of CBD short-stay apartments as 'prescribed accommodation' under Divisions 2 and 4 of Part 6 of the <i>Public Health and Wellbeing Act 2008</i>
Option 11	Amendment of the definition of Class 2 building in the Building Code of Australia
Option 12	Amendment of the City of Melbourne Planning Scheme
Option 13	Empowering VCAT to prohibit the use of apartment for short-stay accommodation

Source: Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings, *Final report*, Victorian Government, Melbourne, 2016.

The panel noted that in isolation most of these options are inappropriate to deal with issues that arise from unruly short-stay occupants in CBD apartment buildings. It described them as 'too broad, too heavy-handed, unworkable, inapplicable to existing buildings or insufficiently enforceable'.¹⁵

The majority of the panel recommended that the appropriate regulatory approach was to:

- make providers of short-stay accommodation responsible to a limited extent for parties in their apartments
- empower owners corporations to deal with problems using existing powers and processes under the *Owners Corporations Act 2006*.

The panel recommended Option 13, supplemented by Option 2, as the appropriate way to achieve this.¹⁶ The Panel's recommendations were then used by the Victorian Government to scope and draft the Bill.

¹⁵ Ibid., p. 35.

¹⁶ Ibid.

1.4. Introduction of the Bill

The Bill was introduced in the Legislative Assembly in May 2016. Hon Jane Garrett, then Minister for Consumer Affairs, Gaming and Liquor Regulation, noted the Bill's provisions went further than the Panel's recommendations due to subsequent consultation with stakeholders. This intended to 'achieve a better balance between the competing interests involved in the regulation of short-stay accommodation'.¹⁷

Minister Garrett stated this was due to two problems:

The first problem that necessitates this broader approach is that it is practically impossible for owners corporations and aggrieved residents to pursue remedies against short-stay occupants arising from unruly parties.

This is because of the difficulties in identifying and locating transient short-stay occupants, and in enforcing any court orders against them.

The second and connected problem is that short-stay accommodation providers are not liable for the conduct of their short-stay occupants.

Therefore, in practice, no-one is made responsible for the problems caused by unruly short-stay parties, and there is little to discourage short-stay providers from letting apartments to problematic short-stay occupants, or to encourage them to adopt screening practices, which will, in most cases, deter those seeking to host unruly parties.¹⁸

The Bill passed the Assembly in August 2016. It was subsequently referred to the Committee during the second reading debate in the Legislative Council in November 2016.

1.5. Consumer property law review

At the time of writing, the Victorian Government is conducting a review into the state's consumer property law. One aspect of the review is investigating options to reform the *Owners Corporations Act 2006*.

The Government published two issues papers relating to owners corporations inviting stakeholder feedback. The public consultation process on the issues papers closed in March 2016 and April 2016 respectively.¹⁹

The Government subsequently issued an options paper for reform of the *Owners Corporations Act*. Options for consideration included:

- regulation of owners corporation managers
- responsibilities of developers, occupiers and committee members
- decision-making within owners corporations

¹⁷ Victoria, Legislative Assembly, 2016, *Debates*, vol. 7 of 2016.

¹⁸ *Ibid.*, p. 2015.

¹⁹ Consumer Affairs Victoria, 'Consumer property law review', viewed 29 May 2017, <www.consumer.vic.gov.au>.

- dispute resolution and legal proceedings
- whether owners corporations of varying size might be regulated differently
- finances, insurance and maintenance
- Part 5 of the *Subdivision Act 1988*, which provides for the creation of owners corporations
- retirement villages with owners corporations.²⁰

The public consultation process on the options paper closed in December 2016.

The Committee notes that a number of issues raised in this inquiry are relevant to the review and envisages that the Government will consider them in its broader review of the Owners Corporations Act.

1.6. Short-stay accommodation in Victoria

During the inquiry the Committee received varying data about the impacts and prevalence of short-stay accommodation in Victoria.

Many stakeholders noted the economic and tourism benefits that short-stay accommodation provides to Victoria as a whole. This included:

- tourism outside of 'traditional' hotel areas
- benefits to local businesses
- increased accommodation supply
- extra income supplementation for hosts.

However the Committee notes that the Independent Panel conceded that 'There is limited data on the economic contribution of short-stay accommodation in apartment building in Victoria/Melbourne'.²¹

The Holiday Rental Industry Association provided data on the economic impacts of short-stay accommodation based on national-level research. This included findings from a 2014 BIS Shrapnel study on the economic impact of the holiday rental industry:

- in 2011 there were 623,000 holiday homes across Australia with 44 per cent made available for rental. Disaggregating this to Victoria based on proportion of national population (Victoria approximately 1/4) this indicates 155,750 holiday rental properties in Victoria and 68,530 made available for [short-stay rental].
- nationally these properties provided approximately 32.5 million visitor nights of accommodation which disaggregated indicates 8.2 million visitor nights in Victoria

²⁰ Consumer Affairs Victoria, 'Options paper 1: Options for reform of the Owners Corporations Act 2006', viewed 29 May 2017, <www.consumer.vic.gov.au>.

²¹ Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings, *Final report*, Victorian Government, Melbourne, 2016, p. 7.

- nationally this generated direct and indirect spending of \$7.3 billion which disaggregated indicates \$1.8 billion of direct expenditure in Victoria o nationally this generated an economic impact of \$31 billion (based on a multiplier of 4.3) which disaggregated indicates \$7.7 billion of economic impact in Victoria
- nationally this supported 238,000 jobs which disaggregated indicates 59,500 jobs in Victoria.²²

In its submission, Stayz stated it has 12 000 listings from Victoria, and approximately 90 per cent of these are outside of Melbourne.²³ Michelle Chaing, a public policy representative from Stayz added:

On average, a Stayz homeowner rents out their home for 18 weeks. Our data shows that 70 per cent of the people who are on Stayz do so for their holiday homes and typically only own one for the majority of time, so it's their family get-togethers, and I just want to note here that over 75 per cent of our holiday homeowners have a taxable income of less than \$80 000 ...²⁴

In its submission, We Live Here provided data it collected from the website insideairbnb.com, which compiles data from Airbnb online listings. We Live Here stated:

There are over 12,000 listings on Airbnb for Melbourne. Of these, 56% of the listings offer the entire residence for let, not a single room or rooms within the residence. Furthermore, 39% of the listings in Melbourne are from hosts that have listed more than one residence, suggesting the host is a property agent, investor landlord or commercial short-term accommodation provider. Airbnb's public relations and advertising does not encourage these types of hosts to list, but is happy enough to take the revenue. It is estimated that Airbnb earns \$8 million revenue each year from Melbourne.²⁵

However, this data differs from figures provided by Airbnb. At a public hearing Brent Thomas, head of public policy in Australia and New Zealand for Airbnb, provided figures on the organisation's listings in Victoria:

Airbnb now has about 26 000 listings across Victoria, about 10 000 of which are in Melbourne. About two-thirds of Airbnb listings are entire homes, and the remaining third are private rooms or shared rooms. In fact less than 60 per cent in Melbourne are entire homes. The average length of stay for a guest is three nights, or four nights in Melbourne. A typical host in Victoria earns about \$5700 per year, and a typical listing in Victoria is occupied for 33 nights per year. We know that about 80 per cent of Airbnb hosts share the home they live in, whether that is a freestanding home or a townhouse or a unit.

...

²² Holiday Rental Industry Association, *Submission*, p. 4.

²³ Stayz, *Submission*, p. 1; Michelle Chaing, public policy representative, Stayz, *Transcript of evidence*, 24 March 2017, p. 49.

²⁴ Michelle Chaing, public policy representative, Stayz, *Transcript of evidence*, 24 March 2017, p. 49.

²⁵ Airbnb, *Submission*, p. 5.

The overwhelming majority of people — in fact across Victoria it is 83.1 per cent and across Melbourne it is 83.7 per cent of hosts — share only a single dwelling. The next biggest chunk of people are often also sharing a holiday house ...²⁶

Mr Thomas attributed the differences due to the unreliability of raw data that has been ‘scraped’ from the Airbnb website.²⁷

The Committee requested detailed data from Airbnb to support its claims, however at the time of writing the information has not been provided.

FINDING 1: There is inadequate and inconsistent data relating to the prevalence and locations of short-stay accommodation in Victoria.

RECOMMENDATION 1: That the Victorian Government investigates a mechanism to improve data collection on short stay accommodation.

1.7. New South Wales inquiry into short-stay accommodation

Short-stay accommodation in New South Wales was examined by a parliamentary inquiry. The final report was tabled in October 2016. The New South Wales Government tabled its response to the report in April 2017.

Among others, the report’s key findings included:

- a lack of a consistent state-wide definition for short-stay accommodation was a serious regulatory shortcoming
- short-stay accommodation attracts a low-level of complaints, however there is potential for more complaints without appropriate planning controls
- complaints from stakeholders about the impact of short-stay accommodation on the quiet enjoyment of their properties are real and serious, and can be addressed within existing planning regulations
- short-stay accommodation should be regarded as residential use, subject to appropriate definitions and conditions
- management of short-stay accommodation in strata complexes needs to be complemented by amendments to strata management legislation.²⁸

The inquiry made 12 recommendations, including:

- amending the state planning framework to:
 - permit short-stay accommodation
 - include a definition of short-stay accommodation

²⁶ Brent Thomas, head of public policy, Australia and New Zealand, Airbnb, *Transcript of evidence*, 13 April 2017, pp. 2, 4.

²⁷ Airbnb, *Submission*, p. 9.

²⁸ Legislative Assembly Committee on Environment and Planning, *Adequacy of the regulation of short-term holiday letting in New South Wales*, New South Wales Parliament, Sydney, 2016, pp. viii–ix.

- exempt short-term letting of spare rooms or a person’s principal place of residence from regulatory requirements
- establish exempt and complying provisions for short-stay accommodation in unoccupied houses, depending on the impact of the accommodation
- introducing a compliance framework that considers:
 - the use of investigative powers by council officers
 - streamlined development assessment for short-stay accommodation in unoccupied houses
 - the Holiday Rental Industry Association’s *Holiday and short-term rental code of conduct* (discussed further in chapter 2)
 - party house provisions
- amending strata regulations to give owners corporations more powers to manage and respond to adverse behaviour resulting from short-stay accommodation
- reviewing the impact of short-stay accommodation in strata environments within three years
- providing information to councils and the community about the changes that will apply to short-stay accommodation
- requiring councils to communicate to landowners about their rights and obligations
- government participation in the management of the Holiday Rental Industry Association’s code of conduct
- investigating the impact of short-stay accommodation on traditional accommodation providers, and opportunities for regulatory reform
- implementing a system to collect data on the holiday industry and short-stay accommodation in particular, to assess its economic contribution and impact on housing affordability and community viability.

The New South Wales Government tabled its response to the inquiry in April 2017. This indicated full support to three recommendations and qualified support to the remaining nine.²⁹

Whilst the terms of reference for the NSW inquiry were broader than the scope of this inquiry, the Committee considered its outcome and response.

The Committee also notes that a key focus of the inquiry concerned the need for amendments to the New South Wales planning scheme. The Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 is not intended to make any amendments to the Victorian planning framework.

²⁹ New South Wales Government, *Response to the final report of the parliamentary inquiry into the adequacy of regulation of short-term holiday letting in New South Wales*, New South Wales Government, Sydney, 2017.

1

Despite this, the Committee highlights that many of the key themes and issues raised in the NSW committee report are consistent with the evidence that was provided during this inquiry.

2 Key issues raised

During the inquiry, the Committee received 108 submissions and heard from 13 organisations at public hearings. These are listed in appendices 1 and 2.

Inquiry stakeholders highlighted a number of issues with the Bill. These included how it does not adequately address problems caused by the lack of regulation for short-stay accommodation and issues in the drafting of specific clauses of the Bill (discussed in chapter 3).

Key inquiry stakeholders supported the need to properly and fairly regulate the short-stay accommodation in strata apartment complexes. Many participants acknowledged that the Bill was a good 'step in the right direction'. However the majority considered that, for a range of reasons, the Bill in its current form it would not adequately address the issues raised during the inquiry.

In addition, many stakeholders provided alternative proposals to the Bill to regulate the short-stay accommodation sector. These are discussed in section 2.1 below.

Based on the concerns raised in evidence, the Committee considers that the Bill is inadequate and unfair to many parties, including residents and in some cases those who are legitimately providing short-stay accommodation.

RECOMMENDATION 2: That the Victorian Government amends the Bill, where appropriate, to address:

- (a) the issues of affected parties as outlined in this report; and
- (b) the current review into consumer property law, to the extent that it relates to short-stay accommodation in Victoria.

2.1 Alternative proposals to the Bill

During the inquiry, the Committee heard four key alternative proposals to the regulatory framework contained in the Bill.

- deferring the Bill for two years in lieu of a trial of industry self-regulation through the Holiday Rental Industry Association's code of conduct
- introducing regulation for shorts-stays when the owner or occupier is not present
- allowing owners corporations to regulate short-stays under the *Owners Corporations Act 2006*
- introducing a mandatory registration and compliance framework for oversight of the short-stay industry.

The proposals are discussed further in the following sections.

2.1.1 Industry self-regulation through the Holiday Rental Industry Association's Code of Conduct

A common recommendation in evidence provided to the Inquiry was to defer the Bill for up to two years in lieu of a trial period of self-regulation through the Holiday Rental Industry Association's code of conduct.³⁰ The Holiday Rental Industry Association is the national peak body for the Australian short-stay accommodation industry.

The Committee notes that this was also a preferred option in the Independent Panel on Short Accommodation's final report. However, as stated previously, the Panel noted that self-regulation on its own was not an adequate response to the issues surrounding party houses.

The code of conduct is a voluntary framework that requires short-stay operators of participating organisations to require their guests to abide by the terms of the code.

In its submission, the Holiday Rental Industry Association summarised its reasoning to adopt the code in lieu of a legislative framework as follows:

We submit that the Code is far and away the most effective and efficient way of setting standards and minimising adverse impacts on amenity, particularly on neighbours and Owners Corporations (OCs) from rogue operators or misbehaving guests.

The Code does this in three main ways, building upon the unique features of [short-stay accommodation]:

- (a) It requires Owners to exercise their rights in contract law to impose strict Terms and Conditions upon Guests
- (b) It requires Owners to exercise their rights in Property Law to impose strict House Rules upon Guests and Visitors
- (c) Participating Organisations must require Owners and Managers to comply with the Code or exercise their contractual or constitutional rights to delist them or cancel their membership.

Current Participating Organisations include the major digital platforms Stayz Homeaway/Expedia and Flipkey/Tripadvisor as well state and local holiday rental associations. Airbnb is currently only a Supporting Organisation but we recommend it upgrade its commitment and become a Participating Organisation.³¹

However during the inquiry's public hearings, stakeholders were unable to provide a compelling argument in favour of self-regulation through the code of conduct in lieu of legislation. The Committee notes that:

³⁰ For example, see Holiday Rental Industry Association, *Submission*; Victorian Accommodation Industry Association, *Submission*; The Restassured Group, *Submission*; Jodie Willmer, *Submission*; Flinders Wharf Apartments, *Submission*; Alpha Apartments, *Submission*; Vince Sciacca, *Submission*; Jason Douglas, *Submission*; Docklands Private Collection of Apartments, *Submission*; Corporate Keys, *Submission*; Paul Strange, *Submission*; Roamlocal, *Submission*; Southbank Apartments, *Submission*; Anchor Abodes, *Submission*; Donna Broun, *Submission*; Waterfront Apartments, *Submission*; Aeroprop, *Submission*; Uptown Frankston, *Submission*.

³¹ Holiday Rental Industry Association, *Submission*, p. 2.

- the code has existed in some form since 2014, yet has done little to address the issues of unruly guests in short stay accommodation
- outside of the industry, there is a general lack of awareness of the code
- Airbnb is not a participatory organisation of the code and has implemented its own framework³²
- the Bill is intended to work in a ‘complementary way’ with industry self-regulation³³
- the Victorian Accommodation Industry Association — the state branch of the Holiday Rental Industry Association — has since provided an alternative regulatory model (discussed in section 2.1.4).³⁴

The Committee acknowledges the code of conduct is a useful policy for the industry and encourages good practice by short-stay operators. However it alone will not be enough to address the issues associated with party houses that the Bill aims to address.

Significantly, the Victorian Accommodation Industry Association changed its position during the course of the inquiry. It raised concerns with members in response to issues that were raised with the committee at the first day of public hearings. The Victorian Accommodation Industry Association subsequently developed a proposal for a registration framework, which is discussed further in section 2.1.4.³⁵

The Committee commends the responsible approach by the Victorian Accommodation and Industry Association in response to the genuine concerns raised during the inquiry.

2.1.2 Restrictions on ‘un-hosted’ accommodation

In its submission, Tourism Accommodation Australia (Vic) made a series of recommendations for regulation of short-stay accommodation. These focused on regulating short-stay accommodation where entire properties are made available, as opposed to short-stays provided with the host present.

Tourism Accommodation Australia (Vic) was concerned that an uneven ‘regulatory playing field’ could jeopardise future investment in new accommodation supply.³⁶ It noted that the traditional accommodation sector is required to comply with regulations that do not cover short-stay accommodation, including:

- food safety
- fire safety

³² Ibid.

³³ Victoria, Legislative Assembly, 2016, *Debates*, vol. 7 of 2016, p. 2016.

³⁴ See Bev Constable, owner/director, Boutique Stays, *Transcript of evidence*, 13 April 2017.

³⁵ See *ibid.*

³⁶ Tourism Accommodation Australia (Vic), *Submission*, p. 4.

- disability access
- liquor licencing.³⁷

Tourism Accommodation Australia (Vic) described the Bill as a ‘step in the right direction’, however recommended that the Bill should consider what it submitted to be a regulatory imbalance.³⁸

In its recommendations, Tourism Accommodation Australia (Vic) adopted definitions for the different types of short-stay accommodation. These are listed in Table 2.1 below.

Table 2.1 Tourism Accommodation Australia’s definitions of short-stay accommodation

Sharing accommodation	Primary residences let un-hosted for a maximum total of 90 days per financial year.
Hosted accommodation	All hosted stays in primary residences.
Commercial-residential accommodation	Short-term accommodation that falls outside the above definitions of sharing and hosted accommodation, and the property is not a regulated commercial accommodation provider. This includes properties offering un-hosted short-term accommodation for a cumulative total of more than 90 days per year, and entire properties short-term let by operators with multiple listing.
Short-term commercial accommodation	Regulated commercial accommodation (traditional short-term accommodation providers).

Source: Tourism Accommodation Australia (Vic), *Submission*, p. 2.

The Committee considers these definitions provide a useful foundation to define the different types of short-stay accommodation. Accordingly, the Committee refers to the definitions throughout this report.

Tourism Accommodation Australia (Vic) welcomed ‘genuine sharing and hosted accommodation’, stating:

In the hosted accommodation category, any perceived risks or possible detrimental consequences for neighbourhood amenity are considerably mitigated by the physical presence of the host. As such, hosted accommodation in a private or shared room should not have limits imposed on permissible lengths of stay.³⁹

However it was concerned ‘entrepreneurial commercial operators’ were exploiting ‘regulatory grey areas’.⁴⁰

The recommendations included:

- implementing a ‘one host, one home’ policy to limit short-stay providers from advertising listings at more than one address (similar to frameworks implemented in San Francisco and New York)
- limiting un-hosted nights in listings of entire residences to 90 days.⁴¹

³⁷ Ibid., pp. 9–10.

³⁸ Ibid., p. 5.

³⁹ Ibid., p. 3.

⁴⁰ Ibid., p. 2.

⁴¹ Ibid., p. 6.

Tourism Accommodation Australia (Vic) also recommended a registration framework and providing the power for owners corporations to make rules to restrict short-stays.⁴²

These recommendations were also endorsed by the Tourism and Transport Forum in its submission.⁴³ We Live Here also supported a 90-day limit per year on un-hosted accommodation.⁴⁴

The Committee acknowledges that there are uneven regulatory arrangements for short-stay accommodation providers compared with those in the traditional accommodation industry. In the Committee's view, this is an issue that requires further consideration by government.

RECOMMENDATION 3: That the Office of the Commissioner for Better Regulation reviews the regulatory imbalance between the short-stay and traditional accommodation sectors.

The Committee does not support a restriction on the number of days an owner may let their property for short-stay. However it recognises that there is a need to regulate short-stay accommodation that falls within the scope of commercial-residential accommodation.

In addition, the Committee considers that it is important to distinguish between low-impact hosted accommodation as separate from sharing accommodation and commercial-residential accommodation. Stakeholders unanimously considered that hosted accommodation provides little to no risk to other residents in apartment complexes due to the presence of the host. This is also consistent with the findings and recommendations of the New South Wales parliamentary inquiry into short-stays.

FINDING 2: Hosted accommodation, instances where owners are present in a dwelling, has little impact on the amenity and safety of other residents and should be embraced by government.

2.1.3 Allowing owners corporations to restrict short-stay accommodation

Several inquiry participants recommended providing owners corporations with a legal right to restrict short-stay accommodation. As discussed previously, the Supreme Court has ruled that owners corporations do not have this power under the *Owners Corporations Act 2006*.

Advocacy group We Live Here's primary policy position is that owners corporations should be given the right to restrict 'commercial short-term accommodation' if supported by a special resolution (75 per cent) of owners.⁴⁵

⁴² Ibid., pp. 6–7.

⁴³ Tourism and Transport Forum, *Submission*.

⁴⁴ We Live Here, *Submission*, p. 4.

⁴⁵ Ibid., p. 18.

It also opposed the Bill outright, however it recommended a series number of amendments to the Bill should debate continue. These are discussed further in this Chapter and provided in appendix 3 of this report.

Tom Bacon, chief executive officer and principal, Strata Title Lawyers and appearing with We Live Here, explained at a public hearing:

... the model rule and the wording of that model rule can impose certain restrictions, and we would suggest that there would be no restriction on, as I said, the partial letting of an occupied flat.

When it comes to a commercialised or an absenteeism owner, one policy response from the government might be that that is prohibited, another policy response might be that that is limited for a certain duration of stay, and another one might be that it is limited to a certain maximum amount of nights per year, which has all been followed in San Francisco and London et cetera. By doing that, you are not leaving it up to, say, local councils or to the authorities to police, but it is put back into owners corporations.

By imposing a model rule, it is not going to be that everyone in Victoria is going to be able to take up that rule, because to pass that would require a special resolution. So, 75 per cent of the unit entitlements would have to vote positively in favour of moving to that. When I say self-determination, the solution we say is that it is offered as a permissive. An owners corporation that might pass that special resolution amongst themselves may choose to do it, or it may choose to say, 'Actually we're pretty open and pretty friendly to short-term stays. We want to keep that because we want to incentivise owners to do that if they wish'.⁴⁶

The Committee received mixed evidence on the appropriateness of owners corporations be able to restrict short-stay accommodation. Stakeholders who were in favour of this proposal noted that owners should be able to choose whether they consider short-stay accommodation appropriate in their buildings.

Others considered that the length of stays should be restricted to impose a minimum length of stay. OC Pride, the owners corporation of Melbourne's Eureka Tower, recommended 28 days and 27 nights, stating:

7 days and 6 nights is not appropriate it is way too short for an Owners Corporation (OC) to be able to take any viable action on out of control residents. Any stays under 28 days should be for hotel accommodation only.⁴⁷

Similarly, other owners corporations and residents considered a minimum rental period would provide reassurance to owners on the safety and amenity of their apartments.⁴⁸

⁴⁶ Tom Bacon, chief executive officer and principal, Strata Title Lawyers, *Transcript of evidence*, pp. 19–20.

⁴⁷ OC Pride, *Submission*, p. 1.

⁴⁸ For example, see: Committee of management, St James Apartments *Submission*; Owners Corporation 400270Q, *Submission*; Kingstoun Apartments, *Submission*; Christopher Fellows, *Submission*; Fiona Reed, *Submission*; Barbara Thornely, *Submission*; The Knight Alliance, *Submission*.

Inquiry participants who opposed this proposal reasoned that:

- it interferes with fundamental property rights of owners
- owners corporations do not necessarily have the expertise to address these issues
- giving this power to owners corporations will increase divisiveness
- it will allow discrimination against short-stay accommodation providers
- it will have negative effects on tourism and the economy in Victoria.

The Committee also notes that this option was considered by the Independent Panel on Short-Stay Accommodation in CBD apartments and it was rejected by the majority of the panel.⁴⁹

The Committee recognises that apartment owners have the right use their properties within the law for short-stay accommodation. However, in the Committee's view owners corporations of strata buildings should be empowered to regulate short-stays within their complex. This should include the right to insist on legitimate inductions on building facilities.

Any such powers given to owners corporations should recognise the inherent differences between hosted accommodation, sharing accommodation and commercial-residential accommodation.

RECOMMENDATION 4: That, as part of its broader review of consumer property law, the Victorian Government considers the appropriateness of giving owners corporations of strata complexes power to regulate short stay accommodation in their building.

2.1.4 Introducing a registration and compliance framework for short-stay providers

Another alternative regulatory framework suggested to the Committee involved mandatory registration for short-stay accommodation providers. Variations of this type of framework were suggested by short-stay industry stakeholders and providers as well as residents and owners corporations.⁵⁰

At a public hearing, the Victorian Accommodation Industry Association's President Bev Constable gave an overview of a proposed regulatory and compliance framework for commercial residential short-term accommodation. Ms Constable considered it would address a number of shortcomings of the Bill that had been identified during the inquiry.

⁴⁹ Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings, *Final report*, Victorian Government, Melbourne, 2016, pp. 21-23.

⁵⁰ For example, see: Basil Jenkins and Rita Jenkins, *Submission*; The Knight Alliance, *Submission*; We Live Here, *Submission*; Frances Whitten, *Submission*; Tourism Accommodation Australia (Vic), *Submission*; David Jobling, *Submission*.

The proposed framework included:

- mandatory registration, with a deregistration process available through VCAT
- industry-funded through a registration fee
- administration outsourced to a ‘capable body’ with functions including:
 - a 24-hour security call-out
 - detailed mediation process
 - ongoing education, awareness and transparency including a public website.⁵¹

More information on this model is included as appendix 4 of this report.

The Committee considers there is merit in the Victorian Government exploring the Victorian Accommodation Industry Association’s proposal when reconsidering a regulatory framework for short-stay accommodation. This framework should only be applied to commercial-residential short-stay accommodation providers to reduce the impact of regulatory burden on smaller providers.

RECOMMENDATION 5: That, as recommended by the Tourism Accommodation Association (Vic), the Victorian Government investigates the costs and benefits of introducing a registration and compliance regulatory framework for commercial-residential short-stay accommodation providers where properties are listed for more than 90 days and a single owner, whether a person or an entity, has multiple listings.

2.2 Safety and amenity issues

Many inquiry participants gave examples of how short-stay accommodation had affected the amenity of their apartment complexes. Their key concerns included:

- unruly and antisocial behaviour
- compromised security
- inappropriate use of common property, including pools and gyms
- increased owners corporations fees due to maintenance, security and other costs
- a hotel-like ambience to their complex
- a loss of a ‘sense of community’.

These concerns are consistent with those raised in other similar reviews, including the New South Wales parliamentary inquiry.⁵²

⁵¹ Bev Constable, owner/director, Boutique Stays, *Transcript of evidence*, 13 April 2017.

⁵² Legislative Assembly Committee on Environment and Planning, *Adequacy of the regulation of short-term holiday letting in New South Wales*, New South Wales Parliament, Sydney, 2016.

Many of these complaints were raised by owner/occupiers who were residents in the apartment complexes before short-stay providers commenced operations.

The Committee received compelling evidence of the impact on the safety of residents in apartment complexes. This included instances of violent behaviour and illegal practices such as drug dealing and prostitution that were carried out in short-stay apartments. Many of the owners corporations of these complexes have incurred extra costs to employ security guards and infrastructure to deal with these issues.

Further, advocacy group We Live Here presented research conducted by Griffith University in strata buildings in Surfers Paradise, Queensland. The study found that buildings with mixed-length tenancies recorded the highest levels of crime.⁵³

However, other stakeholders pointed out that these issues are also caused by long-term tenants and owner/occupiers. A number of submissions noted that there have been more issues caused by long-term tenants in their building compared to short-stay occupants. In addition, some highlighted that the loss of a 'sense of community' is a reality of residential living these days.

Further, many stakeholders from the short-stay industry believed these allegations were unfounded and based on misconceptions.

Regardless, the Committee notes that there is certainly enough anecdotal evidence to suggest that short-stay accommodation has had a negative impact on the lives of residents in certain apartment complexes. In the absence of regulation, the industry has done little to address these issues.

The Committee acknowledges only a small minority of all short-stay guests engage in unruly and antisocial behaviour. However it is important that there is a regulatory framework in place to address those who breach rules and negatively impact on the rights to the quiet enjoyment of property by residents.

FINDING 3: Unruly behaviour is confined to a minority of all short-stay accommodation guests, however instances where this occurs are real and must be addressed.

FINDING 4: There are apartment complexes where community safety has been negatively impacted by short-stay accommodation, causing residents to not feel safe in their own homes.

RECOMMENDATION 6: That the Victorian Government and Victoria Police examine issues relating to community safety in apartment complexes where short-stay accommodation is provided.

RECOMMENDATION 7: That as part of the state review into consumer property law, the Victorian Government and Victoria Police consider establishing protocols with owners corporations to manage violent and/or disruptive incidents in apartment complexes.

⁵³ Michael Townsley, et al., *Crime in high-rise buildings: Planning for vertical community safety*, Criminology Research Advisory Council, 2013.

3

Issues raised on provisions of the Bill

During the inquiry, stakeholders gave evidence on a number of issues on specific provisions of the Bill, which are summarised in this chapter. These issues should be considered by the Government in redrafting legislation to regulate short-stay accommodation.

3.1 Definition of ‘short-stay accommodation arrangement’ and scope of the Bill

Clause 4 of the Bill proposes to define ‘short-stay accommodation arrangement’ as follows:

a lease or licence for a maximum period of 7 days and 6 nights to occupy a lot or part of a lot affected by an owners corporation that is—

- (a) in a building wholly classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia; or
- (b) in the case of a building where only 30 part of that building is classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia—in that part of the building ...⁵⁴

Some stakeholders considered that the length of stay defined as a ‘short-stay accommodation arrangement’ should be increased. This was typically for a maximum of 28 or 30 days.⁵⁵

For example, We Live Here recommended increasing the period defined as short-stay accommodation arrangement to 30 days and 29 nights.⁵⁶ Tracey Allen, secretary of the Southbank Residents Association, also advocated for a period of 28 days and 27 nights. She stated that there are a number of tourism events that last for longer than a week and expanding the definition would capture these longer short-stays.⁵⁷

Trevor Atherton, chair of the Holiday Rental Industry Association’s regulations and government relations committee, also raised concerns with the scope of the Bill. He told the Committee at a public hearing:

⁵⁴ Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 4.

⁵⁵ For example, see OC Pride, *Submission*; The Knight Alliance, *Submission*; Owners corporation committee 400270Q, *Submission*; Kingstoun Apartments, *Submission*; Christopher Fellows, *Submission*; Barbara Thornely, *Submission*; Fiona Reed, *Submission*.

⁵⁶ We Live Here, *Submission*, Attachment 1.

⁵⁷ Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017.

The definitions look at short-stay occupants and short-stay occupants are anybody who had a tenancy or a lease or a licence to be there. When someone comes onto your property, by legal definition they have a licence or a permission to be there. A licence means permission to be there ...

So if you are the owner and you give anyone permission to stay in your property short-term, that's a licence — that's a short-term stay arrangement as is defined in the legislation. So you are caught. You are liable to pay compensation if they misbehave and cause interference. You're responsible for repairs and damage to the property ...⁵⁸

However the Committee notes that the intent of the Bill as described in its purpose is 'to regulate the provision of short-stay accommodation arrangements in lots or parts of lots affected by an owners corporation and for other purposes'.⁵⁹ As such, the Committee considers it unlikely that the provisions of the Bill would be interpreted to the extent considered above.

3.2 Complaints and dispute resolution process

Proposed sections 159A–159F of the Bill outline a complaints and dispute resolution process for short-stay accommodation. This allows a resident to make a complaint to the owners corporation, and for the owners corporation to issue breach notices and apply to VCAT to settle a dispute.⁶⁰

Section 159A proposed by the Bill outlines the arrangements for making complaints about short-stay accommodation. It allows a lot owner, occupier or manager to make a complaint in writing to the owners corporation about the conduct of a short-stay occupant. The prescribed conduct includes:

- (a) unreasonably creating any noise likely to substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);
- (b) behaving in a manner likely to unreasonably and substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot;
- (c) using a lot or the common property, or permitting a lot or the common property to be used, so as to cause a substantial hazard to the health, safety and security of any person or an occupier;
- (d) unreasonably and substantially obstructing the lawful use and enjoyment of the common 25 property by an occupier or a guest of an occupier;
- (e) substantially damaging or altering—
 - (i) a lot or the common property, intentionally or negligently; or
 - (ii) a structure that forms part of a lot or the common property, intentionally or negligently.⁶¹

⁵⁸ Trevor Atherton, chair of regulations and government relations committee, Holiday Rental Industry Association, *Transcript of evidence*, 24 March 2017, p. 4.

⁵⁹ Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 1.

⁶⁰ *Ibid.*, Division 1A

⁶¹ *Ibid.*, s. 159A(2).

The owners corporation must determine whether or not to take action on an alleged breach. This includes if conduct of a short-stay occupant as described above ‘comes to the attention’ of the owners corporation.⁶² The owners corporation then must pursue one of the following options:

1. If the owners corporation decides not to take action it must give notice of this decision to any person made a complaint about the conduct of a short-stay occupant.⁶³
2. If the owners corporation decides to take action, it must issue a notice to rectify the breach to the lot owner and the short-stay provider (if the provider is not the owner). The owners corporation may give notice of the allegation to the short-stay occupant.⁶⁴

Proposed section 159E allows an owners corporation to apply to VCAT to resolve the dispute.

The Bill also proposes a requirement for the owners corporation to report on the complaints at its annual general meeting.⁶⁵

Stakeholders highlighted a number of issues regarding the complaints and dispute resolution processes proposed by the Bill. Their key concerns included:

- practical and administrative issues for owners corporations associated with breach notices and potential legal action
- terminology concerns
- a lack of right of reply requirements for short-stay providers and occupiers.

These are discussed in detail in the following sections.

3.2.1 Practical and administrative issues

Several stakeholders highlighted practical and administrative issues that would arise from the Bill’s proposed complaints process.

Advocacy group We Live Here considered that owners corporations would not use the enforcement and penalty provisions proposed in the Bill due to the administrative requirements. It also stated that the costs to pursue legal proceedings would amount to over \$50 000.⁶⁶

Tom Bacon, chief executive officer and principal, Strata Title Lawyers and appearing on behalf of We Live Here, explained at a public hearing:

I would not advise any owners corporation — any of my clients — to use any of these powers within this bill. It is a Trojan Horse. It provides little or no enforcement measures. It reads quite well when you first take a glance at it, but then you really

⁶² Ibid., s. 159B(1).

⁶³ Ibid., s. 159C.

⁶⁴ Ibid., s. 159D.

⁶⁵ Ibid., s. 159F.

⁶⁶ We Live Here, *Submission*, p. 19.

start unpacking all of the provisions and cross-referring back from a practitioner's perspective of having to go to VCAT and present all of this evidence and try and get up an order — perhaps a prohibition order or a loss of amenity compensation order. As a practitioner in VCAT most weeks I can see this, and I just shake my head and say, 'I would never use it'. So if this bill was passed into law, I think owners corporations around Victoria would say, 'Thanks but no thanks'.⁶⁷

Mr Marshall Devles, director of We Live Here, believed the process was designed for short-stay operators. He stated that there is 'no sympathy' for owners corporations at VCAT.⁶⁸

Mainpoint owners corporation believed the process was unlikely to be effective due to the practical difficulties of owners corporations enforcing it. Along with Kingstoun Apartments owners corporation, Mainpoint noted that owners corporations may not be aware of which properties are short-stays.⁶⁹ Mainpoint recommended amending the Owners Corporations Act to require owners and agent providers to provide to owners corporations a list of properties that are subject to short-stay arrangements.⁷⁰

Kingstoun Apartments owners corporation also highlighted that an owners corporation is unlikely to have any information on the identity of the short-stay occupant in order to give them notice of a breach.⁷¹

Gregor Evans, a council member of Strata Community Australia's Victorian Branch, described the practical difficulty for an owners corporation to make an application to VCAT:

... in order to make application to VCAT which is in a breach of the owners corporation Rules or debt collection requires a special resolution which is in the first instance 75 per cent of owners agreeing to taking that action. There is a second stage where if you do not get 75 per cent in favour but not more than 25 per cent against, but 50 per cent in agreement, not 25 per cent in disagreement, then you can actually obtain interim special resolution.⁷²

He also added that meetings of owners corporations require all owners to be represented in person or by proxy.⁷³

Similarly, Ms Tracey Allen, secretary of the association, stated that requiring a special resolution would be a 'huge deterrent' for an owners corporation to pursue a short-stay matter at VCAT.⁷⁴

⁶⁷ Tom Bacon, chief executive officer and principal, Strata Title Lawyers, *Transcript of evidence*, p. 20.

⁶⁸ Marshal Delves, director, We Live Here, *Transcript of evidence*, 13 April 2017, p. 19.

⁶⁹ Kingstoun Apartments, *Submission*; Mainpoint Owners Corporation, *Submission*.

⁷⁰ Mainpoint Owners Corporation, *Submission*, p. 2.

⁷¹ Kingstoun Apartments, *Submission*.

⁷² Gregor Evans, council member, Strata Community Australia (Victorian Branch), *Transcript of evidence*, 24 March 2017, p. 34.

⁷³ Ibid.

⁷⁴ Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017, p. 30.

Conversely, other stakeholders considered that the complaints process may be used to make frivolous or vexatious complaints over minor incidents. Bronwyn McAsey, director of short-stay providers Matrix Apartments, gave an example where she received a breach notice because a short-stay guest hung a towel out to dry on the balcony:

We have had a situation — we have been breached ... Basically one of our guests went down to the pool. They had a swim, sat outside on their balcony, got up, went inside. Somebody took a photo of the towel sitting on the back of the chair, and we got a breach notice on that. There was someone else that was talking about this. There needs to be an understanding about what it is that we are actually trying to curtail around the breach notices.⁷⁵

Similarly, Beyond a Room stated:

[The Bill] then goes on to state that the owners corporation should take action on the alleged breach, simply if it “believes on reasonable grounds” that it should. This leaves room for unruly Owners Corporations to pursue agents, lot owners etc. based on nothing at all, simply because they “believe” it. It is completely unreasonable to give this kind of power to a group of non-government persons especially where regulations already exist.⁷⁶

The Holiday Rental Industry Association was also concerned that ‘All that is required [for legal action] are three notices of breach — each of which may or may not be vexatious or without merit or remedied’.⁷⁷

3.2.2 Terminology concerns

A number of inquiry participants were concerned about the terminology in these sections of the Bill.

We Live Here raised concerns over the multiple uses of the term ‘substantial’, and recommended that they be removed.⁷⁸ Tom Bacon, chief executive officer and principal, Strata Title Lawyers and appearing with We Live Here, explained at a public hearing:

Now that is a very clever word to use, ‘substantially’, because that imposes such a high legal threshold and it immediately cross-refers to hundreds of years of English common law on torts and nuisance, and suddenly we are off to 100 pages worth of legal submissions on this. I mean, to actually run one of these cases in practice would cost at least \$50 000 in legal fees, if not more, and several days worth of evidence to be tested. And at the end of it the maximum you are going to get is a maximum \$2000 loss of amenity compensation order, or perhaps the accommodation provider is going to be blacklisted for a period of time.⁷⁹

⁷⁵ Bronwyn McAsey, director, Matrix Apartments, *Transcript of evidence*, 13 April 2017, p. 47.

⁷⁶ Beyond a Room, *Submission*, p. 2.

⁷⁷ Holiday Rental Industry Association, *Submission*, p. 10.

⁷⁸ We Live Here, *Submission*, Attachment A.

⁷⁹ Tom Bacon, chief executive officer and principal, Strata Title Lawyers, *Transcript of evidence*, p. 20.

Beyond a Room, a short-stay provider, highlighted that the terms ‘behaving in a manner likely to’ and ‘unreasonably creating any noise likely to’ do not define what types of behaviour or level of noise are likely to cause a breach to be issued. It considered it ‘unreasonable’ for undefined terms to ‘exist in enforceable legislation’.⁸⁰

At a public hearing, representatives of the Southbank Residents Association highlighted ambiguity over whether an owners corporation would require a special resolution to apply to VCAT to resolve a dispute. In its reading of the Act, it believed a special resolution is not required.⁸¹

However Strata Community Australia had a different view, stating:

... on each occasion they wish to pursue legal proceedings, they need to go forward and get a special resolution which incurs costs again and that’s all borne by the OC not the individual causing the problems.

So the OC Act currently permits action to be taken at VCAT without the need for a special resolution if it is for debt recovery or a breach of the rules, not for a breach of the Act. So all additional time, angst and expenses to go through those processes is all borne by the OC which is all the individual lot owners who all come with different ideas, some who are not interested, those who are impacted, not the residents.⁸²

Section 18 of the *Owners Corporations Act 2006* states that an owners corporation must not bring legal proceedings unless it is agreed to by special resolution.⁸³ However, in a short-stay context a special resolution is not required for an application to VCAT ‘to recover fees and other money’.⁸⁴

To address this, We Live Here recommended amending section 18(2) of the Act to clarify that a special resolution is not required for an owners corporation to bring an application for a short-stay dispute to VCAT.⁸⁵

Ms Allen from the Southbank Residents Association also stated that the Bill should clarify ‘reasonable grounds’ to make complaints for breaches under section 159A:

We believe that evidence and proof are required to substantiate any complaint under this section. The reason is that the nature of the evidence of the different types of breaches varies significantly. So in the case of a breach about damage there is likely to be physical evidence of the damage. For parts (c) and (d) in relation to causing a hazard and obstruction there is likely to be CCTV footage to back that up ...

⁸⁰ Beyond a Room, *Submission*, p. 2.

⁸¹ Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017; Dan O’Keeffe, committee member, *Transcript of evidence*, 13 April 2017.

⁸² Sharon Lameris, education and policy manager, Strata Community Australia (Victorian Branch), *Transcript of evidence*, 24 March 2017, p. 62.

⁸³ *Owners Corporations Act 2006* (Vic), 69 of 2006, section 18(1).

⁸⁴ *Ibid.*, s. 18(2).

⁸⁵ We Live Here, *Submission*, Attachment 1.

On the flipside of that, for sections (a) and (b) in relation to noise and behaviour the evidentiary record is likely to be anecdotal, so fellow residents calling up saying that there is a party going on a few floors up. We believe that for type (a) and (b) breaches there should be corroborating evidence from either security personnel that are called out to the site or police, CCTV footage, photos et cetera.⁸⁶

FINDING 5: Some of the terminology used in the Bill's proposed dispute resolution process is unclear and ambiguous, and could potentially lead to unreasonably high thresholds for owners corporations to pursue legal action at VCAT.

The Committee acknowledges that dispute resolution processes for owners corporations are cumbersome and at times counterproductive. This is not unique for issues relating to regulation of short-stay accommodation and is a reality of the current regulatory environment for owners corporations. However the Committee believes that the issues raised during the inquiry should be addressed by the government in its current review of consumer property law.

RECOMMENDATION 8: That the Victorian Government, in its review of consumer property law, considers the difficulty for owners corporations to properly regulate safety and amenity in their apartment complexes, in particular relating to short-stay accommodation disputes.

3.2.3 Right of reply for short-stay providers and occupants

Some stakeholders highlighted that the Bill does not require consultation with short-stay providers and occupants when an alleged breach occurs.

To address this, Airbnb suggested amending proposed section 159B(3) to require owners corporations to make inquiries about an alleged breach with the provider and occupant.⁸⁷

Airbnb further noted that the complaints process outlined in the Bill does not provide any avenue for appeal by short-stay occupants or providers. Accordingly it suggested amending proposed section 169B to allow short-stay occupants and providers to appeal against short-stay disputes at VCAT.⁸⁸

3.2.4 Other proposed amendments

In its submission, Airbnb proposed amendments to proposed section 159A(2)(a) and (b) to clarify that breaches relating to noise and unruly behaviour relate to use of a lot rather than use of common property:

The intention is to guard against party houses and unruly tenants. We therefore suggest that Sections 159A(2)(a) and (b) be clarified to mean noise/interference caused by use of a lot rather than common property. For example, section 159A(2)(a)

⁸⁶ Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017, pp. 23–24.

⁸⁷ Airbnb, *Submission*, p. 10.

⁸⁸ *Ibid.*, p. 11.

will read as “using a lot to unreasonably create any noise...”. Otherwise, we may end up penalising hosts/guests for reasonable behaviour e.g. a guest checking in at 11pm who unknowingly causes temporary noise in the common corridor.⁸⁹

The Committee does not support this proposal, noting that evidence provided to inquiry gave examples of noise and unruly behaviour by guests in common property, including lifts, stairwells, hallways, pools and gyms, among others.

Ms Allen from the Southbank Residents association suggested introducing timeframes under section 159C for notices to be given and for the owners corporation to respond to the complaint.⁹⁰ Similarly the Holiday Rental Industry Association recommended imposing a time limit of 7 days for any notice proposed by the Bill to be issued to a short-stay provider to ensure the provider is able to recover a bond or other security from the guest.⁹¹

Ms Allen further raised three key issues in the drafting of proposed section 159D, which allows an owners corporation to issue a short stay provider and occupant a notice to rectify a breach:

[Sub-section] (1)(b) says that the owners corporation may — I am using air quotes there — give notice of the allegation to the short stay occupant, whereas section 169H says that the short stay occupant is liable for satisfying any order by VCAT. If the short stay occupant is potentially liable, then they must be given that notice. We believe that that is an inconsistency between the two sections that may infringe on rights of the short stay occupant and that it is an anomaly that should be corrected.

[Sub-section] (2)(b) uses the phrase ‘in any case’ in reference to taking the matter to VCAT. The interpretation of this phrase could be problematic as it suggests the owners corporation may take the matter to VCAT even if a notice to rectify the breach has been issued. This seems to complicate matters, with possibly two actions in place at the same time: the first, a notice to rectify the breach; and the second, a VCAT application. It just does not seem like natural justice.

[Sub-section] (2)(b) also uses the word ‘dispute’ for the first time in the act without defining the term, although it is defined in a later section. What is the mechanism by which a complaint about an alleged breach becomes a dispute, and does this require a notice to be issued first? This section seems to suggest that the owners corporation can decide that there is a dispute prior to issuing a notice ...

The same section has three possible orders by VCAT, whereas section 169C has four possible orders. You will note that the loss of amenity compensation order is missing from section 159D. We query whether these two sections should be the same and also if the list needs to be mentioned twice in the act. It just appears incomplete, misleading or unclear.⁹²

Along with Airbnb, Ms Allen also suggested specifying a timeframe for issuing a notice to rectify a breach, as previously suggested for section 159C.⁹³

⁸⁹ Ibid., p. 10.

⁹⁰ Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017, p. 24.

⁹¹ Holiday Rental Industry Association, *Submission*, p. 12.

⁹² Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017, pp. 24–25.

⁹³ Ibid., p. 25; Airbnb, *Submission*, p. 11.

3.3 Penalties and compensation orders

Inquiry participants expressed mixed opinions on whether the levels of compensation and civil penalties proposed by the Bill were appropriate.

Proposed sections 169A–169H outline the types of penalties and compensation orders that VCAT may issue. Under the proposed framework, VCAT would be empowered to make four types of orders in a short-stay accommodation dispute:

- a prohibition order
- a loss of amenity compensation order
- an order for a civil penalty
- any applicable order that VCAT may make under section 165 of the *Owners Corporations Act 2006*.⁹⁴

Proposed section 169F requires VCAT to consider matters in resolving a short-stay dispute. These include:

- the conduct of the parties
- an act or omission or proposed act or omission by a party
- any other matter it considers relevant.⁹⁵

Proposed section 169H outlines that short-stay providers and occupiers are jointly and severally liable for any penalties or compensation ordered under the Act.

3.3.1 Prohibition orders

Section 169D proposed in the Bill allows VCAT to make an order to prohibit a lot's use for short-stay accommodation. Prohibition orders can only be issued if a short-stay provider receives at least three breach notices⁹⁶ within 24 months and each notice relates to conduct of a short-stay occupant.⁹⁷

Proposed section 169F also includes additional criteria that VCAT must consider before making a prohibition order. This includes:

- the severity and nature of the breach
- the time between breaches
- the history of the short-stay provider's provision of short-stay accommodation arrangements
- any measures the short-stay provider took to prevent the breach.⁹⁸

⁹⁴ Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 169C.

⁹⁵ Ibid., s. 169F(1).

⁹⁶ Under proposed section 159D.

⁹⁷ Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 169D.

⁹⁸ Ibid., s. 169F(2).

Under proposed section 169D(2), a prohibition order over a lot ceases after an arms-length sale of the property.⁹⁹

In its submission, Airbnb made three suggestions regarding the proposed prohibition orders:

- specifying a maximum term (e.g. 3 months) for prohibition orders
- reducing the required period for three breach notices from 24 to 12 months
- clarifying that three breach notices must relate to separate occasions of stay
- allowing a prohibition order to cease in the event of a change in the long-term lessee of the lot.¹⁰⁰

Ms Allen from the Southbank Residents Association also suggested reducing the timeframe required for breach notices to 12 months. She stated this would be more indicative of a serious sequence of breaches. In addition, she noted that there could be a case for different timeframes based on the type of breach:

- a shorter time for minor breaches such as noise and behaviour
- a longer time for breaches involving damages, hazard and obstruction.¹⁰¹

We Live Here was critical of prohibition orders, and considered that VCAT is unlikely to make them ‘regularly or at all’.¹⁰² It recommended mandating a maximum period of up to 12 months for prohibition orders and allowing these to occur for multiple properties in the same building run by the same provider. Along with The Knight Alliance, We Live Here also recommended reducing the number of breaches required from three to two.¹⁰³

In contrast, a number of short-stay industry stakeholders opposed the provisions as interference with property rights. The Holiday Rental Industry Association described them as ‘unprecedented’, noting it is in contrast with the terms of reference of the Independent Panel.¹⁰⁴

3.3.2 Loss of amenity compensation order and civil penalties

Section 169E proposed by the Bill allows VCAT to make an order for compensation due to loss of amenity. Compensation is payable up to \$2000 to each affected occupier for each breach.¹⁰⁵

⁹⁹ Proposed section 169D(3) excludes when the sale is made to a person who has a ‘beneficial’ relationship to the owner. Beneficial relationships are defined in section 169D(4).

¹⁰⁰ Airbnb, *Submission*, p. 11.

¹⁰¹ Tracey Allen, secretary, Southbank Residents Association, *Transcript of evidence*, 13 April 2017, p. 25.

¹⁰² We Live Here, *Submission*, p. 19.

¹⁰³ *Ibid.*, Attachment A.

¹⁰⁴ Holiday Rental Industry Association, *Submission*, p. 9.

¹⁰⁵ Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 169E(3).

Affected occupiers must make an application for a compensation order within 60 days of the breach.¹⁰⁶

The Bill also allows VCAT to make an order imposing a civil penalty for a breach by a short-stay occupant of up to \$1100. This is payable into the Victorian Property Fund.¹⁰⁷

Inquiry participants noted that in strata buildings the number of ‘affected occupiers’ may be quite high, resulting in a large potential liability. The Holiday Rental Industry Association recommended a \$2000 cap on the maximum penalty VCAT could impose on a short-stay provider:

Even \$3100 is out of order for a 6 night stay. But the compensation provision is per person. So one neighbouring apartment with 5 occupants is \$10,000, 3 i.e. either side and opposite is \$30,000, but it could include the whole floor or the floors above and below or the whole building if the breach of conduct prescriptions concerned common property or facilities. This is absurd. Although the Bill requires the Tribunal in assessing compensation to take into account the proportionality of the harm caused this is cold comfort to owners faced with contingent liabilities limited only by the jurisdictional limits of VCAT.

The total liability for civil penalties and compensation in respect of any one stay needs to be limited to a maximum of say \$2000. That is sufficient compensation and deterrence. Anything else will only encourage disputes, conflicts, vexatious claims, harassment and litigation.¹⁰⁸

Airbnb and several other stakeholders also supported implementing a cap on the maximum penalty.¹⁰⁹

However other stakeholders considered the potential severity of penalties appropriate and would act as a deterrent to unruly guests.

In its submission, We Live Here recommended:

- increasing the compensation cap to \$5000 for each affected occupier
- allowing compensation orders to be made by causing potential hazards, rather than ‘substantial hazards’
- removing the civil penalty cap and providing that payments for any penalties are paid to the applicant.¹¹⁰

The Knight Alliance also supported increasing the maximum amount of compensation and civil penalties, which it believed should be ‘a lot higher’.¹¹¹

¹⁰⁶ Ibid., s. 169E(4).

¹⁰⁷ Ibid., s. 169G.

¹⁰⁸ Holiday Rental Industry Association, *Submission*, p. 13.

¹⁰⁹ Airbnb, *Submission*, p. 11; Bronwyn McAsey, director, Matrix Apartment, *Transcript of evidence*, 13 April 2017; Neil Ackerman, director, Matrix Apartments, *Transcript of evidence*, 13 April 2017.

¹¹⁰ We Live Here, *Submission*, Attachment A.

¹¹¹ The Knight Alliance, *Submission*, p. 2.

3.3.3 Joint and several liability

Proposed section 169H of the Bill imposes a joint and several liability on the short-stay provider and occupant for any order made by VCAT. Sub-section (3) also indemnifies the short-stay provider from liability if VCAT is satisfied they ‘took all reasonable steps’ to prevent the breach.¹¹²

Many stakeholders opposed imposing a liability on the short-stay provider for the actions of a guest and considered that the Bill should ‘punish the offender’. The Holiday Rental Industry Association noted that this option was not supported by the Independent Panel and endorsed its reasons for rejection:

It is not only unfair but also contrary fundamental legislative principles and principles of justice to make one person (the owner) responsible for the actions of another (the guest or visitor). This covers responsibility for both fines and damages.

...

To superimpose on this system an overarching responsibility on the short-stay owner would add nothing except to make the short-stay owner the de facto insurer of the building and add another layer of litigation.

...

This is also unfair and contrary fundamental legislative principles and principles of justice because it makes one person (the owner) responsible for the actions of another (the guest or visitor).¹¹³

However the Committee notes that joint and several liability exists in several other areas of law and is not exclusive to this Bill. In addition, the Committee is satisfied that the provisions of sub-section (3) will protect short-stay providers who have attempted to prevent the breach.

3.3.4 Cost recovery for owners corporations

Some owners corporations stakeholders raised concerns that the Bill does not provide for owners corporations to recover costs associated with increased maintenance required due to short-stay operations in their building.¹¹⁴

Under section the *Owners Corporations Act 2006*, VCAT can make an order for payment for money:

- found to be owing by one party to another
- by way of damages
- by way of restitution.¹¹⁵

¹¹² Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 169H.

¹¹³ Holiday Rental Industry Association, *Submission*, pp. 7-8.

¹¹⁴ Sandra McCashney, *Submission*; Kingstoun Apartments, *Submission*; The Knight Alliance, *Submission*; Arthur Lumsden, *Submission*; Joe Sarraf, *Submission*.

¹¹⁵ *Owners Corporations Act 2006* (Vic), 69 of 2006, section 165(c).

Sub-section (j) also allows VCAT to make an order ‘in relation to damaged or destroyed buildings or improvements’.¹¹⁶

As the Bill stands, VCAT can make these orders in relation to a short-stay dispute.¹¹⁷ However the Committee acknowledges that this does not include a mechanism for owners corporations to recover costs associated with legal proceedings or caused by increased repairs, maintenance or other works.

We Live Here recommended amending section 49 of the Owners Corporations Act to specifically allow owners corporations to recover as debt costs associated with short-stay operations in a building, including:

- repairs, maintenance and other works
- costs associated with replacing and renewing depreciating assets.¹¹⁸

We Live Here also recommended amending section 18 of the Act to specify a special resolution is not required for the owners corporation to recover these fees.¹¹⁹

OC Pride, an owners corporation management company, proposed a provision in the Bill to allow owners corporations to impose a fee on short-stay operators. It stated this could be a set percentage of the total annual budget and be used to offset additional wear and tear and security costs.¹²⁰

At a public hearing, Antoinette Hall, director of OC Pride, explained to the Committee:

It is not just about penalties, to be honest. It is about maintenance of that building ongoing. With so many people coming in and out, in and out, there’s a lot more maintenance on the floors.

...

There is a lot more cleaning, there is a lot more security that you are putting in place for those particular floors. There is a lot more maintenance in terms of keeping your corridors looking nice.¹²¹

Several other stakeholders supported this proposal to offset the increased costs to owners corporations caused by short-stay operations in their building.¹²²

FINDING 6: It is difficult to quantify the extraordinary impact of short-stay letting on the wear and tear of common property. However there is anecdotal evidence to suggest this is occurring and is an issue for owners corporations.

¹¹⁶ Ibid., s. 165(j).

¹¹⁷ Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (Vic), section 159D(2)(b)(iii).

¹¹⁸ We Live Here, *Submission*, Attachment 1

¹¹⁹ Ibid., Attachment 1

¹²⁰ OC Pride, *Submission*, p. 2.

¹²¹ Antoinette Hall, director, OC Pride, *Transcript of evidence*, p. 41.

¹²² The Knight Alliance, *Submission*; Arthur Lumsden, *Submission*; Joe Sarraf, *Submission*.

RECOMMENDATION 9: That the Victorian Government, in its review of consumer property law, considers allowing owners corporations to levy fees on short-stay accommodation providers to cover increased maintenance and repair costs caused by their guests and the usage of these apartments. This should include a fair and equitable cap on the percentage of fees that may be levied.

Appendix 1

Submissions

Submission no.	Name
1	Cathy Sherry
2	Pete Morton
3	Sara Hoffman
4	Phillip Ooi
5	Moses Price
6	Hamish Robinson
7	Tony and Katie Dear
8	Melissa Warner
9	Stayz
10	Victorian Accommodation Industry Association
11	Confidential
12	Keith McHugh
13	Boutique Stays
14	Julie and Craig Trigg
15	Doug Kerr
16	Holiday Rental Industry Association
17	Tourism Accommodation Australia (Vic)
18	Airbnb
19	Property Owners Association of Victoria
20	The Restassured Group
21	Henk van Leeuwen
22	Market Square Condos Owners Corporation
23	Matthew Counsel
24	Paul Holbourne
25	Linda Dugan
26	Name Withheld
27	Annette Smith
28	Andrew Bridge
29	Giancarlo Sponza
30	Karl Berberich
31	Robert Dandie
32	David Jobling
33	OC Pride
34	Jane Bate
35	Carey Guan
36	Lynette and Arthur Lumsden
37	Roger Matthews
38	Milton Salgado

Submission no.	Name
39	Mainpoint Owners Corporation
40	Allen Gravier
41	Alan Hibberd
42	Sally McDonnell
43	Peter Gleeson
44	Owners Corporation PS 415804U
45	Dawn Linnett
46	Mary Barassi
47	Arthur Lumsden
48	Owners Corporation Committee PS602497J
49	Basil and Rita Jenkins
50	Rachel Salmond
51	Sandra McCashney
52	The Knight Alliance
53	Robert Hinde
54	Southbank Residents Association
55	Halim Hendrik
56	David Bates
57	Nina and Gary Lichtenstein
58	Constable and Folley
59	Gavin Lane
60	Matrix Apartments
61	Tourism Transport Forum Australia
62	Sarah-Jane Bedington
63	Owners Corporation 400270Q
64	Committee of Management St James Apartments
65	Meagan Emery Solid Group
66	Jospeh Sarraf
67	Owners Corporation Committee Kingstoun Apartments
68	Christopher Fellows
69	Barbara Thornely
70	Confidential
71	Fiona Reed
72	We Live Here
73	Carol Jones
74	Stephen Digby
75	Jodie Willmer
76	Flinders Warf Apartments
77	Alpha Apartments
78	Julie Burton
79	Vince Sciacca
80	Jason Douglas
81	Docklands Private Collection of Apartments
82	Corporate Keys

Submission no.	Name
83	Paul Strange
84	Veronica Kypros
85	KeyHub
86	Barbara Hunter
87	Dennis Warren and Gwen Scott
88	Roamlocal
89	Peter Cavanagh
90	Beyond a Room
91	The Concierge
92	Southbank Apartments
93	Frances Whitten
94	Penelope Wiffen
95	Anchor Abodes
96	Dr Anna Lavelle
97	Confidential
98	Confidential
99	Katherine Anrath
100	Tony Penna
101	Donna Broun
102	Waterfront Apartments Melbourne
103	Aeroprop
104	Uptown Frankston
105	Peter Brohier
106	Fran Calbas
107	Shaun Hogan
108	Confidential

Appendix 2

Public hearings

Friday 24 March 2017, Melbourne

Name	Position	Organisation
Trevor Atherton	Chair of Regulations and Government Relations Committee	Holiday Rental Industry Association
Andrea Wilson	President	
Paddy O'Sullivan	Chief Executive Officer	Australian Hotels Association
Dougal Hollis	General Manager	Tourism Accommodation Australia (Victorian Branch)
Antoinette Hall	Director	OC Pride
Michelle Chaing	Public Policy Representative	Stayz
Michael Nugent	Member	Strata Community Australia
Gregor Evans	Council Member	
Sharon Lameris	Education and Policy Manager	
Paul Salter	Spokesperson and Past President	Victorian Accommodation Industry Association

Thursday 13 April 2017, Melbourne

Name	Position	Organisation
Brent Thomas	Head of Public Policy, Australia and New Zealand	Airbnb
Tom Bacon	Chief Executive Officer and Principal	Strata Title Lawyers
Barbara Francis	Director	We Live Here
Marshall Delves	Director	
Tracey Allen	Secretary	Southbank Residents Association
Dan O'Keeffe	Committee Member	
Rob Mair	Team Leader, Place Brokerage and Facilitation	City of Melbourne
Henk van Leeuwen	Chairman	St Bedes Owners Corporation
Bronwyn McAsey	Director	Matrix Apartments
Neil Ackerman	Director	
Bev Constable	Owner/Director	Boutique Stays

Appendix 3
**We Live Here suggested
amendments to the Owners
Corporations Amendment
(Short-stay Accommodation)
Bill 2016**

A3

PARLIAMENT OF VICTORIA

**Owners Corporations Amendment (Short-stay
Accommodation) Bill 2016**

TABLE OF PROVISIONS

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

**Owners Corporations Amendment
(Short-stay Accommodation) Bill 2016**

A Bill for an Act to amend the **Owners Corporations Act 2006** to regulate the provision of short-stay accommodation arrangements in lots or parts of lots affected by an owners corporation and for other purposes.

The Parliament of Victoria enacts:

1 Purpose

5

The main purpose of this Act is to amend the **Owners Corporations Act 2006** to regulate the provision of short-stay accommodation arrangements in lots or parts of lots affected by an owners corporation.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

Owners Corporations Amendment (Short-stay Accommodation) Bill 2016

(2) If a provision of this Act does not come into operation before 1 July 2017, it comes into operation on that day.

3 Principal Act

5 In this Act, the **Owners Corporations Act 2006** is called the Principal Act.

4 Definitions

In section 3 of the Principal Act insert the following definitions—

10 "**agent provider** means ~~a person~~ **a body politic or corporate as well as an individual** who, for a fee, arranges and manages short-stay accommodation on behalf of a lot owner, lessee or sub-lessee;

15 **Building Code of Australia** has the same meaning as it has in section 3(1) of the **Building Act 1993**;

20 **depreciating asset** means an asset that is listed as an item in the Maintenance Plan and has a limited effective life and can reasonably be expected to decline in value over the time it is used.

25 **short-stay accommodation** means accommodation provided under a short-stay accommodation arrangement;

30 **short-stay accommodation arrangement** means a lease or licence ~~or agreement~~ for a maximum period of ~~7 days and 6 nights~~ **30 days and 29 nights** to occupy a lot or part of a lot affected by an owners corporation that is—

- (a) in a building wholly classified as a Class 2 building in Part A3.2 of

Owners Corporations Amendment (Short-stay Accommodation) Bill 2016

- 5
- 10
- 15
- 20
- Volume One of the Building Code of Australia; or
 - (b) in the case of a building where only part of that building is classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia—in that part of the building;
- short-stay occupant* means a person who occupies a lot or part of a lot under a short-stay accommodation arrangement;
- short-stay provider* means—
- (a) the owner of a lot or part of a lot that is leased or licensed by the owner ~~or has otherwise entered into an agreement to~~ with a person under a short-stay accommodation arrangement; or
 - (b) a lessee or sub-lessee of the owner of a lot or part of a lot that is leased or licensed by the lessee or sub-lessee ~~or has otherwise entered into an agreement to~~ with a person under a short-stay accommodation arrangement; or
 - (c) an agent provider;".

5 Amendment Division 4 of Part 2

“Division 4 - Power to bring legal proceedings

18 Power to bring legal proceedings

- (1) Subject to subsection (2), an owners corporation must not bring legal proceedings unless it is authorised by special resolution to do so.
- (2) A special resolution is not required for an application to VCAT under Part 11 to

Owners Corporations Amendment (Short-stay Accommodation) Bill 2016

recover fees and other money or to enforce the rules of the owners corporation or to bring an application for short-stay accommodation dispute.

6 Amendments 49 in Division 5 of Part 3

49 Cost of repairs, maintenance or other works

- (1) An owners corporation may recover as a debt the cost of repairs, maintenance or other works undertaken wholly or substantially for the benefit of one or some, but not all, of the lots affected by the owners corporation from the lot owners.
- (2) An owners corporation may recover as a debt, the cost of maintaining, repairing, replacing and renewing Depreciating Assets from a lot owner or lot owners that are responsible for causing damages or substantial deterioration resulting from, and/or associated with, the short-stay arrangements.
- (3) The amount payable by the lot owners under subsection (1) is to be calculated on the basis that the lot owner of the lot that benefits more pays more.
- (4) The works referred to in subsection (1) and (3) may be to the common property or a lot.
- (5) An order for the purpose of subsection (2) may be made in addition to any order made under section 165(1)(c)(ii).
- (6) Where VCAT makes compensation orders for the purpose of subsection (2) against multiple respondents in relation to the same breach, in determining the amount of compensation to be paid under each order,

OC Submission 72
Attachment A

Author 20/1/2017 1:59 PM
Comment [1]: Effectively to regulate the 'wear and tear' caused by the short-term occupier. In the Consumer Victoria Review in Part 6 Option 18 allows the OC to recover cost arising from particular uses of lots by way of special levy

Author 20/1/2017 2:01 PM
Comment [2]: Provision consistent with 169E

Author 20/1/2017 2:05 PM
Comment [3]: Multiple residents - provision

581085B.1-24/5/2016

4

BILL LA INTRODUCTION 24/5/2016

Owners Corporations Amendment (Short-stay Accommodation) Bill 2016

VCAT must take into account whether the total compensation proposed is proportional to the harm caused by the breach.

5-7 New Division 1A of Part 10 inserted

After section 159 of the Principal Act insert—

5

"Division 1A—Complaints and procedures—short-stay accommodation arrangements

159A Complaints—short-stay accommodation arrangements

10

(1) An owner of a lot, an occupier of a lot or an owners corporation manager may make a complaint to the owners corporation about an alleged breach by a short-stay occupant of the conduct proscriptions applying to short-stay accommodation arrangements.

15

(2) For the purposes of subsection (1), a short-stay occupant breaches a conduct proscription applying to a short-stay accommodation arrangement by engaging in any of the following conduct—

20

(a) unreasonably creating any noise likely to substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);

25

30

Author 20/1/2017 1:43 PM
Comment [4]: 'Likely' is balanced by 'unreasonably' (eg. Loud music= likely to interfere; but provision apply only if unreasonable= it means a loud music for short amount of time and justified does not active the provision as it may be reasonable)

Owners Corporations Amendment (Short-stay Accommodation) Bill 2016

- 5 (b) behaving in a manner likely to unreasonably ~~and substantially~~ interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot;
- 10 (c) using a lot ~~in~~, or the common property ~~of, the building~~, or permitting a lot or the common property to be used, so as to cause a ~~substantial hazard~~, ~~or a potential hazard~~ to the health, safety and security of any person or an occupier;
- 15 (d) ~~unreasonably and substantially~~ obstructing the lawful use and enjoyment of the common property by an occupier or a guest of an occupier;
- 20 (e) ~~substantially~~ damaging or altering—
 - 25 (i) a lot or the common property, ~~intentionally or negligently~~; or
 - (ii) a structure that forms part of a lot or the common property, ~~intentionally or negligently~~.
- 30 (3) A complaint must be made in writing in the approved form.
- (4) An owners corporation must make a copy of the approved form available at the request of a person who wishes to make a complaint under this section.
- 35 (5) A complaint cannot be made under this section in relation to a personal injury.

Author 20/1/2017 1:55 PM
Comment [5]: Superfluous

A3

Owners Corporations Amendment (Short-stay Accommodation) Bill 2016

~~159B Decision whether to take action in respect of alleged breach by a short-stay occupant~~

- ~~(1) This section applies if—~~
 - ~~(a) a complaint is made under section 159A; or~~
 - ~~(b) it otherwise comes to the attention of the owners corporation that a short-stay occupant has breached a conduct proscription specified in section 159A(2).~~
- ~~(2) The owners corporation must decide—~~
 - ~~(a) to take action under this Part in respect of an alleged breach by a short-stay occupant; or~~
 - ~~(b) to take no action in respect of the alleged breach.~~
- ~~(3) The owners corporation must not take action under this Part in respect of an alleged breach by a short-stay occupant unless it believes on reasonable grounds that the short-stay occupant has committed the alleged breach.~~
- ~~(4) A decision under this Part cannot prevent the carrying out of an obligation under section 46 or 47 that is necessary to ensure safety or to prevent significant loss or damage.~~

159C Notice of decision not to take action—short-stay accommodation arrangement complaint

- (1) If an owners corporation decides not to take action under this Part in respect of an alleged breach by a short-stay occupant, it must give notice of the decision to any person who

581085B.1-24/5/2016

7

BILL LA INTRODUCTION 24/5/2016

OC Submission 72
Attachment A

Author 20/1/2017 1:58 PM

Comment [6]: Unnecessary

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made a complaint under section 159A in respect of the alleged breach.

- (2) The notice must set out the reasons for the decision.

5 **159D Notice to rectify breach—short-stay accommodation arrangement complaint**

- (1) If an owners corporation decides to take action under this Part in respect of an alleged breach by a short-stay occupant, the owners corporation—

10

- (a) must give notice of the allegation to the lot owner and the short-stay provider (if the short-stay provider is not the lot owner); and

15

- (b) may give notice of the allegation to the short-stay occupant, **if the short stay occupant can be found.**

- (2) A notice must specify the alleged breach and state that—

20

- (a) the person to whom the notice is given is required to rectify the breach if this has not been done so already; and

25

- (b) in any case, the owners corporation may decide to apply to VCAT to resolve a short-stay accommodation dispute in relation to the breach and may seek one or more of the following orders—

30

- (i) a prohibition order under section 169D;
 - (ii) an order for a civil penalty under section 169G;
 - (iii) any applicable order that VCAT may make under section 165.

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(3) A notice under this section must be in writing in the approved form.

159E What if the person does not rectify the breach?

- 5 (1) If a person has been given a notice under section 159D, the owners corporation may decide to apply to VCAT to resolve a short-stay accommodation dispute in relation to the breach and may seek one or more of the following orders—
 - 10 (a) a prohibition order under section 169D;
 - (b) an order for a civil penalty under section 169G;
 - 15 (c) any applicable order that VCAT may make under section 165.
- (2) The owners corporation may make a decision under subsection (1), whether or not the person to whom the notice is given has rectified the breach.

159F Report to annual general meeting

- 20 (1) The owners corporation must report to the annual general meeting in relation to—
 - 25 (a) the number of complaints made under this Division; and
 - (b) the nature of the complaints; and
 - (c) the number of matters on which action was taken under this Division; and
 - (d) the nature of the matters in respect of which action was taken; and
 - 30 (e) the outcome of each action.
- (2) The report must not identify the person who made a complaint or the short-stay occupant alleged to have committed the breach.

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6 8 Conciliation and mediation

After section 161(1)(e) of the Principal Act
insert—

"(ea) an agent provider **short-stay provider**;"

5

7 9 New Division 1A of Part 11 inserted

After section 169 of the Principal Act **insert—**

**"Division 1A—Short-stay
accommodation disputes**

10

**169A VCAT may hear and determine short-stay
accommodation disputes**

VCAT may hear and determine a
dispute relating to an alleged breach by
a short-stay occupant of the proscribed
conduct (*a short-stay accommodation
dispute*).

15

Note:

In this Division a breach by a short-stay occupant includes a
breach by an invitee of the short-stay occupant.

**169B Who may apply to VCAT in relation to a
short-stay accommodation dispute?**

Any of the following persons may apply
to VCAT to resolve a short-stay
accommodation dispute—

20

- (a) **the owners corporation**;
- (b) a lot owner or former lot owner;
- (c) a lot owner on behalf of an owners corporation;
- (d) an occupier;
- (e) an agent **short-stay provider**.

25

Author 20/1/2017 3:24 PM
Comment [7]: It Includes an agent provider and more

Author 20/1/2017 3:30 PM
Comment [8]: It would be better to lower the threshold to an ordinary resolution for any legal action.

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169C What orders can VCAT make?

In determining a short-stay accommodation dispute, VCAT may make any order it considers fair including one or more of the following orders—

5

- (a) a prohibition order under section 169D;
- (b) a loss of amenity compensation order under section 169E;
- (c) an order for a civil penalty under section 169G;
- (d) a compensation order for the wear and tear of the common property and/or of the amenities under section 49(2);
- (e) any applicable order that VCAT may make under section 165.

10

169D Prohibition order

(1) VCAT may make an order prohibiting the use of a lot or part of a lot for the purpose of a short-stay accommodation arrangement for a specified a period up to 12 months if—

15

- (a) a notice under section 159D has been served on a short-stay provider on at least 3 2 separate occasions within 24 months, related to accommodations in the same building and run by the same short-stay provider or agent provider (regardless of whether the short-stay provider was an agent provider or a lessee of the lot or part of the lot); and
- (b) each notice relates to an alleged breach by a short-stay occupant of the proscribed conduct specified in section 159A(2).

20

25

30

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- 5
- (2) Subject to subsection (3), a prohibition order ceases to have effect if the lot that is used (wholly or partly) for the purpose of a short-stay accommodation arrangement is sold.
- 10
- (3) A prohibition order does not cease to have effect upon the sale of a lot that is used (wholly or partly) for the purpose of a short-stay accommodation arrangement, if the sale of that lot is made—
- 15
- (a) where the short-stay provider is the owner of the lot—to a person who has a beneficial relationship with the short-stay provider; or
- 20
- (b) where one of the notices under subsection (1) was served on a short-stay provider who is not the owner of the lot—to the short-stay provider or a person who has a beneficial relationship with the short-stay provider.
- 25
- (4) For the purposes of subsection (3), a person has a beneficial relationship with a short-stay provider if the short-stay provider is—
- 30
- (a) an associate of the person; or
- (b) a body corporate of which the person, or an associate of the person, is a member; or
- 35
- (c) a corporation over which the person (either as an individual or jointly with associates) or an associate of the person, can exercise control of; or
- (d) a corporation of which the person, or an associate of the person, is an executive officer; or

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- 5 (e) in the case of a person that is a corporation—an executive officer of that corporation or an associate of an executive officer of that corporation; or
 - (f) the trustee of a discretionary trust of which the person, or an associate of the person, is a beneficiary; or
 - 10 (g) a member of a firm of which the person, or an associate of the person, is a member.
- (5) In this section the following definitions apply—
- associate* means—
- 15 (a) an employee of the person; or
 - (b) a spouse, domestic partner, parent, sibling or child of the person or the person's representative; or
 - 20 (c) a child of the spouse or domestic partner of the person or the person's representative;
- control* has the meaning given by section 50AA of the Corporations Act;
- executive officer* means any person described as an executive officer, whether or not the person is a director of the corporation, who is concerned with, or takes part in, the management of the corporation.
- 25
- 169E Loss of amenity compensation order**
- 30 (1) VCAT may make an order for compensation in favour of an occupier (*a loss of amenity compensation order*) who resides in the same building or part of a building where a short-stay occupant resides, and has suffered

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a loss of amenity caused by a breach by the short-stay occupant of the proscribed conduct referred to in subsection (2).

5

(2) For the purposes of this section, VCAT may make a loss of amenity compensation order in relation to the following breaches by a short-stay occupant—

10

(a) unreasonably creating any noise likely to ~~substantially~~ interfere with the peaceful enjoyment of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);

15

(b) behaving in a manner likely to unreasonably ~~and substantially~~ interfere with the peaceful enjoyment of an occupier of another lot;

20

(c) using a lot ~~in~~, or the common property ~~of, the building~~, or permitting a lot or the common property to be used, so as to cause an ~~substantial~~ hazard ~~or a~~ **potential hazard** to the health, safety and security of an occupier;

25

(d) ~~unreasonably and substantially~~ obstructing the lawful use and enjoyment of the common property by an occupier or a guest of an occupier.

30

(3) The maximum amount of compensation that VCAT may order under this section is ~~\$2000~~ **\$5000** for each affected occupier for each breach.

35

(4) An application for a loss of amenity compensation order must be made within 60 days of the relevant breach.

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- 5
- (5) A loss of amenity compensation order may be made in addition to any order made under section 165(1)(c)(ii).
- (5)(a) Nothing in this Act derogates from any rights or remedies that an owner occupier, may have in relation to any lot or the common property apart from this Act.
- 10
- (6) Where VCAT makes loss of amenity compensation orders in favour of multiple applicants in relation to the same breach, in determining the amount of compensation to be paid under each order, VCAT must take into account whether the total compensation proposed is proportional to the harm caused by the breach.
- 15
- 169F What must VCAT consider?**
- (1) In making an order to resolve a short-stay accommodation dispute, VCAT must consider the following—
- 20
- (a) the conduct of the parties;
 - (b) an act or omission or proposed act or omission by a party;
 - (c) any other matter VCAT thinks relevant.
- (2) In relation to a prohibition order under section 169D, VCAT must also consider the following—
- 25
- (a) the severity and nature of the breach;
 - (b) the time between the breaches;
 - (c) the history of the short-stay provider's provision of short-stay accommodation arrangements;
- 30

(d) any measures the short-stay provider took to prevent the breach.

169G Civil penalty for breach by short-stay occupant

5 Where VCAT determines that there is a breach by a short-stay occupant of the proscribed conduct specified in section 159A (2), VCAT may make an order imposing a civil penalty upon the short-stay occupant or the short-stay provider. ~~not exceeding \$1100.~~

Note

10 The penalties imposed under this section will be paid into the Victorian Property Fund ~~to the applicant.~~

169H Joint and several liability of short-stay provider and short-stay occupant

15 (1) A short-stay provider and a short-stay occupant are jointly and severally liable for satisfying any order made under—

20 (a) section 165(1)(c) to compensate for loss or damage incurred as a result of the short-stay occupant ~~substantially~~-damaging or altering—

25 (i) a lot or the common property, intentionally or negligently; or

(ii) a structure that forms part of a lot or the common property, intentionally or negligently; or

30 (b) section 165(1)(j) to rectify loss or damage incurred as a result of the short-stay occupant ~~substantially~~-damaging or altering—

(i) a lot or the common property, intentionally or negligently; or

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- (ii) a structure that forms part of a lot or the common property, intentionally or negligently; or
- 5 (c) section 169E to compensate for loss of amenity; or
- (d) section 169G to pay a civil penalty.
- (e) section 49.2 to compensate costs of repairs, maintenance and works connected with the short-stay arrangements.
- (2) Where a lot owner has appointed an agent provider—
 - 10 (a) subsection (1) does not apply to an agent provider; and
 - (b) the lot owner and the short-stay occupant are jointly and severally liable instead for satisfying any order referred to in subsection (1).
- 15 (3) Despite subsection (1), a short-stay provider is not liable for satisfying a loss of amenity compensation order under section 169E and/or repairs and maintenance costs under section 49.2 if VCAT is satisfied that the short-stay provider took all
 - 20 reasonable steps to prevent any relevant-breach by a short-stay occupant of the proscribed conduct specified in section 159A(2)."
 - 25 **Note:**
'All Reasonable steps' in this section means acting with reasonable and best endeavours doing all it is reasonable in the circumstances.
- (5) Where a short-stay occupier, during the prescribed time of occupation under the short-stay arrangement, invites one or more persons in the lot occupied, it will be liable

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for any breaches prescribed under this act
committed by the invitee.

- 5 (6) Where the short-stay occupier is not
identifiable the liability may be enforced
against the short-stay provider only. In this
event, the short stay provider is entitled to
recover the contribution paid for the short-
stay occupier from the short-stay occupier.

8 10 Repeal of amending Act

This Act is **repealed** on 1 July 2018.

Note

10 The repeal of this Act does not affect the continuing operation
of the amendments made by it (see section 15(1) of the
Interpretation of Legislation Act 1984).

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Endnotes

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

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BILL LA INTRODUCTION 24/5/2016

Appendix 4
**Victorian Accommodation
Industry Association's
proposed regulatory framework**

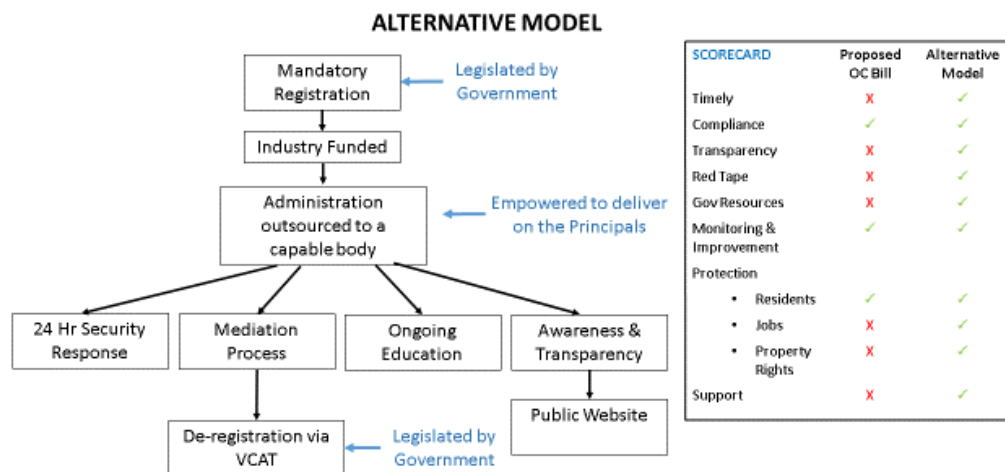
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VICAIA’S ALTERNATIVE MODEL

Principals:

- Timely: timely responses to complaints
- Compliance: increased industry regulation and compliance through education and mandatory participation whilst reducing red tape and administrative burden on Government and the sector
- Transparency: through clearer processes for and responsibilities of: legislating; licensing; enforcing and reporting
- Monitoring and improvement: through effective data collection, analysis and provision to Government, all key stakeholders and the community
- Protection: of residents, jobs; and property rights
- Support: for confidence in Melbourne’s apartment market and small businesses in – and providing services to – the short stay sector
- Benchmarking: for other jurisdictions of modern, effective legislation and regulation.

An overview



1. Mandatory Registration

It starts with Mandatory Registration which is legislated by the Victorian Government. That’s essential.

In the registration process applicants are required to:

- Provide Insurance Certificate of Currency
- Successfully complete online testing of the Industry Code of Conduct

Along with other benefits, registration would enable the collection of data from all short stay providers. We would welcome an opportunity for data collection to establish the facts about the short stay industry and its contribution to Victorian tourism and broader economy.

Benefits

- Industry funded
- Transparency & Data
- Compliance
- Protection

2. Administration of the Alternative Model

We propose the administration of this model is *outsourced* to an appropriate and capable body with a specific remit to deliver on the principals of this model.

Mandatory industry participation would fund this body.

Example

There are approximately 68,000 short stay properties in Victoria.
\$50 per property = \$3.4M in registration fees.

Benefits

- Reduces red tape
- Low on government resources
- Encourages all stakeholders to develop practical solutions
- Reduces divisiveness

3. 24 Hour Security Call out

HLO (Holiday Lettings Organisation) is a short stay industry body based in Byron Bay. They have been operating a 24 Hour security call out hotline for the last 12 years.

See <http://www.hlobyron.com.au/noisy-neighbours-hotline/>

We propose a Victorian body could do exactly the same.

Regarding Eviction

Please note, in contrast to Owner residents and long term tenants, a short stay occupant is granted a limited licence or permission to occupy, subject to conditions (Code of Conduct) rather than a tenancy under the Residential Tenancy Act. If a short stay occupant breaches the conditions, their license to occupy can be cancelled. If they do not depart voluntarily, they are regarded as trespassing and **can be evicted**.

Benefits

- Timely responses to complaints would be significantly improved
 - *The proposed Bill does not enable this*
- Compliance
- Reduces red tape
- Provides protection for Residents

4. Mediation

The appointed body could be the first point of contact for complaints.

Only repeat offenders who are not remedying complaints would be referred to VCAT, significantly reducing the burden on VCAT resources compared to the current Bill

Benefits

- Protects residents and short stay providers, provides both parties with a right to be heard
- Timely responses to complaints would be significantly improved
 - *The proposed Bill does not enable this*
- Reduced government resources
- Allows for ongoing, *constructive* dialogue between industry & Owners Corporations to further improve the Code of Conduct
 - *The proposed Bill does not facilitate this*

5. De-registration

VCAT would remain the arbitrator if mediation failed.

Benefits

- De-registered operators would not be able to open up in new locations
 - *The proposed Bill does not prevent this*
- Doesn't rely on 3rd party portals to enforce

6. Ongoing Education

Further builds on compliance, awareness and ongoing improvement

- *The proposed Bill does not enable this*

7. Awareness & Website

We propose a public website be developed with the following features:

- Provides login access for Owners Corporations (to their own building only)
- All apartments need to be registered & listed on website
 - *The proposed Bill does not enable this*
- *Complaints can also be logged & tracked*
- Website is promoted to all Owners Corporations

8. Benchmarking

This could be a model for other jurisdictions to consider.

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