

# TRANSCRIPT

## STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

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

Melbourne — 24 March 2017

#### Members

Mr David Davis — Chair	Ms Samantha Dunn
Ms Harriet Shing — Deputy Chair	Mr Khalil Eideh
Ms Melina Bath	Mr Cesar Melhem
Mr Richard Dalla-Riva	Mr Daniel Young

#### Participating Members

Mr Greg Barber	Mr James Purcell
Mr Jeff Bourman	Mr Simon Ramsay
Ms Colleen Hartland	

#### Staff

Inquiry Officer: Mr Matt Newington

#### Witnesses

Ms Sharon Lameris (sworn), education and policy manager

Mr Michael Nugent (sworn), member, and

Mr Gregor Evans (sworn), council member, Strata Community Australia (Victorian Branch).

**The CHAIR** — I welcome our next guests Strata Community Australia, Michael Nugent, Gregor Evans and Sharon Lameris. If I can ask our secretariat to swear you in just indicating that evidence given here is under oath in a public hearing is protected, outside it may not be, and can indicate that this is in respect of our inquiry in the Owners Corporations Amendment (Short Stay Accommodation) Bill 2016.

If we could ask for just a short statement from your group and then we will follow with some questions please.

**Ms LAMERIS** — First of all, we just want to acknowledge that striking the right balance will undoubtedly be a hard task for any committee with various industries impacted as well as people's lives and people's livelihoods. The need also exists to address so many vast and different challenges, perspectives and opinions, so protection of one's home environment, their sense of community and their financial investment. So one size will certainly not fit all.

SCA (Vic) represents the strata sector so we will limit our discussions to concerns that impact those who live, own and work in the strata industry and the potential redress of legislation governing the strata industry, the owners corporations Act and the building laws.

Our primary concerns are the adverse impact on the quality of life of residents and home owners and occupiers and the perverse reduction in the lifespan of the building and its assets. So we encourage the government to continue the light touch approach of the Victorian Legislation and set boundaries within which lot owners have the authority to make decisions based on what is right for their building, their community and their OC. The ability to weight decisions by the need for a majority vote, 75 per cent special resolution or unanimous resolution offers protection to all the lot owners that any decisions made and take into consideration the interests and needs of all owners but having said that, individual owners or an OC can proceed to VCAT if any decision that is made they believe is unfair.

So whilst we believe this Bill doesn't go far enough, we welcome its purpose which appears to be to provide the OCs with the authority to manage complaints related to short stay accommodation. We believe that the Bill falls short however of its original intent which was to give the authority to the OC to actually regulate short-term stays so we therefore request consideration given to the following to address the failures.

So with regards to the OC Act, it was basically a clear — this is what we are asking for, a clear recognition that an OC can establish rules to control the behaviour and conduct that impacts the OC and its resident occupiers in regard to the short-term stays, the authority to set rules to govern the administration of short-term stays with respect to the use of common property and the shared services and the authority for an OC to pass a rule to prohibit short-term stays with that 75 per cent resolution, the power for an OC to recover the cost directly attributable to occupiers who cause damage from their respective occupiers and/or lot owners, the authority of an OC to require lot owners who benefit from the income of short stay accommodation to contribute what is fair and proportional to the additional expenses towards excessive wear and tear of the premises and its service, and the power of an OC to recover additional costs incurred by owners collectively to enforce a breach which will be incurred under the provision of this Bill.

In addition, we also seek amendments to the planning laws to address the safety and the zoning for the use of purpose. Upon conclusion of this short presentation, don't hesitate to ask us if there's anything further we can explain.

Now we know you have got things in writing from us but one other thing we wanted to add was that the OC would need to obtain a special resolution to proceed to VCAT under this Bill. So 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.

So to counteract these unnecessary expenses, the OC could be expected to fund a review of their rules, we are saying, but if you allowed it to be in the rules with a view to introducing rules to administer and control the use

of common property and for the purpose of building health, safety and security which the Act currently says they should be doing.

Rules will allow all owners and occupiers to be notified of their obligations before an event as opposed to addressing an unacceptable behaviour after an event by way of a complaint or a breach. In addition, there are concerns raised in evidence that may only be addressed by other legislation such as the building legislation so we were talking about the concern on the safety of the short-term occupants themselves because obviously they have no prior knowledge of the building so if there is an issue they are at greater risk to not be able to evacuate at any time or know where to go or what the services are.

With regard to drafting of the Bill, should the Bill remain as is or in part, we have already provided details of where we thought the drafting might cause problems. Representing managers we can see the technical terms that can sometimes be hindrances where they say there's loopholes to allow things in and get things through when 'No, you cannot do this because it says this word here.' So we have pointed out a couple of things that we think might cause problems. But if we could address one point in brief it would be to highlight that the OC Act governs and creates a relationship with and by the lot owners. Other than an occupier's obligation to comply with the rules of the OC there is no legislated obligations for agents or tenants to be made known to the OC informally or formally.

So it can cause a lot of problems in relation to breaches which is what owners corporations experience now with other complaints, even if it was not a short-term stay occupant. An owners corporation would still have problems recovering costs from a tenant because there is no advice who that tenant is or how to approach them and then there's been the legislated obligations where unless there is a proper contract in place you cannot even take action via the landlord. So these are all extenuating circumstances around it. But other than that, you have our comments on all the other issues we have raised.

**The CHAIR** — Can I thank you for that submission. There are a couple of points early on that I want to just pursue because there are assertions made and I want to understand those.

The additional wear and tear on buildings of use through repeated short stay, do you have any way of documenting that?

**Mr NUGENT** — It is very difficult to document.

**The CHAIR** — I know, that's why I'm asking. That is precisely what I am asking, if someone has done it.

**Mr NUGENT** — The short answer is no but certainly there are multiple examples of equipment being misused and being broken. There are lifts being used much more frequently by — —

**The CHAIR** — Heavier usage.

**Mr NUGENT** — Heavier usage, yes. There is also damage done by taking suitcases in and out of apartments hitting walls and maintenance like that. If I could give a couple of very brief examples. One property that we manage has levels 1 to 10 are Quest serviced apartments, which are not short stay by the way, it is a proper arrangement — —

**Ms SHING** — That you are aware of.

**Mr NUGENT** — Well, yes, and up to Level 27 from there on is residential. We have to paint the Quest Apartments about twice as often as the residential apartments.

**The CHAIR** — Right. So that's actually very helpful to be able to — —

**Mr NUGENT** — Also we put in carpet squares on the Quest apartments rather than lineal carpet because of the ability to be able to replace bits and pieces here and there because of staining and things like that so I think there is evidence there but it's difficult to quantify, it is just subjective.

**The CHAIR** — Perhaps an open offer to you, if you have the capacity to provide any further additional evidence in that regard we would welcome that because I think it is a central thing that we have to be able to document

**Mr NUGENT** — Yes, I do have some additional evidence of that.

**The CHAIR** — So I think that would be extremely useful and the cost of the proceeding where you need to get leave to take a matter to VCAT, what is the average cost of that?

**Mr EVANS** — It is both costs as well as time. So 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.

So the whole process of trying to get owners to respond to that request for going to VCAT is timely and very rarely for the larger properties do you get a response from 50 per cent of the owners at least.

**The CHAIR** — So for me to understand it clearly, there is a cost in that early set of meetings that you might need to achieve the resolution — —

**Mr EVANS** — There are two ways about it. You can do it at a meeting, a general meeting, or you can actually do it by postal ballot so — —

**Ms SHING** — And that's owners not occupiers, isn't it?

**Mr EVANS** — Owners, yes.

**Ms LAMERIS** — So if it was a meeting, it would add costs to call an additional meeting, the cost of the manager's time, if you needed legal advice. Then the ability to notify everybody of that meeting because there are requirements of 14 days' notice, and that is all postal as well. There is a lot of paperwork that has to go with that and our industry has not caught up with technology.

**Mr EVANS** — It is a lot easier to obtain special resolution by postal ballot because at a meeting you need the owners to be represented in person or by proxy and it is very rare that you get at least 50 per cent.

**Ms LAMERIS** — So what may happen if you have a meeting is you might not get the number you require. Even though have spent all that money you cannot actually achieve that.

**The CHAIR** — You have got to retry to get a meeting — —

**Ms LAMERIS** — You would have to because it just fails, there is nothing in the Act which says you just automatically retry.

**The CHAIR** — But then there's also the legal cost to get to VCAT itself.

**Ms LAMERIS** — Yes, because an owners corporation would generally not self-represent, they normally get a lawyer involved.

**Ms SHING** — And that is part of the current owners corp Act review that has been going on as well as the wear and tear issue that you raised before, Mr Nugent, just to put that into context.

**Mr NUGENT** — Just to add something, the application fee is \$87.80.

**Ms LAMERIS** — Is may depend on the amount of the costs — —

**Mr NUGENT** — For an owners corporation.

**The CHAIR** — Again, it would help us if we actually had some detailed information that says, you know, a barrister to do this sort of appearance would cost this much and the machinery to put that in place — —

**Mr EVANS** — Sure, as well as the costs to the owners corporation's manager's time to facilitate the ballot, the cost of disbursements, yes, some owners will receive ballot papers by email but a lot of them receive them by post and the follow-up as well, phone calls to owners, just asking them to respond.

**The CHAIR** — Yes, that would help us, I think, to understand the precise costs and document them accurately rather than just the impression that everyone has.

**Ms SHING** — I will take you to section 159B of the Bill which in fact refers to the decision to proceed in relation to a breach requiring the owners corporation to be positively satisfied on reasonable grounds that the alleged breach has been committed.

Now this is something which is a bit an infernal challenge for law all over the place, it relates to everything from police investigations through to the way in which anyone can commence litigation across a range of sectors and industries. How would that sort of requirement to be positively satisfied on reasonable grounds that the alleged breach has been made out, work in a practical context where, for example, you have had a party house situation but you have also had reasonable wear and tear and other visitors, for example, who may not be part of a short stay arrangement may also have caused damage of the type that you described, Mr Nugent?

Tell us a little bit about that in the context that how this might work to provide a greater level of a line of sight of responsibility, I suppose, for damage and loss of amenity?

**Mr NUGENT** — Yes, as an owners corporation manager from a practical point of view, the committee would need to have evidence from at least two owners. One owner who is he said/she said, we do not take it any further than that. When it is a significant breach, we will have generally more than two owners. We will have a handful or 10 owners on a floor, all complaining about the noise.

The other means of enforcing this is through security. We have many properties that have significant short stay apartments that can engage security guards and those security officers will also confirm they have knocked on the door four times, told them to be quiet, they have had to go back again. Eventually they call the police.

**Ms SHING** — Yes, okay.

**Mr NUGENT** — So I think the evidence is there.

**Ms SHING** — On a case-by-case basis.

**Mr NUGENT** — Yes.

**Mr EVANS** — It is about getting the evidence in the first instance but there is also the issue where for large apartment buildings especially, the owners corporation Committee have the delegated powers in most cases to deal with these issues and a lot of these committee members are voluntary members and therefore it is about getting together to actually review the evidence and they've got full time jobs. If they are faced with all this evidence to review and make a decision, it's not an easy process trying to get up to 12 people together, yes, you have sub-committees, it is not easy.

**Ms SHING** — We have just heard evidence today from a couple of witnesses in relation to concerns about vexatious complaints being made. What is your view in relation to the requirement to be positively satisfied that something has on reasonable grounds taken place to amount to a breach? Does that address and if so to what extent, concerns that may have been realised about the making of vexatious complaints against people who want to just be able to supplement their income and perhaps defray the costs associated with a mortgage?

**Mr NUGENT** — Yes, I think the individuals who will mount their own cases would be really limited, very small. Ninety five per cent — 99 per cent of people will rely on the owners corporation to take the action which Sharon mentioned means that although the legislation provides for compensation to an owner — —

**Ms SHING** — This legislation as opposed to the owners corporation Act?

**Mr NUGENT** — Sorry, the proposed legislation.

**Ms SHING** — No, that is all right, as long as we are clear we are talking about the Bill, yes.

**Mr NUGENT** — Yes, the proposed legislation provides compensation to the owner but not to the owners corporation and it will be the owners corporation that will be bearing the costs.

**Ms SHING** — So just on that point then, what would your view then be to a levy that were payable to the owners corporation to defray or offset the additional work, resources and engagement that would be required, not just in dealing with standard wear and tear — sorry, extraordinary wear and tear occasioned through short stay accommodation but to actually deal with the processes associated with this additional legwork that you would have to do?

**Mr EVANS** — So owners who are not involved in short-term stay accommodation should not be having to foot the bill for the extra costs so therefore it shouldn't be based on a unit's entitlement or liability rather. It should be targeted to the people who are actually using their apartments — —

**Ms SHING** — What if, for example, you were given an opportunity to calculate an owners corp levy on owners who make their property available for the purposes of short stay and to calculate that, firstly, would that be something you would be inclined to entertain? Secondly, if you were inclined to entertain it to offset the costs and resources associated with the additional workload, how would you go about doing that? Because I note that the current owners corporation Act review is in the process of looking at that as well and there is a clear interface between that and what the short stay accommodation impost is.

**Mr NUGENT** — I think it is very problematic because there are different sorts of short stay apartments. There are those that are run by an organisation, those that are run by individuals and then through those short-term stays or Airbnb and then there is the third category where somebody goes away for three months, they might be taking a trip overseas and decide to use Airbnb as a one-off for three months and that is it.

**Ms SHING** — Yes.

**Mr NUGENT** — I can see that there would be difficulties trying to work it out and I have already answered Mr Davis that putting a dollar term on this is extraordinarily difficult.

**Ms SHING** — Isn't that like an insurance premium situation though where, you know, you pay insurance on a month by month basis, you know, you actually have that safeguard in place and dollar for dollar it is probable that it won't turn out in your favour but in the event you do have a claim against you for a breach that that may — —

**Mr NUGENT** — So how do you identify that short-term stay apartments are being used?

**Ms SHING** — Well, again that is a question which we are looking at in the context of the proposal and in the context of the Bill because at the moment we have a code which is voluntary in the context of the self-regulation and that soft code that proponents of the code say is a really great thing but others say it has no bearing on people's decision to act well or not and that others say needs to be strengthened by being included in law. So I just invite comment on that.

**Mr NUGENT** — So we are owners corporation managers and our relationship is with the owners. We do not know when people move in and out and unless there is a requirement to bag the lift or something like that. But an owner is under no obligation to inform us when their tenancy is changed and a new tenant's moving in or similarly if they are going to use their apartment for whatever purpose — —

**Ms LAMERIS** — Or who the agent is either.

**The CHAIR** — Should there be some mechanism — —

**Mr NUGENT** — We believe so. We believe for the proper management of the building we need to know who all the residents are.

**Ms SHING** — And you have provided that as part of your submission to the owners corporation Act review as well though. I mean again we've got two parallel processes taking place here.

**Ms LAMERIS** — The fact that there is no relationship so it is hard for an OC manager to impose any obligations, yes, that's in there.

**Ms HARTLAND** — Can I add to that too also that issue about knowing who it is who's actually doing the subletting or short-term letting, knowing to complain to seems to be a problem as well. So is that something you would also want to know?

**Ms LAMERIS** — As in knowing which owner?

**Ms HARTLAND** — Well which owner is using which company to — —

**Ms LAMERIS** — We would not know so we would be reliant on contacting the owner saying — with the proposed Bill, saying that this has been a breach, notify the provider using those terms. It is not something we would automatically do.

**Ms HARTLAND** — So the previous witness said they have only delisted three owners, could that also be because, you know, other residents don't know who to complain to. So if you actually knew who the lister was you could make the complaint in that process of delisting.

**Ms LAMERIS** — As in the short-term provider you mean, whoever that is?

**Ms HARTLAND** — Yes, so you know the owner but you don't know who they are listing with and if they don't know that that's an ongoing problem with that particular owner, they are going to continue listing them.

**Ms LAMERIS** — Can I just go back? When you were talking about the vexatious litigants, with the owners corporation Act, the way it works — —

**Ms SHING** — Vexatious complainants I said — —

**Ms LAMERIS** — Yes, yes — —

**Ms SHING** — So they complain against occupiers of short stay or are those owners for that behaviour?

**Ms LAMERIS** — Same person, I just said the wrong thing.

**Ms SHING** — No, that is okay.

**Ms LAMERIS** — Okay. So when a complaint is made to the owners corporation, the owners corporation basically should have a grievance committee which is really hard again going back to the fact that they are all volunteers and nobody wants to get involved. So the facts come forward, it goes to the manager and it says this is what the complaint is. The owners corporation then has to consider it and decide whether it is going to take action or not. So if there's not enough evidence or if it is the same person constantly the owners corporation can say, 'No, we are not a party to it.' The Act gives it that ability. If you have got a problem you can go forward separately as an individual, it is not an OC issue.

I mean in the industry — I have worked in the industry as well as a manager, I have seen that happen many times.

**Ms SHING** — They might also have redress under the Residential Tenancies Tribunal, for example, through separate arrangements if they are a tenant.

**Ms LAMERIS** — If they are a tenant complainant, okay. We would not necessarily see that.

**Ms SHING** — Okay, thanks.

**Mr DALLA-RIVA** — The legislation that I am reading makes it very clear that there is no discretion for the owners corporation. This notion that you had before that it needs to go to majority, you know, discussion and all this, the legislation is making it, from what I can read here, the owners corporation must make a copy of the approved form. It does not say needs to be considered by the corporate body. It says here under 159B:

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.

It then says that depending on what the breach — depending if you do not take action, must give notice of the decision to the person who made the complaint under section 159 and then the notice must set out the reasons for the decision. Then if the owner decides to take action then they must do certain activities under 159D. So I guess from what I'm trying to work out is — and I have had owners corporation so I understand what you are getting at but where the legislation is very clear that you must do certain activities, you must do them.

**Mr EVANS** — Well, the owners corporation committee may argue that — —

**Mr DALLA-RIVA** — No, this is legislation, this is law.

**Ms LAMERIS** — I think, if I could just go back a step, with the legislation the way it works is the owners corporation is all the individual owners and the owners corporation appoints a manager. So the owners corporation must give out that complaint form, which is fine, a manager can do that on behalf of the OC. It goes forward. They write a complaint, it comes back. The manager cannot make a decision. The manager must consult with the committee which means it has to go out to the committee and the committee makes a decision on behalf of the owners corporation. Now that is a complaint.

The process that this provision is leading to is the fact if this complaint wants to go further it can go to VCAT. The problem we have got is other parts of the legislation do not support they can go direct to VCAT. The legislation within the owners corporation Act says you can only go to VCAT for debt recovery or for complaints for a breach of the rules but if you want to go for a breach of the Act, you have to get the 75 per cent approval of the lot owners, which is what goes back to us going out to all owners.

**Mr DALLA-RIVA** — So if I was complaining about — and we heard evidence of somebody defecating in the corridors, you are telling me that if I am in a 300 apartment block that I — let's make it 100, that I would have to get 75 of those apartments to agree to take action against that one apartment.

**Mr EVANS** — If you want to go to VCAT, correct.

**Mr NUGENT** — You could get by with 50.

**Ms SHING** — This is the interim special resolution to court.

**Mr DALLA-RIVA** — Twenty-eight day delay, there is a 28 day delay. So what you are telling me is the legislation probably should be amended to enforce the owners corporation — —

**Mr EVANS** — So the conduct prescriptions should possibly be incorporated into the model rules because that would then be a rule and therefore would avoid the requirement for a special resolution.

**Ms SHING** — Sorry, are you talking about amending this legislation or amending the other Act in relation to the way — —

**Mr EVANS** — It is really the owners corporations Act — —

**Ms SHING** — Yes, so it is not an amendment to this particular Bill that you are talking about, Mr Nugent?

**Mr NUGENT** — It could be — —

**Ms LAMERIS** — Unless this Bill includes the fact it could be incorporated as a rule, if this gave rise — —

**Ms SHING** — So there are a couple of options that might work to achieve the same desired objective. Is that what you are all saying?

**Ms LAMERIS** — Yes.

**Ms SHING** — Yes, okay, good.

**Mr NUGENT** — Was that in our submission, sorry — —

**Ms LAMERIS** — That was one of the things that I pointed out in particular and said it might not have come out as clearly when I reread it.

**Ms SHING** — To this review and to the owners corporation Act review as well?

**Ms LAMERIS** — I cannot remember.

**Ms SHING** — That's okay, you might want to double-check — —

**Ms LAMERIS** — I know that we have had that discussion with CAV but I do not think we are clearly outlining — —

**Ms SHING** — That's okay.

**Mr NUGENT** — So it's in the submission to — —

**Ms LAMERIS** — No, that's what we spoke to today.

**Ms SHING** — Yes, good.

**Mr NUGENT** — So if I could just clarify a couple of things on the rules, what Sharon has suggested or SCA is suggesting is a clear recognition that the owners corporation can establish rules to control behaviour. At the moment, the Supreme Court has ruled that an owners corporation does not have the power to make rules in relation to this which we think is flawed because while there is a degree of privacy and independence, it is your property, you should be able to do what you like with it, the impact on other residents is so significant that we think the right of the minority is overridden by the rights of the majority and I'm sure you'll hear from other witnesses as to all of the reasons why. I would be happy to run through some if you'd like me to.

**Mr EVANS** — So Schedule 1. The owners corporation Act basically states what rules an owners corporation can make and there's subheadings so there are some rules an owners corporation can make in relation to lots, renovation of lots, other subheadings, but in terms of the length of stay there are no subheadings. So an owners corporation cannot make a rule that restricts the length of stay within an apartment.

**Mr DALLA-RIVA** — Again, you may have already discussed it, but are there standard forms that are used for owners corporations or they depend on the — —

**Mr NUGENT** — There are standard rules for — —

**Mr DALLA-RIVA** — Where do they come from?

**Mr NUGENT** — From the regulations, the owners corporation regulations but most owners corporations pass special rules, particularly the larger ones.

**Mr EVANS** — But we need a special resolution to pass a rule so it is a timely process and a difficult process.

**Ms LAMERIS** — But its once pretty much, if you can do it by a rule and then it is not going to be as expensive to enforce that with going to VCAT.

**Mr NUGENT** — The catch-22 is that you cannot make a rule in relation to short stay and so — —

**Ms SHING** — You can circumnavigate that to get to the same end though without regulating short stay per se though. If you regulate the obligations that apply to an owner through standard obligations arising under the owners corporation rules for a rule change then cannot you effectively get the same outcome?

**Mr NUGENT** — You can.

**Ms SHING** — Yes?

**Mr NUGENT** — Yes. Whether that rule is enforceable is a different question but if it's in the rules then you can take action I think.

**Ms HARTLAND** — If I can give a scenario so you have got an apartment block that is 300 apartments and a 100 of them are short stay through a multitude of different letting processes, how do you manage that when

you then possibly every weekend of those 100 short-let ones there is a problem? So how is that managed especially when the other residents are making multiple complaints and does this legislation actually assist that?

**Mr EVANS** — In an apartment building of 300 lots, you are going to have to an onsite building manager most likely. So the building manager — onsite building manager will be the one who is dealing with these complaints in the first instance. Yes, if they are continuous, they will refer them to the owners corporation manager who will then refer them to the committee to be dealt with.

So an owners corporation can make rules in relation to affecting the peaceful enjoyment of a lot so noise, damage to common property or behaviour on common property, that sort of thing. So there is ability to take action under Part 10 of the owners corporations Act in regard to breaches of owners corporation rules. I am not sure whether Sharon said before but there's a grievance procedure which is actually defined in the model rules that an owners corporation can make their own that's followed. Generally a grievance meeting has to be held within 14 days and then at that point, after that meeting is held, an owners corporation can then make an application to VCAT to take further action or they can decide to issue breach notices or whatever but that is the process and if you are getting daily complaints in relation to short-term stay occupiers then it can be a difficult process and it's going to result in the owners corporation manager's fees and the facility manager's fees possibly going up.

**Ms HARTLAND** — So if have got an owner who is a repeat offender but they are the owner rather than the tenant, so how is that dealt with?

**Mr EVANS** — So the same process under Part 10. Basically, before you go to VCAT, you need to hold this grievance meeting.

**Ms HARTLAND** — Right.

**Mr EVANS** — Some managers rather than holding a grievance meeting will issue a breach notice which is a prescribed form issued by CAV but even if you still issue a breach notice, prior to going to VCAT you need to have this grievance meeting which takes up time. Although — yes, so you have to have the grievance meeting but if the person doesn't turn up then you can obviously go to VCAT after that so it's a bit of a lengthy process.

**Ms HARTLAND** — But will the legislation assist in any way or are there other things in the legislation we need to look at?

**Mr EVANS** — It avoids the requirement to actually hold the grievance meeting because from my reading you have to issue a notice. Well, I think the owners corporation can go direct to VCAT based upon — —

**The CHAIR** — The grievance meeting, I would understand, is in a sense a natural justice issue. Is that the way it is viewed?

**Mr EVANS** — Yes, it tries to nip in the bud first. Rather than go to VCAT, it gives back the stakeholders the complaint to try and resolve it.

**The CHAIR** — The Supreme Court is going to look at it that way I would have thought.

**Mr EVANS** — That's right but with the short-term stay occupiers, they are there for the weekend — they are gone the next day so you are not going — —

**Ms LAMERIS** — With the legislation the way it is currently, with the breach notices and the complaints for normal day-to-day issues, the person you are placing it on has 28 days to rectify that breach so that would not work in the instance of short stays because the people have gone. I guess the proposed Bill allows you to take action against the owner and do something that way.

**Ms SHING** — Who do you think should be responsible?

**Ms LAMERIS** — For?

**Ms SHING** — The breaches.

**Mr NUGENT** — I think the owner needs to be responsible for who he lets into the apartment. The then instances where — look, there are short stay operators, particularly down at Docklands, who have 24-hour presence, the people come in, it is like a hotel reception, they eyeball them, that's fine. If there are problems then just going back to your statement, 'How do you manage this?' invariably the problems happen at 3 o'clock in the morning, the building manager is not there but very often buildings that have that sort of presence will have 24-hour concierge or security on staff, again another cost. So those companies down at Docklands et cetera, we'll send somebody over there and they'll evict those people and get police assistance if required but where there is random activities and people who might have five apartments in one building and have them all for short stay, they have a key lock where a person comes up — I know of one property just down the road, where they used false identity and it was Apex gang members who came and all hell broke loose, there were riots outside — —

**Ms SHING** — Are you referring to anything that is currently under investigation by the police, Mr Nugent?

**Mr NUGENT** — No, it is not.

**Ms SHING** — Thank you.

**Mr NUGENT** — There were no charges laid, the police came and pushed them out but the organisers reimbursed the owners corporation for the damage to the lift and to the apartment.

**Ms SHING** — But in short you are saying the owners should be responsible for any damage occasioned because of handing of control for that property over to somebody else?

**Mr NUGENT** — Exactly.

**Mr EVANS** — I think if you actually — well, 169H, the joint several liability and short stay provider and short stay activities where the provider, unless I think they can prove they have actually done due diligence by providing rules and educating the occupier of the building that they would actually be responsible for paying part of the compensation order which VCAT would actually put down.

**Ms SHING** — So what do you think then of the definition of short stay provider which includes three components:

(a) the owner of a lot or part of a lot that is leased or licensed by the owner to 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 to a person under a short-stay accommodation arrangement; or

(c) an agent provider

in the context of that sure requirement responsibility, what's your view in relation to that definition?

**Mr NUGENT** — I think it is appropriate. I think if you are using an internet website I do not think they are a provider. I think the legislation is intimating the sort of arrangement that there is at Docklands, for example, where instead of using a real estate company you hand it over to a company that will advertise and take the bookings.

**Ms SHING** — So I just take you there to the definition of 'short stay provider' which includes at (c): 'an agent provider'. The definitions include the definition of agent provider which means 'A person who, for a fee arranges and manages short stay accommodation on behalf of a lot owner, lessee or sublessee'.

**Mr NUGENT** — Yes.

**Ms SHING** — So would you interpret that to include or not those sorts of internet services that have been just talked about?

**Mr NUGENT** — I think it excludes those internet services and I do not think those internet service providers should be held responsible.

**Ms SHING** — But you are saying that that definition would exclude them as far as what your interpretation of that would be?

**Mr NUGENT** — Yes.

**Ms SHING** — Thank you, Mr Nugent.

**Mr DALLA-RIVA** — Can I ask, Mr Evans, just in respect of the process I was trying to get at before with the short-term stay, the residents are within the building, they have made a complaint to the manager, as was indicated, who is representative of the owners corporation Act. I am trying to get a feel for the process, what is the requirement for the giving of a notice to the owners of the apartment, how much notice has to be given in the normal course for a meeting?

**Mr EVANS** — So if an official complaint is received by the owners corporation via the owners corporation manager, they have — —

**Mr DALLA-RIVA** — So the owners corporation manager has received a complaint and he or she says, ‘No I have to’ — —

**Mr EVANS** — Based on the model rules which are the default owners corporation rules for a dispute resolution procedure stipulates that you actually need to call a meeting within 14 days I’m pretty sure it is — —

**Mr DALLA-RIVA** — So within 14 days — could you have a meeting called within three hours?

**Mr EVANS** — No, you would need to actually have a representative of the owners corporation — well, I am not quite sure whether it’s mandatory but the preference is for somebody from the committee to be in attendance at the meeting and these committee members are voluntary as I mentioned before. So having a meeting within three hours is not tenable.

**Ms LAMERIS** — Are you talking about the actual complaints process or are you talking about us going to get agreement to go to VCAT?

**Mr DALLA-RIVA** — Yes, the agreement — you need the agreement of the owners corporation being the members, the representative members but to get — for an agreement, how long is a full meeting?

**Ms LAMERIS** — It is 14 days minimum notice but have got to allow at least a week to pull together a date and a venue and draw up all the paperwork to do it so at least have got three weeks — —

**Mr DALLA-RIVA** — So we have got a short-term, somebody has come in on the Friday night, they have trashed the place, they have gone on Sunday night, you are then saying a meeting has to be then called, it can be called a week later and in the meantime they have had another party with another group.

**Ms LAMERIS** — Okay, so the Act does say within 14 days you have to call the meeting so basically you are allowed 14 days to allow the parties to come together so if they could get together in three hours you could do it in three hours, but if they cannot, and most likely they will not be able to — —

**Mr DALLA-RIVA** — So how do we get over that? That was my question. How do you get over this?

**Mr NUGENT** — I think you have to recognise that owners corporations are ponderous beasts, they work slowly, people trying to get things repaired on time, things take a bit of time, got to go through a building sub-committee et cetera because we are dealing with volunteers and — —

**The CHAIR** — I take the point.

**Ms LAMERIS** — Say we do not go through the dispute resolution process, for argument’s sake, and we did it and the complaint came forward, you then issue the notice and have to give them 28 days to address the issue. Do you want us to maybe put together a time schedule?

**The CHAIR** — That would be helpful.

**Ms SHING** — I’m just trying to find out some more detail, it is complex to say the least.

**Ms LAMERIS** — Could I just say very quickly, when you were talking about a levy, were you saying if an issue arises you impose that levy or were you saying if somebody wanted to take out short-term — —

**Ms SHING** — That as a condition precedent for an owner making a property or a lot or part thereof available for short stay accommodation would a levy ameliorate some of the pressure borne by owners corporations and/or their peak bodies in managing the additional workload and if so how would you go about calculating something along those lines?

**Ms LAMERIS** — So would you see the legislation as providing an authority to do that or to give a price or to give a — —

**Ms SHING** — Not in relation to necessarily legislation and again we've got multiple pieces of legislation here so we need to be quite specific in what we are talking about. In terms of the policy challenge that we have and the challenge of additional impost of workload and resourcing and cost for owners corporations and for their representatives the time associated with that, would a levy be of any utility as part of the arrangement whereby a lot or part of a lot can be made available for short stay and if so how could that be structured in a way to strike an appropriate balance. So I am just looking to you for guidance not on the way in which that might manifest in law but what your view is from your side of things in a practical sense?

**Mr NUGENT** — Yes, from a practical point of view I think there are so many hurdles, so many difficulties, it's not going to be able to be achieved.

**Ms SHING** — Well you might have an opportunity to do some inventive thinking and if you do have any thoughts you would like to provide to the secretariat as part of this it would probably be very useful.

**The CHAIR** — Related to that, two further points, is the question of just documenting the costs in an owners corporation, you know, 100 in a tower and you know, 30 per cent of them are short stays as opposed to 50 per cent short stays or 10 per cent, what are the additional costs actually encountered in the management of all of that and so forth? You may have some data on that and I wonder also related to that whether there is some insurance information about how insurers treat these matters.

**Mr NUGENT** — Yes, true.

**Mr EVANS** — I was actually thinking that costs of additional insurance be tied to the calculations for an additional levy, along those lines as well.

**The CHAIR** — But I think from our perspective, as well as Harriet's questions, the question of the actual evidence on this is actually a powerful point.

**Ms SHING** — And your views, you have a comparative expert opinion to offer in the subject matter, as do all witnesses to these particular inquiries that assist us. I mean we are not owners corporation gurus save for you Chair, I am not sure about any fields you might have — —

**The CHAIR** — There are a couple of fields, a couple — —

**Ms SHING** — You might know the Eureka Tower and the Casino — —

**The CHAIR** — We do not have any buildings that we let out unlike some other members of parliament — —

**Ms SHING** — Well, I do not, I can put on the record — —

**The CHAIR** — Caravans?

**Ms SHING** — I can put on the record and I drive my dogs everywhere myself.

**Ms LAMERIS** — Just going back to the question about the legal proceedings, section 18 of the owners corporation Act is the one that has to work in with the new provisions you are putting in the Bill that requires an owners corporation to get a special resolution.

**The CHAIR** — Thank you the three of you for your contribution and the secretariat will be in contact to follow-up on a couple of those points in the next few days.

**Witness withdrew.**