T R A N S C R I P T

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

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

Melbourne — 13 April 2017

Members

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Mr James Purcell
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Ms Jaclyn Symes

Witness

Mr Henk van Leeuwen (affirmed), Chairman, St Bedes Owners Corporation.

The CHAIR — I welcome Henk van Leeuwen to the table. This hearing is pursuant to the inquiry into the Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 of the environment and planning committee. The evidence you give here is protected by parliamentary privilege; elsewhere it is not.

Mr van Leeuwen, if I can ask you, as St Bedes owners corporation chairman, to provide a short introductory presentation, then we will follow with some questions.

Mr VAN LEEUWEN — Sure. I am Henk van Leeuwen. I am the chairman of an owners corporation in Elwood named St Bedes — 19 units — for 10 years, and prior to that I was chairman of an owners corporation in St Kilda East for 25 years, so I have some 35 years direct experience in owners corporation management, and I have also lived, prior and in between, as a tenant for 10 years. I am also the building manager and generally the go-to guy in our building. I make the following summary comments on this proposed legislation.

In summary, I think that this legislation does not enable and facilitate the provisions of short stays in owners corporations even though this bill talks about short stays. A lot of water went under the bridge prior to the introduction of this legislation regarding the powers that owners corporations do or do not have. I think that owners corporations in both existing and future multi-unit developments should have the power to make special rules regarding the facilitation of short stays, and I do think that all these important issues that other speakers and submitters have brought forward — anonymity, sense of community, increased wear and tear of common facilities — these, together with the administrative workload so increased by voluntary committees, have not really sufficiently been addressed.

Importantly — I will go into that a little bit further later — it is very important that short-stay accommodation of a commercial nature should not directly be seen to compete with owner-occupied or indeed long-term rental tenured buildings in the multi-unit market, particularly in the current housing environment in this state. As I said, the bill merely sets out the mechanisms, and some of these have been addressed. Comments have been made how inadequate they are, and I agree with these.

The other thing is that of course this bill was introduced about six weeks prior — in May last year — to when the Supreme Court made the ruling on 22 June that there was never the intention, right back to 1967, that owners corporation committees should have the power to make special rules pertaining to such things as short stays. Anyway, I think that in existing owners corporations that I represent there should be defined powers to make special rules. We did this three and a half years ago. Ninety-five per cent of the owners agreed and the rule is there, but of course presently it stands there as invalidated. I do think that we should have these rules. I also think that for future owners corporations — owners corporations that are yet to be formed through planning permit applications by developers — it is very important that we, right at the front, state the facility for these buildings to be partially occupied through short stays.

The CHAIR — Or not.

Mr VAN LEEUWEN — Or not. It would be up to the developer who controls all the lots that go onto the market to say to the council, 'Look, I wish to have 25 per cent', or a designated floor, in the same way as we have hotel apartments now with six floors — you mentioned it yourself this morning — with limited access and so forth. This of course then says that you have class 2 and class 3 building residences occupied in the same building. This can all be facilitated. But I think it is important that an owner-occupier who buys into a future building knows up-front what to expect in terms of short-stay accommodation of a commercial nature. Equally so, it is probably important for a tenant who goes into a building through a landlord — either through an investor or a social housing corporation for that matter — to know what he or she could expect in terms of short stays.

I go back to two recommendations that I make, and that is once again to say that we should have the facility and necessarily the legislation to allow existing owners corporations to make rules and that a 75 per cent majority applies. Then I think the individual, who would be an owner, who wishes to make his or her unit available should get a simple permit from the council so we also know which units may well be affected in the future. I think that it gives a very clear message to Airbnb and short-stay commercial operators to know what or what not to expect in either an existing building or a future building.

Again, there is already a very fragile situation with regard to residential tenancies. As you know, a tenant can be given 120 days notice without reason. It is very important that in all the multi-unit developments that we are

going to build in Melbourne that we do have adequate stock available for both owner occupancy and for rental. I therefore think that, coming to the conclusion of what I wanted to say, the strategy is important for the government in a housing tenure nature. It is very much also a planning matter. Apart from being a housing and consumer affairs matter, it is a planning matter also. You know that the present government has a policy, at least on paper, to persuade for social inclusion — to persuade developers for certain rights to have certain inclusions of social housing in future buildings. Not a lot of that is happening. But in the same way I think it is possible for the government and the planning minister to ask future commercial operators of short-stay rental markets to get a delivered component in return.

Finally, when you forecast the population growth of Melbourne, you know that presently already 66 per cent — or two-thirds — of all dwellings are non-detached housing. In 20 or 30 years time we will have something like 3.6 million dwellings and two-thirds of those will be non-detached and half of those — over 1 million future dwellings — will be multiresidential units. So I think that it is for all these reasons important that this legislation is actually going back to the drawing table and that we very clearly define what role and what powers owners corporations should have with regard to the allowance of short-term stays in residential multistorey, multi-unit buildings.

The CHAIR — Can I thank you for your presentation and the lucid way that you have structured this. I understand essentially that what you are saying is that there should be the capacity to make rules by owners corp organisations but that this should be in two parts: one for the existing arrangements — there might be one set of capacities for an owners corp — but also for new buildings there should be some clarity about what is allowed and what is not and what people can expect up-front, and that should also apply to tenants and others.

Mr VAN LEEUWEN — This is precisely right. I think this is important for a whole bunch of implementation reasons. We give notice and we certainly deal with those situations, as you just summarised.

The CHAIR — Are you aware of anywhere around the country where this is happening? You point to the UK and the US. Do they have arrangements that make it clear when a building is being built what the usage will be?

Mr VAN LEEUWEN — I have no direct point of evidence of that, but I do know from my own travels — I am from the Netherlands, I go to Scandinavia every year and Berlin is a good example — that the governance of residential buildings is very much focused on long-term occupation and long-term rental occupation, so I am quite certain that it is very difficult for a commercial operator to come in and suddenly command or deal through the marketplace with short-stay stock just like that.

The CHAIR — And that might mean that some buildings are built with this as a clear understanding that in fact these operations will occur.

Mr VAN LEEUWEN — Yes.

The CHAIR — People would know?

Mr VAN LEEUWEN — People would know. And the other thing of course is that, as I also put in my submission, one should be allowed to charge justifiably differential rates for liabilities of entitlement and contributions. Already in existing buildings that should be possible. If you have an absentee owner who through a commercial operator like Airbnb frequently lets the place, then I think it is not unreasonable to ask them to contribute a surcharge to their quarterly contributions because of the increased wear and tear and maintenance. After all, the people who have to deal with this on a day-to-day basis are persons like me at the coalface. You know, if somebody walks in with a suitcase at midnight on the Friday, I have every right to ask them, 'Who are you? Where are you going?', because strangers have walked into our building before and have caused damage or have stolen stuff from the basement car park. So it is always up to the voluntary commitment of committee members who do not get paid to have to deal with this extra workload.

Ms HARTLAND — You talked about your own complex where you had actually called a meeting and you had an agreement to have a special rule. If that was challenged, would that stand up? What is your understanding of that?

Mr VAN LEEUWEN — If that was challenged, someone would have to then go to VCAT to challenge the rules. That did not occur. We had a plebiscite; 95 per cent — 18 out of 19 owners — agreed. It was not challenged. But of course, as I said, the ultimate outcome of the Supreme Court decision on 22 June last year was that owners corporations have not got this power and it was not intended to have this power. But of course there is nothing to stop the government from legislating that they should have this power.

Ms HARTLAND — Do you think one of the problems with this is that it feels to me that short-term rental is something that has developed over the last five to 10 years? Legislation has clearly not kept up with that, so by allowing owners corporations to create these special rules, I think they need some flexibility for each building. What would think?

Mr VAN LEEUWEN — Yes.

Ms HARTLAND — How would that be?

Mr VAN LEEUWEN — I think that under the new set of model rules you could say with buildings, depending on the number of units in the building, could say, 'We allow you 28 days per apartment per year' — or it could be 30 or 60 — and that this could vary within a range of a particular owners corporation. In existing buildings it is almost impossible to say, 'We are going to try and designate, you know, on a certain floor'.

Typically existing buildings like mine have three or four storeys et cetera, and 40 per cent are tenant and 60 per cent are owner occupied. In some cases, regrettably, we do not know who the owners are; they stay well away, do not come to AGM, never contribute. But nevertheless, on a day-to-day basis as a chairperson/building supervisor I deal with everyone individually, resident or owners. With the sense of community that we have and the facility that we have, people feel secure. Forty per cent also are retirees in our building. They came from Sandringham and Brighton and they thought, 'We'll buy a lovely two-bedroom, two-bathroom unit in Elwood'. If they say, 'I saw somebody walking around strangely yesterday', it goes and gets reported. This is the choice people make, to be close to things, and it is also a sense of security and protection. As other people have said, we do not want a situation where, in theory, you are turning your wonderful residential building — without being elitist — into a quasi-hotel type. This we ought to be very careful about; we ought to separate this out.

In Brisbane and other cities — I have travelled quite a lot — I see this. I see 20-storey buildings or 10-storey buildings and say, 'That's for designated residents. You don't even get out on the floor'. This should and could happen in multi-unit residential developments, particularly because we are saying as a society, 'Don't get accommodated on the periphery of Melbourne, 40 kilometres away. Try and live in the middle suburbs. We can offer you a three-bedroom unit with two bathrooms, with and for families, not on a one-year tenancy but maybe on a five-year-plus tenancy basis'. This is the talk, and therefore people have a right to know what kind of community they are entering into.

Ms HARTLAND — When you did the model rule, was that because there was a problem —

Mr VAN LEEUWEN — Yes.

Ms HARTLAND — or you could foresee a problem coming up?

Mr VAN LEEUWEN — The problem became a problem because someone bought in and, without any explanation, we noticed people started to arrive there on a Friday and stay three or four days. They did not know the building. Perhaps they asked or got lost, and it became quite apparent that we should approach them very kindly and say, 'Where are you from?'. They said, 'I'm from Manchester', and so forth, or, 'I'm from Sydney'. This is how particularly the longer term owner-residents got a little bit concerned about this. We confronted the owner and said, 'Sorry, this is how I do it', so we then developed this rule. The rules are a minimum of 90 days — three months, 90 days — and we define commercial. Of course if you have your cousin, your friend and your immediate relative, that is a different proposition, but as long as you get money for it, it becomes commercial, then the minimum we have said is 90 days.

Ms HARTLAND — Thank you.

Mr MELHEM — I just want to flesh out a few things with you. On the last one, you talked about your own experience with short stay. Can you take us through what sort of objectionable behaviours have arisen from

short stay in your own experience which led you obviously to come here today and put in your submission as well? Can you give us some examples?

Mr VAN LEEUWEN — Yes, sure.

Mr MELHEM — You touched on it earlier, apart from one from Manchester who was a bit lost and did not know their way around et cetera. Is there any other bad behaviour — for example, noise, damages, too many people coming into the apartment?

Mr VAN LEEUWEN — We have had people come in unannounced, not knowing exactly how the building functions and being noticed, and in turn people — other co-residents and owner-occupiers — not knowing whether these people were friends or existing owners or whether they came to stay for longer. In general people get greatly concerned, and we should at all times have some knowledge as to who comes in and out of the building, because we have had people come in — strange people, to be honest — that were given access with fobs, and certain drug-related and prostitution instances occur. It is quite worrying indeed, and as a result of that, anxiety broke out and confrontation occurred.

So if you add all these things together, people have expressed a desire that we should not have a weekend-style, Airbnb-type, short-stay facility in our building, and we made this rule, and of course the rule was effectively invalidated and immediately following that another unit owner started doing Airbnb. They put a big padlock outside — you know, one of these key safes — and even though I explained the history it was no concern to them. So we have left that abeyance. We have to just do as best we can.

Mr MELHEM — Let me take you through a few examples. If a person living on the property rents out a room, that is okay; that does not cause an issue for you. Would that be right, or does it?

Mr VAN LEEUWEN — If someone indeed, as has been exemplified, has someone stay in the spare room and they are there themselves in occupation, it is their own business, definitely.

Mr MELHEM — So that does not present a problem. And someone renting the place for a month or two months or three months or six months, that is not representing a problem. With issues you are raising in relation to the overnighter, weekender or an 18th birthday, for example, they go out, hit the town and then 10 of them turn up to the apartment and make all this noise. They are the things you are concerned about; they are representing your major concern.

Mr VAN LEEUWEN — Yes, that is definitely the case, because owners corporations are run by voluntary committees. I do not get paid for being the chairperson. I am the building manager; this is another story. I also am the caretaker. Owners corporation committees are voluntary. Frankly that means two or three people do all of the work even though you have got five on the committee. So therefore I think it is desirable that owners corporations committees, through their lot liability members, have the right to make a rule — a qualified rule — on short-term stays, depending on the nature of the building, how many units, for how long, they have got to get a permit et cetera. It has to be transparent — no surprises.

I can see it coming. Particularly if there are new developments it should be very important to know up-front what the market might be for this type of building, because they can put in security systems accordingly to say, 'We are going to have 50 units in the building, and we have the right to have these units on the designated floor level'. I think that is a good thing. Then the market knows, and we also know, from a residential future rental market perspective, what demand will be, whether it is in the suburbs or in the middle suburbs or in the city.

Mr MELHEM — I understand your preference is to have the owners corporation able to make your own rules. How would that sit with an individual owner basically wanting to carry on the legal stuff to rent out? How do you balance the two? An owners corporation might make a rule saying, 'Okay, you can't have any short stay less than five days', for example, but then you have got 20 per cent or 25 per cent or five out of 10 owners who are not happy with that decision. How do you balance the two?

Mr VAN LEEUWEN — Well, if you do a plebiscite —

Mr MELHEM — You have taken away their right. I am not necessarily advocating, but I am basically asking the question: how do you balance that?

Mr VAN LEEUWEN — First up you have a committee meeting. Then you might call a special general meeting. You put the proposal for a plebiscite, which we did. You draft a rule, you put it forward and you say to people, 'You've got 14 days in which to say yay or nay to it'. If you get 75 per cent, you then adopt this rule and you register the rule with the lands department, as we did, for $100. And the rule is there. You reprint your rules, you distribute your rules and if someone is obviously grieved by it — or even a future owner could be grieved by it — they say, 'Look, I just bought into this existing owners corporation. I don't like this rule. I'm challenging this rule, and I'm going to VCAT'. He or she has of course the right to go there.

Mr MELHEM — Yes. I will finish off with a last question. So with that, if you have something like this and what the legislation will provide going forward, you think the bill is already looking at providing some safeguard as well. So the current proposed bill with your idea, together, do you reckon that is solving a problem? Or does the bill assist in some way toward addressing the issue if they take into account getting further flexibility for the owners corporation to make their laws as well, so on top of what the legislation is actually proposing? So if you add that to it, are you saying that could sort out some of your issues?

Mr VAN LEEUWEN — On the mechanisms for addressing breaches and stuff, in any governed owners corporation, including people who do the wrong thing, it does not matter whether they are weekend stayers, whether they are long-term owner-occupiers or whether they are a tenant. If someone does the wrong thing, I will knock on their door and say, 'You're in breach of the rules; we are making a complaint'. So if we want to take that further, if they do not rectify it et cetera, we then have the option to go to VCAT. The extra burden upon us to raise the paperwork, fill in forms and all the rest of it to then bring somebody to VCAT is more likely to be of an increased nature with a series of frequency of short stays where people do not know the rules than it is with people who have lived in the place for 1, 2 or 10 years, because typically what happens is that a real estate agent who rents a building does not give the incoming tenant a set of the owners corporation rules. I say to a tenant, 'Do you know what our rules are?'. 'I have never seen them'. I say, 'Your owner should have given you a copy of our rules'. They do not do that. They have got the tenancy agreement and they sign the thing. So you have to reinvent the wheel and explain and re-explain all the time.

It does not matter for me. Owners corporations have certain duties, and they have to fill in certain sets of forms. All of these costs ultimately cannot be covered voluntarily and the burden of the quarterly lot liabilities of entitlement will have to increase administratively as a result.

The CHAIR — So just to conclude that point, essentially what you are saying is that the new laws create a huge administrative burden and in some ways therefore are negative.

Mr VAN LEEUWEN — Definitely. We do stuff by email a lot. That is a very good thing; it is very powerful. I know everybody by their first name and everybody's email address in the building — and bang, the thing goes out. But when it comes to raising forms and filling them in and getting them signed and then sending them into VCAT — if the thing goes to VCAT, somebody will have to give up their own individual time from their occupation to go in there, because the people who do our billing, the people who raise our invoices, the people who pay our bills — the accountants, so to speak — are not in our property on a day-to-day basis. It is the members of the committee who usually are there on a day-to-day basis.

So I think we need to transparently realise that the additional burden that is placed upon voluntary committees to carry on with this stuff and having to actually deal with the rules and the implementation and breaches and so forth is an extra realistic burden upon people like myself. Of course what happens is that people get discouraged. They say, 'I'm not standing for the committee because I will have to do this and I will have to do that'. The whole idea is to get people to participate in their own self-management.

Mr MELHEM — What the bill is doing now is putting responsibility on the owners and they are automatically liable for the actions of their tenants or their clients or whatever we are going to call them, whether they are a one-nighter, a seven-nighter or a three-nighter. At least you can recognise that that is a positive and not a negative. That is what Mr Davis is trying to say.

Mr VAN LEEUWEN — I certainly recognise the positivity of placing the onus on owners of buildings and owners of units but also on tenants. I think that is a good thing. But it ought be incorporated and part of a reconstructed or significantly revisited owners corporation bill. At this point it is a housing issue and it is a planning issue as much as it is a consumer affairs issue. We should be prepared to say as a government, as a parliament, 'Let's look at all these things and then put it forward'.

The CHAIR — All right. I think we have covered all of that. I again thank you for your contribution, which has been very helpful. Thank you, Henk.

Witness withdrew.