

TRANSCRIPT

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

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

Melbourne — 13 April 2017

Members

Mr David Davis — Chair

Ms Harriet Shing — Deputy Chair

Ms Melina Bath

Mr Richard Dalla-Riva

Ms Samantha Dunn

Mr Khalil Eideh

Mr Cesar Melhem

Mr Daniel Young

Participating Members

Mr Greg Barber

Mr Jeff Bourman

Ms Colleen Hartland

Mr James Purcell

Mr Simon Ramsay

Ms Jaclyn Symes

Witness

Ms Bev Constable (affirmed), Owner/Director, Boutique Stays.

The CHAIR — Bev, if I can ask you to give a short presentation, we will then try and follow up with some brief questions.

Ms CONSTABLE — Certainly. Thank you.

Visual presentation.

Ms CONSTABLE — Thank you very much for the invitation to speak today on this important issue. I have been asked to come and represent Boutique Stays today. I am, however, the current president of VicAIA also. Boutique Stays very much operates under the code of conduct which is part of VicAIA, and I intend to speak for both organisations today.

In preparing for today, I would just like you to acknowledge or understand that I have actually read all submissions on the website. I have read the report from the independent panel into short stay in 2015. I have spoken with Matthew a number of times to understand the process and had chats with other stakeholders, including an organisation like VicAIA in Byron Bay just to see how they manage some of the issues that have been brought up, and I have read some of the transcripts that have made available to me. The transcripts in particular have highlighted, I think, that the short-stay industry has not satisfactorily addressed some of the concerns that have been brought up in some of the submissions from residents and owners corporations. In my role as the president of VicAIA I have challenged our committee in the meantime, in between the two hearings, to see if we can better address some of those issues, so I will be presenting an alternative way forward today. Boutique Stays mirrors VicAIA's position on these matters, so I speak for both.

Today I would like to just give a very brief background of Boutique Stays and again talk about how we do see some of the consequences of the bill — I will not dwell on the ones that Bronwyn and Neil just spoke to — and talk about an alternative forward, a model that could be looked at. Just briefly about Boutique Stays: Boutique Stays was driven by a passion for wanting something different for myself. I used to travel a lot when I was working in the corporate world and did not quite like hotels myself. I wanted a less corporate-style accommodation, something more homely where I could open a window, get fresh air and sink into a comfortable couch — something a little bit more unique rather than the same, same, same. So I started my own property back then. I could go on with more examples of differences between traditional accommodation and short stays, but I think this captures the energy with which Boutique Stays was born and also, I believe, the innovative approach with which the short-stay industry approaches things.

I did start off as a home-based business, working out of my son's bedroom when he was off at creche, and I have now grown to employ seven full-time staff, four part-time staff and eight casual staff — and yes, we have a proper office now! My team are passionate Melburnians, delighted every day to be promoting the world's most livable city. We have developed our core values as a business, which are 'genuine', 'warm', 'fresh' and 'polished'. Half of our portfolio — we do mainly operate out in the suburbs. We have two in the city and the rest out in the suburbs, which is about 29 properties out of our 60, that are under owners corporations. The reason I bring that to your attention is my concern, like some of the concerns that were brought up in the last presentation, that whilst I think the intent is to address partygoers in the CBD, Docklands and other areas, any changes will roll on to affect families coming out to the suburbs for our style of accommodation as well. Half of our bookings are six nights or less even though our average length of stay is about 10 nights.

I am personally passionate about bringing in a flexible and dynamic team of people. I have had one person just have their 10th anniversary. Three others have had their fifth-year anniversaries, and we have created job opportunities for new Australians, supporting them into new careers. We offer flexible working conditions and embrace return-to-work mums. We have one team member due to come back from maternity leave who will work, going into a part-time role, two days from home and two days in the office. What I am trying to say is that we are a vibrant and innovative small business offering an excellent and much-desired service to our clients, and we have worked extremely hard to get to where we are today.

The people coming to stay with us are mostly families — we operate mainly in two and three-bedroom properties — and they stay with us for a variety of reasons. Some are Melburnians relocating back to Melbourne. Some unfortunately have had an issue with their own home and have an insurance claim in place and need somewhere to stay in the meantime. Obviously some are visitors from interstate wanting to be near family and friends, and we are pet friendly and they need somewhere pet friendly, and with much more space than what a traditional option offers. It would be devastating to quash our entrepreneurial and innovative spirit.

We strive to add diversity to Melbourne's accommodation scene. Importantly I have done the stats on my own business, and the incidence of noise complaints in Boutique Stays is 0.1 per cent over the last 12 months per available night.

My concern is, if the owners corporations bill went through without amendments, that it would absolutely lead to job losses.

Mr MELHEM — Can you expand on that point, and be specific, please?

Ms CONSTABLE — Yes, if I can just go forward a little bit, I think it will answer that. I will give an example. I am not going to harp on this, because I think it has been answered. It is an extreme example, and I think you have satisfied me to some extent in talking about this with the last people. However, the concern has been that the \$2000 fine is uncapped. You did answer that with your reading out of the bill. I do understand there is a VCAT member in between making some rational decisions, but there is no cap. So as a business owner it is a risk that you do not know the size of. Additionally, my reading of it is that there is no time limit for complaints to be logged.

Mr MELHEM — No, it is 60 days.

Ms CONSTABLE — Sixty days? That is a long time to manage someone that had a party last weekend. I would suggest it be 48 hours. Currently there are no mediation opportunities before it gets to VCAT. Currently day-to-day issues are usually sorted out by going to talk to the person. They are the issues that I would like to raise about the current drafting.

The CHAIR — Do you have legal advice on any of these matters?

Ms CONSTABLE — Not personally, no.

The CHAIR — Or the association?

Ms CONSTABLE — The association has had some interpretation put forward but not in a formal sense.

Ms HARTLAND — That is a real problem, because I do not think the association is reading the bill properly.

Ms CONSTABLE — All I would say is I have dwelled over it for hours, and these are the concerns in it. And I am not the only one; there are many of us.

Mr MELHEM — I think it is important that you keep going through these things because that airs them. But you are right, some of these issues — —

Ms HARTLAND — The other three points you made, though, are really important — that you need a process of mediation before it escalates. You have got to do everything you can do to stop it in its tracks.

Ms CONSTABLE — Yes, good. With my VicAIA hat on, I would just like to say that we actually do support legislation. We do accept that there are issues, as put forward by various people during this process, from time to time, and we support legislation that stops non-compliant operators but not the whole industry. We do have a concern that there is a possibility for opportunistic people to abuse the scheme. They are our issues.

I would like to propose a scenario that I do not think the bill does address, where if you do have a repeat offender, being a short-stay operator, at the moment the prohibition orders — I hope I am right in this — are targeted to shut down the actual apartment from being used for short stays. We believe the actual operator should be targeted to stop. It is not the apartment that is causing the issues; it is the people being brought in by the potential person that is not following the code of conduct and not taking heed of people intervening.

Ms HARTLAND — Can you expand on that a little? Are you making the distinction between someone like you who operates on behalf of an owner, whereas I am thinking of the owner?

Ms CONSTABLE — Correct, yes.

Ms HARTLAND — So how would you make the distinction between the two?

Ms CONSTABLE — I would look at who is the short-stay provider. If it is the owner that is bringing in the guests repeatedly causing problems on weekends, then that is the person. If it is an agent, then it is the agent.

Ms HARTLAND — I get it. I understand your point.

Ms CONSTABLE — Another issue that I identified, particularly reading through some of the transcripts from 24 March, is that there seems to be a lack of transparency. This was touched on as well in that people within a building and an owners corporation building manager do not know which apartments are being used for short stays and which ones are for long or normal use. There is a lack of data on both sides. We have as VicAIA done a members survey, and I do have some draft results of that today. What it shows is an extremely low — 0.1 per cent — number of occupied nights in the last 12 months have resulted in breach notices, for example, but what is missing is all the data. That is just a subsection of data. We need more.

There also seems to be a lack of awareness of the code of conduct by the HRIA. Obviously all the VicAIA members know about it and all our guests coming into Boutique Stays know about it because they have to sign up to those terms. There also seems to be a lack of enforcement of the code. Currently it is depending on the third-party portals. It might be one party that is not a participating organisation today; in five years time it might be a new website that is being launched and is not participating. What I am about to propose will address these issues and some of the other ones I have brought up. This is the alternative model that we have put all our time into in recent weeks, the principles of which are to address the issues of compliance via regulation and education. Importantly we have also considered how it impacts on red tape and the use, or trying to eliminate the use, of government resources.

The model has transparency. Let us give a way for everybody to find out the data that they need to know — owners corporations so they know which apartments are short stays et cetera, all those sorts of things. It addresses monitoring and ongoing improvement of things like the code of conduct. The code of conduct is very good; it is just not very well known. The model provides protection to residents but also of property rights, and it supports short-stay businesses and associated businesses working in this space. It could also provide benchmarking for other jurisdictions.

It starts off with mandatory registration, which Bronwyn and Neil touched on. This is something that would need to be legislated for, obviously, to be mandatory. Just on the right I have started to give a green tick as to which of those principles these steps would assist. It would need to be funded by industry, and by that I would mean each apartment or home or unit.

The CHAIR — What? A levy on each rent or each let or something?

Ms CONSTABLE — Yes. A registration fee is what I am thinking of, so you have to go onto a website and pay a fee to join to have a registration number.

There would obviously have to be somebody appointed to administrate all of this, and the administering body would need to be empowered to deliver on these principles. If it is just a registration, I do not see that as enough. It is a body that starts with registration to bring the funding in and then goes on to do a bunch of things. This is where I had quite a conversation with HLO in Byron Bay, which is the VicAIA equivalent up there. It is an industry-based body where they have been running a 24-hour security hotline for the last 12 years. They advertise the hotline to neighbours of short-stay accommodations, and they take it from there. I can go into some detail about that if you want to, but I will leave it for now.

The important thing is that, regarding eviction, short-stay residents are granted a limited licence or permission to occupy a property which is subject to terms and conditions, I would propose being the code of conduct, rather than a tenancy under the Residential Tenancies Act, so if a short-stay occupant breaches those terms and conditions, their licence to occupy can be cancelled. If they continue to occupy the property, they are then regarded as trespassers and can be evicted. So there are teeth in this approach to have an immediate effect, or at least within 24 hours. Obviously that is an extremely timely response.

It also cuts down a lot of the red tape. Inherently in the current drafting of the bill — owners corporations have also highlighted this — there is going to be a lot of paperwork involved. This takes it outside of that and deals with it in a very, very timely way and minimises some of the paperwork for other parties that should not be

burdened with this. It could also be the first port of call for mediation rather than what is currently proposed, which is that there is no mediation until VCAT is called in or the issue has escalated to VCAT.

If there is a bad operator that is not heeding warnings — and that might be three breaches still or something like that — ultimately absolutely deregister them and fine them. The concept is that if they continued operating without a registration number — and that might be in another building — as soon as it was identified, the building manager would be calling this organisation. The next phone call would be to the offending short-stay operator, and there would be either an educational process including the code of conduct, and they would either be registered or they would be again shut down and taken to VCAT.

Ongoing education. I have been in the industry for about 13 years — 11 years with Boutique Stays — but it is still a very young industry and there are a lot of newcomers to the industry, particularly with the advent of Airbnb in the last three years or so in Melbourne. If the funding was passed down to a body to do this, then it would provide for ongoing education also around all of these issues and the code of conduct.

Finally, I would advocate to assist transparency and awareness that one of this body's mandates would be to go out and promote it to all owners corporations and provide a website where they could have their own private login to their own building's data to be able to view which apartments did have a registration and which ones did not. Complaints could be viewed — the status and how they are going through the system. All sorts of things could be addressed in that way, and of course there is the 24-hour security call-out phone number. Finally, if this model got up and got tested, it could be a benchmark for other jurisdictions.

My concern with the current drafting is that the red crosses there and question marks indicate that the proposed owners corporation bill does not have the breadth that this model has. Particularly in supporting industry in ongoing education, there are limitations there. Hand in hand with some editing of the owners corporation bill, supporting industry to implement something like this would be a more ideal outcome.

Mr MELHEM — The way I see your alternative model, this proposed legislation sits at the right at the bottom. The way I see it, your model is supplementary to the legislation; the legislation sits at the bottom. You talked about deregistration, and the bill deals with that, and you did speak about fines, but the bill sits with that. From the four layers you have got there, what are you suggesting in addition to this?

Ms CONSTABLE — With some edits to it?

Mr MELHEM — Or prerequisite?

Ms CONSTABLE — In a form, yes. I think they sit together.

Mr MELHEM — Right.

Ms CONSTABLE — Yes. There is some legislation required to make this work firstly, but also to impose deregistration and fining. That is what I meant by that, yes.

The CHAIR — I thank you for the set of ideas that you put forward and compliment you on the innovation that is involved. I also note that there is — and you have alluded to this — a change in the position between the previous hearing and now, I think, and I appreciate that the industry has realised that there are some significant issues that do need to be addressed. I also understand that what you are effectively saying is that the bill you see as cumbersome and intrusive and divisive and maybe not addressing the issues that you now concede need to be addressed. I am summarising this so that I get it very clear in my mind.

An alternative way forward — not the current legislation but an alternative way forward — is to actually put in place a registration system. There are two issues that struck me with that, and I am playing devil's advocate here; I am not endorsing or disendorsing your suggestion. The first is that it does not have a role for owners corps who I think have some legitimate representation there in that they seem to me to be the only body in a particular building that represents all of the residents in some sort of way. And secondly this may actually be costly. I do not know what the cost of this would be, but you may have some points to make on that.

Ms CONSTABLE — Yes. I would firstly say that I do not have all the answers today. I have some but not all the answers today. This is draft 1 of an alternative model that would require ongoing dialogue to sort out some of these issues. Regarding funding, I have done a bit of a rough calculation based on some of the numbers

that Trevor Atherton from the HRIA put in terms of the number of holiday rentals around Australia. If they were all to pay \$50 for a registration fee, I think there was \$2.5 million coming out of that.

The CHAIR — Noting that this legislation area is different in every state, you would suggest a national — —

Ms CONSTABLE — I cannot speak for national; I am trying to speak for Victoria.

The CHAIR — I am just getting information; I am just trying to understand what exactly you are proposing.

Ms CONSTABLE — Just Victoria. But we could model it for other states if they are interested, but I am thinking just for Victoria.

The CHAIR — Just for Victoria, yes.

Ms CONSTABLE — In terms of where the owners corporations fit into this, I do feel very strongly that you would be having ongoing conversations with owners corporations on this. It relies on the body getting out there to promote it and to be in constant contact with owners corporations that require it, and we would take on board there might be some specific buildings in Melbourne that require this, but not all. So they could take it up and be involved as they see fit. The mediation process as well may involve a panel including owners corporation or building managers. As I say, I do not have all the answers today, but I have thought about some ways it could work.

Ms HARTLAND — It is interesting, because we have heard a lot of very conflicting evidence from residents who live in buildings where there are a lot of short stays, and they talk about just appalling behaviour, and from building managers who feel as if, because they do not know who is in the building, they do not know who is operating these short-term leases and that clearly there are a number of operators out there who are not responsible, who do not care. And then there are people like you who are presenting as people who want to do the right thing.

Without legislation how do we marry all of that up? Because I am really concerned about this idea that has been put forward that we wait two years with the code of conduct, because I think the first time I heard about this kind of behaviour was almost five years ago, and I am aware of residents groups who have been battling it for all of that time with no resolution. So if we wait another two years hoping a code of conduct will work, what is your answer to the residents who are being affected by this?

Ms CONSTABLE — I can speak from our own committee's point of view. We are a group of volunteers, of small business owners — 100 per cent volunteers; we do not have any paid resources. We have challenges getting out there and getting the message out to all people operating short-stay accommodation. If something like this was available with the funding, it would dramatically increase the speed with which we could address issues, educate people and all those sorts of issues. And we are 100 per cent supportive of poor operators being eliminated from operating. It is not good for the residents; we totally agree with that and are 100 per cent supportive of getting rid of that element — people that do not listen are booted out; they cannot operate. It would take a little bit of time to get this up and running. However, we would be highly invested in the success of a group that is mandated to deliver on all of those principles. It is about resourcing; that would be my answer, basically.

Ms HARTLAND — But then the problem is that it is not going to take two years. It would probably take two years to set something up, and then it would take another two years to see how it works, so residents will still be in the same situation without any protection. I think you have made some really relevant points about mediation et cetera, but I am really concerned about the idea that this industry can be self-regulated when clearly there are a number of rogue operators out there who just do not care about what profound effect they have on other residents.

Ms CONSTABLE — Yes. I would propose that it would not take that long. I think that speaking from my point of view as a small business owner, we are a very dynamic group and highly vested in getting something that does work, and I think that if we had some resourcing, we could absolutely make things happen pretty quickly. Also, if there is a specific area or set of buildings that require this, it could be the trial where we get it going and roll it out more fully later on.

Ms HARTLAND — One last question, because I have been aware of this for the last five years, so clearly owners corporations and other organisations must have been aware of it. We are now being told we need more time to fix it. Why is it that it has gone on and on and on without coming up with any kind of solution until there is legislation on the cards?

Ms CONSTABLE — I think firstly from the committee's point of view, which I must say is probably one group of people who are operating responsibly et cetera, we are just not hearing all these stories unless we read them in the paper.

One of the people I consulted in getting ready for today was from Strata Community Australia. His comment to me was, 'There are 65 000 owners corporations registered in Australia'. I did consult him on whether he would be interested in being involved in this sort of model and being involved in the mediation process and what have you and in just hearing his thoughts in general. His comment was, 'It's just not high on our agenda because it is such a small group of buildings that suffer these problems'.

Ms HARTLAND — But a large group of residents.

Ms CONSTABLE — I understand, but in terms of the size of the issue that was his comment. I did pick up on the criticism of the industry groups as to why they have not done more quicker, and it comes down to resourcing again. I think if you look at what we have achieved there is the code of conduct, which has been through various years of legal review and all that sort of thing. We have implemented that. We get our members together three times a year to promote these sorts of things. It is getting people along to these things.

Ms HARTLAND — Where is the code of conduct actually operating, because this is something I have asked before? I am not aware especially in the bigger buildings. There was an example given that it was being done — and sorry, the name of the building in the CBD escapes me, so I will go back and check that — but then when residents were asked they had never seen anything about it. They had never been brought together for a meeting. Nobody had spoken to them about it. So we are being told one thing, but then residents are telling us something quite opposite. It feels like there is quite a big gap.

Ms CONSTABLE — I agree with that. I think the code of conduct needs to be relaunched. That is part of addressing the awareness that we have recognised.

Mr MELHEM — Thank you. Just a few questions. Some of the concerns I have with that particular model — while I think it is a good model — are cost and policing and the chances of people going underground. Those are the sorts of issues. In a perfect world I think it is a good model to have. But then going back to the legislation I think you said it is about 0.01 per cent of your clients that make complaints or alleged breaches.

Ms CONSTABLE — Sorry?

Mr MELHEM — I think some of the statistics you talked about include that the number of complaints you have received is 0.01 per cent or something. So the legislation is really targeting the dodgy operators with their clients. So for businesses like yours that are providers that are doing the right thing, the legislation will have zero impact. Would that be a fair assessment?

Ms CONSTABLE — As it is currently drafted I do not think so, because we also have suffered over the years from vexatious complaints, and that is my concern. Sorry, I do have a document to give you all, which I have forgotten to give you.

The CHAIR — You can follow up with that.

Ms CONSTABLE — One of my concerns or suggestions was compensation versus civil penalties. If it was a civil penalty, there would not be any vexatious complaints, possibly. There was something else you said that I wanted to comment on: the 60-day issue and bringing back the timing between being able to lodge a complaint.

Mr MELHEM — That is my understanding of complaints and taking the matter to VCAT, not lodging a complaint with the owners corporations.

Ms CONSTABLE — Okay, but it is not defined, I do not think.

Mr MELHEM — Yes. I think 60 days for taking action to VCAT, where you are talking about deregistration and you are talking about the issuing of fines. It does not talk about, ‘Hey, on the 59th day I am going to put in a complaint that Mr Davis was renting that apartment and making too much noise’. It does not talk about those things — that complaints need to be made immediately or the next day. It is the 60 days in relation to putting in an application to VCAT. That is the end of the process. That is my reading of the legislation.

Ms CONSTABLE — Yes. My reading is that it is open for ever and a day for somebody to put in a complaint on the same incident. Anyway, I am sure it can be redrafted or amended to give clarity. I would hope so.

Ms HARTLAND — It might be actually quite helpful, Bev, maybe if you send us a list of questions of things that the committee believes that are not clear about the legislation.

Ms CONSTABLE — That would be great.

Ms HARTLAND — And then maybe as part of our report we can clarify those things, because it feels to me a bit like there has been some misinterpretation of what this is actually going to do.

Ms CONSTABLE — Okay.

Ms HARTLAND — Bills are never easy things to read.

The CHAIR — And it might be that there are actually some areas that are unclear in the bill itself. I think you can read the bill in a certain way. Who knows what a court decides?

Mr MELHEM — You have got to understand that these sorts of bills are written by lawyers. You can give a bill to five different lawyers, and they can give you five different explanations. I appreciate the complexity and the difficulty in understanding, and I appreciate a lot of the reception of the bill as well. Like any other bill, it is all about the implementation. Arising out of implementation I think things can be sorted out, but I think it is a great idea if you are able to adjust the questions so we might be able to answer them. I have got no further questions.

Ms CONSTABLE — The issue is with the vexatious complaints, I think. We have all had those and had to go round to a house that has had a party complaint at midnight. I have sat there in my car thinking, ‘I can’t hear any noise here’ — you know, those sorts of things.

Ms HARTLAND — Vexatious complaints are a joy of everybody’s life over a range of different things!

Ms CONSTABLE — Part of being a business owner.

The CHAIR — Is there anything more you wanted to add?

Ms CONSTABLE — Just in closing, if I may, not that specifically but some other submissions have suggested things like limiting the number of nights — 90 nights and things like that. They are in submissions, not the OC bill, but they are the sorts of things that I would view as anti-competitive, to be honest, and not specifically helpful in any way.

The CHAIR — Do we have a copy of the BIS study on economic impact?

Ms CONSTABLE — Do you have it? I have got a reference to it but can certainly provide it following today, and the Harper competition policy review I can provide as well. I have got quotes from it in my document that I have not given you yet.

Ms HARTLAND — Just send the link to the secretariat, and they will supply it to us.

Ms CONSTABLE — And that is it.

Ms HARTLAND — Thank you.

The CHAIR — Can I thank you for your evidence. That has also been very helpful, and there is no doubt we will be in touch for further information. Thank you for your time and your industry group's efforts.

Ms CONSTABLE — Thank you.

Committee adjourned.