

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

Witnesses

Ms Bronwyn McAsey, (sworn), Director, and

Mr Neil Ackerman, (sworn), Director, Matrix Apartments.

The CHAIR — I ask you to give us a brief presentation, and then we will follow with questions.

Ms McASEY — Firstly, we really appreciate the opportunity to present at this inquiry. We particularly would like the opportunity to talk about our experiences as hosts in the hope that we can offer the panel and the inquiry some insights into what it is like to be a responsible host and why guests choose to use our services. We are also hopefully going to suggest a way forward for all parties to be able to come together to protect, obviously, the rights of the people who own the properties, property owners, investors and also what is a very, very important part of the tourism sector of Victoria.

Mr ACKERMAN — And the residents.

Ms McASEY — Yes, that is what I said — the residents, obviously. Quickly, a little bit about ourselves. We are both passionate about Melbourne and very passionate about sharing that passion with others. We love what we do and the people that we meet. We feel we have a good perspective of the short-stay sector as we are both owners, landlords and residents. I am a member of the owners corporation committee. We have both been previous chairpeople. We are also short-stay accommodation providers. We have been very active on our OC for many years. We love our complex and we have spent many hours and volunteer hours to improve the amenities and the desirability of our complex.

Just quickly, we meet all our guests on arrival. We show them into the apartment. We go through all our rules and regulations in the complex. You have got the manual there, I think. We actually physically go through this manual with them.

Mr MELHEM — Did you say that you meet them?

Ms McASEY — We meet them on arrival. We coordinate arrivals. We try and reduce their impact on arrival by directing them to the closest gates for where they are going.

Mr MELHEM — Is that quite common, do you know?

Ms McASEY — Certainly most of the people that we communicate with as hosts do that. We actually do physically go through this manual page by page with our guests, and we also show them where the rubbish facilities are, how things work and what our expectations are of them while they are there. So we are very proud ambassadors for Melbourne. We are also members of the VicAIA, and we also subscribe to the home rental industry accommodation code of practice. We use Airbnb when we travel, and to be honest we see ourselves as the voice of responsible hosting and the way that it should be done — by everybody, to be honest.

We enter into a lot of dialogue with our guests before they arrive. We use purely Airbnb as our platform. We find it provides both the guests and the hosts with the best guarantee for security. We get verifications. We have four forms of ID that come to us. We take a security bond. This is all part of the Airbnb procedures. They have to agree to terms and conditions before they can book. We then enter into often quite long dialogue — ‘What are you coming for?’, ‘What is it you would like to see?’, ‘How can we help you?’ and so forth. We have 23 properties that we manage on Airbnb in eight different locations. Most are in the OC apartment complexes in Melbourne.

We know our guests very well. They are overwhelmingly families that want to holiday together in an affordable and home environment. Over 50 per cent of those are families that come and stay with us. The rest are made up of education work, people who come for special events — the football, theatre. We have got a whole graph, and we will happy to present that after. Sorry we could not get that together in time for today. They are friends that want to get together from all parts of Australia and the world. They come for reunions, special celebrations, anniversaries, sporting events, conferences and so forth, but they do not come for parties. Our people do not come for parties. We have never had a party in our complex or in any of the properties that we have managed. We have had over 2700 guest stays and never had one party. I think that is because we are responsible hosts and we know what we doing and are very clear what our expectations are and what the ramifications are.

Mr ACKERMAN — Could I just add a little bit on top of that? What we have overwhelmingly found from our guests is that they do not want to necessarily stay in a hotel, where it is quite impersonal. They actually want a home experience. What we provide for them is that literally they move out of their house and they are into another house, particularly family environments. Some of the range of people that we have had stay have

included people that have been down here with their children, who have been sick in hospital. We just recently had the unfortunate case of a couple from Queensland. They came with the rest of their family. Their daughter was dying of cancer, and they wanted to all be together in a caring environment. It is not the sort of thing that you can get in a hotel. They want to be together as family members where they can share the experience together.

Ms McASEY — I just wanted to point out that essentially, according to Airbnb statistics, we have found that 35 per cent of the people that do come to Melbourne would not come if there was not short-stay accommodation for them because of that family environment that they are looking for and to be able to stay together. We do actually think it will have a huge negative economic impact if the short-stay tourism sector is curtailed, which I think would have very serious repercussions throughout the community. We did, I think, also provide in your pack just a quick catch-all of the impact on the Australian tennis open, from our guests alone. Do you want to talk to that?

Mr ACKERMAN — Basically we just took details of the people that have specifically told us that they were coming for the Australian Open. There would have been more, but these people had specifically told us. We had 35 bookings, and there were 162 guests who stayed for an average of four days. We made a quick calculation on them attending two days of the open and paying for food and drinks, which would be \$77 000 that they would add to the community. This is at a time when there is no accommodation available. You cannot book a hotel. They are simply not available.

Also in response to some of the other evidence put forward today about how it does not have an impact on tourism, I noted one of the comments was that one of the cities increased their hotel occupancy rates from 65 to 75 per cent, or figures of that nature. That cannot happen in Melbourne because they are already travelling at around 95 per cent occupancy. It cannot go any higher.

Ms McASEY — For example, we had the AIDS international conference a couple of years ago. All the hotels were booked out. All of our accommodation was booked out by doctors that came from all around the world to attend that conference. There was also the Seventh-day Adventists. I am not sure you were aware of it. It was a massive thing: 70 000 people came into Melbourne for that event. There was not a hotel room to be found in Melbourne. A lot of people were staying down in Geelong and further out into regional Victoria, which is great for them, but if there was not for the short-stay sector those people would not have come to the conference. So there is a huge economic impact.

I know that we are here today to talk about the amenity and about the disadvantage to residents, but we did feel that it was important to say that and also to put a public face on these guests because all we have been hearing about today is young, party-crazy people. That is not our experience. Our people are families. They come for good reasons. They are spending big tourism dollars. They are lovely. We are amazed by the people that come and stay with us through Airbnb. But having said all that — —

Ms HARTLAND — But you would not deny that it is the experience of a number of residents of appalling behaviour from people who do stay in short-term accommodation.

Ms McASEY — I am just getting to that, because while that is not our experience — —

Ms HARTLAND — It certainly is a number of residents' experience.

Ms McASEY — As we have seen today, it is the experience, so we totally support legislation that will stamp out that bad behaviour. No-one should have to put up with that. I hate parties in our complex. I do not know how many times we, as chairpeople and committee members, have had to go knock on doors, like the other man. But these are long-term residents — we do not actually have these problems with our short stays. But nobody should have to put up with that.

Mr ACKERMAN — We actually moved from Victoria — which we love — and Melbourne to Queensland for a few years, mainly because we had a series of young tenants as next-door neighbours. They were great people and we got on with them fantastically. They just had loud parties just about every weekend. We could not hear our TV on a Friday and Saturday night. Within our complex they were allowed to make noise up until about midnight, and we just got sick of it and moved.

Ms McASEY — I can say with all sincerity: our guests do not do that. We make it very clear that that is not acceptable, and it just does not happen. But having said that, we agree about stamping about this bad behaviour. It does have to happen. Obviously it is happening in some places, if it is not happening in ours. We do not want the few bad operators that are out there, the bad hosts that are out there, spoiling everybody's enjoyment of their property and also making it very difficult for the good operators, like ourselves, to earn a living, to be honest. But we do have some concerns about the bill as it is written.

Mr ACKERMAN — Which, I might add, were largely addressed by the speakers from the Southbank Residents Association. We would support a great deal of the amendments that they put forward there. We were very pleased to actually hear somebody else come up with — —

The CHAIR — You might want to be specific about that, not necessarily now. You might want to actually put forward proposals as to what you do support and what you do not.

Mr ACKERMAN — I cannot think of anything I did not support from what they said, but I will go through the record and have a look at that.

The other really big concern that we had with the bill was that there was basically an uncapped \$2000 fine per affected person in the amenity block. We came up with a possible scenario: on grand final day last year the owners corporation sent out a breach notice to a long-term tenant that had their television too loud during the grand final, which we thought was ridiculous.

The CHAIR — A Collingwood supporter, probably.

Ms McASEY — Probably. They are always the loud ones, aren't they?

Mr ACKERMAN — That is just one example. In our complex we have an open plan complex where everything looks in, everyone can hear each other. You could effectively have 200 people complain. There is \$2000 per complainant, which could be a \$400 000 fine.

Ms McASEY — From how we read the act and our understanding of what the proposal is, it says basically an uncapped limit on how many people can complain and how often they can complain and what is that breach that they are complaining about. It is a perception about what is the breach. We have had a situation — we have been breached — which is also in your pack. Basically one of our guests went down to the pool. They had a swim, sat outside on their balcony, got up, went inside. Somebody took a photo of the towel sitting on the back of the chair, and we got a breach notice on that. There was someone else that was talking about this. There needs to be an understanding about what it is that we are actually trying to curtail around the breach notices.

Mr ACKERMAN — But also, as the Southbank residents noted, the severity of a breach. To me that was a minor incident. I actually saw the people leave without the towel there. We live on the opposite side of the complex. I saw it there, and I said, 'Oh no', raced over there, and somebody had taken a photo before I could remove it from the chair.

Ms McASEY — One of the other concerns that we do have about the act as it is written at the moment is that it is open to malicious, frivolous and vexatious complaints made by people who are opposed to short stays. We understand that people are opposed to short stays. We have them in our complex. They cannot actually point to a particular problem with them; they just do not like the idea of it. But we do know of, and we have experienced, people making frivolous complaints about things, such as the towels, somebody was stamping on the floor — things like that. They are just designed to put robots and make things difficult for us. We had a Facebook campaign against us within the complex saying that we were not doing things correctly, and yet we are bending over backwards to make sure that we are not having an impact on the organisation or having as little impact as possible. We do think it opens up the compensation, and it does open it all up to malicious complaints by people opposed to short stays.

To be honest, we also do not think the owners corporation is capable. We are on the owners corporation. We do not think we are capable of managing something as sensitive and complex as this. Just before we came in here we went to our OC manager and asked if we could get a list of all the breach notices over the last three years just so we could get a handle of what the major problems were in the complex and so forth. These are supposed to be forthcoming as part of their statutory authority.

Mr ACKERMAN — They are meant to be forwarded at the AGM.

Ms McASEY — Yes. At the AGM they are supposed to be supplied, which they were not, which is why we had to ask for them. We then entered into a 64-page dialogue with the owners corporation, who was basically putting up roadblocks to us getting it, and we still do not know what the problem was to do that, because we as committee members are entitled to receive that. The impression we have is that she has a political position against short stays, as we understand most OCs do — they are fairly hostile to them.

Mr ACKERMAN — On top of that, though, if I could just say one quick thing, we had previously had a breakdown, which is also in your pack, of all the breach notices over around about a six or eight-month period. There were various ones for loud noises, which were all long-term residents who were continually having parties. There was not one short-stay operator that had that. One of the breach notices is the one for our apartment 120, which is the towels on the balcony.

Forgetting all that, we do want to see changes. We support anything that will get rid of the bad operators and we are very much into a collaborative process. As far as the party issue goes, we are 100 per cent against it. I would even go further: I would like to see it legislated that somebody is not allowed to hire a room with the intent of having a party. I think that should be a criminal offence for the disruption that they cause the rest of the community. But the other part of what we are talking about is that we have heard repeatedly here lots of issues about where people do not know who is who, they do not know what is happening, they do not know who is coming, who is going.

As part of that, in the very last part of our submission, there are various recommendations that we would have, and one is one which I think a lot of people have touched on — that all short-term operators should be registered. It should be either a government body or an industry body. It may be easier with an industry body, but the cost of that could be offset by registration fees. They have talked about the HRIA code of conduct, and one of the issues I particularly would like stamped out is overcrowding. As well as managing entire apartments, we have for a number of years also had people stay in our spare room in our house. We were actually in the cinema one day, and we got this message from somebody saying, ‘Help, I’ve had a really bad experience’. She had gone into a two-bedroom apartment with 10 other people staying there. Now, that is completely unacceptable. That should be an instant deregistration of that person.

Ms McASEY — Anyway, we went and picked her up, and we took her back to our place.

Mr ACKERMAN — And she was very happy.

Ms McASEY — Yes, she was very happy, but part of this process is about making short-stay operators accountable — registering them, making them accountable, and if they are not doing the right thing, deregistering them and making it difficult for them to actually operate as a short-stay operator.

Mr ACKERMAN — Part of the thing upon registration is that there would have to be some sort of a course, whether it is online or actually in person. I would want every owner to have a similar sort of manual to what we have stating everything relevant about the property — the hours that the pool is open, when the gym is open so they do not go at 4.00 a.m. in the morning and try and gain access, where the bins are. Everything relevant to the property. That should just be a matter of formality.

The CHAIR — We might — —

Mr ACKERMAN — Just the very last thing, the other part that I would like to see is some sort of a portal or website set up where every apartment that is listed is actually registered. There has been lots of talk about not knowing who is who. If you are operating a short-stay property, the OC should know who it is, but also the residents of the block or the complex should know who is operating it. That portal would also give them an avenue to make a complaint, because we hear about all of these issues, particularly noise issues. If I had someone in our complex that was making a noise, I would just ring them up or walk around and knock on the door and say, ‘Look, just turn it down a bit’, and at the end of the day that is generally what we want to happen. We do not want it to go through some exhausting process where three weeks later somebody gets a fine. What we want is it to stop. There should be a process so that the host is notified immediately and can immediately have an option to rectify the behaviour.

The CHAIR — I begin by thanking you for your evidence and indicating that it is actually very helpful and it is very clear that you are the very responsible end of the industry. Certainly some of your material is impressive. I note that part way through your submission you say under the section ‘The problems with the amendments’:

We firmly believe that the proposed legislation has the potential to inflame the situation and make matters worse not better.

Mr ACKERMAN — Yes.

Ms McASEY — We do.

The CHAIR — So you would prefer things left as they are rather than the legislation coming forward in its current form?

Mr ACKERMAN — Certainly in its current form.

Ms McASEY — In its current form, yes.

Mr ACKERMAN — I think we both agree with some form of legislation, but that should be backed.

The CHAIR — I will get to that in a minute.

Mr ACKERMAN — Okay.

Ms McASEY — Yes. We do think in its current form it will inflame and make it more difficult to manage by everybody. I think there are simpler ways of going about doing that.

The CHAIR — As I understand it, you agree with the idea of notification to the owners corp and to residents of which units or which apartments are being used —

Ms McASEY — Yes.

Mr ACKERMAN — Yes.

The CHAIR — for short-term arrangements?

Mr ACKERMAN — I think that is a very important part of it, because even we ourselves, at the complex we live in, hear a noise and we say, ‘Is that a short-term resident? Because we’re hoping it’s not’. It is something that people should be aware of.

The CHAIR — You say here an example of this are the guidelines for short-stay hosts developed in collaboration with members of the owners corp.

Ms McASEY — Yes.

The CHAIR — Would you support some more general form of guidelines that were mandated through the legislation in some way that actually —

Mr ACKERMAN — Yes.

Ms McASEY — Absolutely.

The CHAIR — could apply across and lay out some behaviours that are expected?

Ms McASEY — Absolutely.

Mr ACKERMAN — Yes, absolutely.

Ms McASEY — A lot of that is caught in the HRIA, but it needs to be monitored, and it needs to be effective.

The CHAIR — Well, it may not have the teeth that are needed.

Ms McASEY — Exactly.

Mr ACKERMAN — Just on the guidelines, by the way, that is an example of how we were cooperating as a committee in our complex. We had already had our residents guide, and we suggested that this should be incorporated into a larger thing that is presented to all short-stay residents.

The CHAIR — And you support some form of registration, whether it be by an industry body or by a government body —

Ms McASEY — Yes.

Mr ACKERMAN — Yes.

The CHAIR — that would say that short-stay operators need to be registered and can be deregistered where there it is proven or shown — —

Ms McASEY — Yes.

Mr ACKERMAN — Absolutely. The instance I was talking about with overcrowding and parties, that is the sort of thing that should be deregistered.

The CHAIR — And would you support regulations that allowed owners corps to produce internal regulations, for example, that had mandated no-party rules and things of that nature?

Mr ACKERMAN — No-party rules I would. We are firmly against parties.

The CHAIR — And no overcrowding? Is that what you are — —

Ms McASEY — No overcrowding. But I think that if this is done through the right processes and the right government body or industry association body, that should be something that all the operators subscribe to, and it is up to them to make sure it happens and that there is a recourse if it does not happen. To be honest, our concern is that, unlike a lot of people who have presented today, we do not really want to see the OC with any more power than it currently has because we are on the committee. We know the other people on the committee — most of them are very nice people in their own way — but this is a very fraught process. I do not believe, certainly in our situation, that our OC manager has the experience or the unbiased attitude that is required to manage this in an effective and equal way.

The CHAIR — I understand the point you are making. Do you also support clearer arrangements for new complexes coming forward where they might be yes to Airbnb and short stays or no, or where there are certain areas set aside and the ground rules are clearer from the start?

Mr ACKERMAN — Good question.

Ms McASEY — I would have to take that one on advice. It would probably help, but I do not know enough about that.

Mr ACKERMAN — As I understand it, in the recent court cases between Watergate and Docklands Executive Apartments a lot of that was coming down to planning. I am waffling along a little bit here.

Ms McASEY — I do not know.

Mr ACKERMAN — I would have to think about that.

Ms McASEY — I think this is an ongoing conversation. I do not think this is going to be the end of it. Whatever the legislation or whatever format or whatever process, it is going to be ongoing. It is going to be ever evolving, and I think that there needs to be the right people that come together that can actually look at it from lots of different points of view. We were talking at the lunchbreak. Because we do not have issues, we have always considered some of the issues that, say, places like Docklands have as over-exaggerated. We seriously think they have been vastly over-exaggerated —

Mr ACKERMAN — But they may not have been.

Ms McASEY — and beaten up by the media, because we just do not have that problem. As was pointed out by Southbank Residents Association, Southbank just does not seem to have those problems. It seems to me that Docklands seems to be an area that probably needs to have some form of task sent in there and maybe perhaps this process trialled in there to see if there is something that can shift that culture down there.

Mr ACKERMAN — I would think a lot of these points, if they were implemented, would overcome a great deal of the problems.

Ms McASEY — But I think that if the onus is on the operator to manage their hosting properly and that there is accountability and repercussions if they do not, then I think a lot of these problems will go.

Ms HARTLAND — I am not disputing that you are a responsible host, but the problem is that for a lot of residents they have people within their buildings who are not responsible hosts who are allowing anybody to stay in their unit who cause a massive amount of disruption. I think you saw the video from Watergate.

Mr ACKERMAN — A point on that: we have seen exactly that behaviour from our long-term guests too.

Ms McASEY — No, not long-term guests, long-term residents. In fact that is exactly the type of thing that looks like something from a long-term resident.

Ms HARTLAND — But there is a lot less recourse to deal with behaviour from short-term residents because they are gone by the time it is reported and it is all back to the owner. If the owner repeatedly allows this kind of behaviour or repeatedly is abusive to the owners corporation or the building manager — and we have heard of a number of incidents of this kind of behaviour where people feel that they can do whatever they like — this is why, in my mind, we need the legislation. We may need it to be amended, but what are the things that you would suggest need to be done to actually deal with hosts who are not doing the right thing?

Mr ACKERMAN — Deregister them.

Ms McASEY — Fine them.

Ms HARTLAND — But they are not registered at the moment. They are registered with platforms that advertise for them. The people we have had give evidence do not seem to have a very rigorous way of dealing with rogue operators.

Mr ACKERMAN — I agree completely. I am 100 per cent behind that. But that is why we think everybody should have to be registered.

Ms McASEY — But through a central body, not through all these various platforms. Airbnb say they have got one way of doing it, Stayz say they have got another way of doing it and all that, but I think that what we are looking at is an overarching organisation that will basically report to government potentially and that people need to be registered on, whether it is the platform or the individual operator.

Mr ACKERMAN — And if anybody is doing it without being registered, they should be told to register, and if they do not, then they are not allowed to operate anymore and they would be up to be penalised.

Ms HARTLAND — Do you think that is the way too for residents who do have a problem — that then they know they have just one place they need to go to, rather than trying to figure out who it is who has actually rented the property?

Ms McASEY — Absolutely. And we think that is the whole crux of it — it is just too confusing out there. There needs to be one place that they can go to where they know they can register their complaint. The model that we are suggesting, and I know it is being talked about within the industry associations too, is that they can see who is there, they can make a complaint, it is acted on immediately with some sort of direct message going to the host saying, ‘You’ve got a problem. Go over there and sort it out’. If that is not sorted out, then it might get elevated to a security call-out. Then you start getting a real handle on what the problems are. Usually in our case, with the long-term residents, if there is a security call-out, they will basically turn it down and it is all okay — not always, but mostly. We would expect that would be the same thing. But if it keeps elevating, then there would obviously be very severe penalties and fines. There should be on-the-spot fines, we think.

Mr ACKERMAN — Further to that, we were over in New Zealand at Christmas time for Bronwyn's brother's 60th birthday. He had a place out in the suburbs with speakers out in the yard and everything, and everything was going swimmingly until at 12.30 the fun police turned up. This is a person employed by the council. Neighbours could make a complaint, and he gave us an on-the-spot fine. That will be the sort of thing that if a host is not responding, particularly for things like noise, hit them with the fine. Yes, you would fine the people there, but at the end of the day it is the host who is responsible. If the guest does not pay for any reason, it is always the host's responsibility.

Ms McASEY — But an on-the-spot fine will obviously also get away from that problem where the guests are there one minute and gone the next, so they are held accountable.

Mr ACKERMAN — Because one of the problems that I see is that, as it stands currently, if somebody has a noisy neighbour, they are grumbling and grizzling and then they put in a complaint to the body corporate, and then eventually, two or three weeks later, something happens, when all they wanted was the noise to go away. I think a lot of this — —

Ms McASEY — And the bad behaviour. If there are unruly people, like what was showing on there, obviously we want that stopped immediately. But I guess our major concern about it is that we do actually think that the way the amendment is written at this moment it does have the potential to basically destroy the short-stay sector. I think that will have horrible implications for Melbourne as the friendly, fantastic city that it is known as, and the economic things, but it does need to be — —

Ms HARTLAND — But it cannot continue the way it is now. I mean, when you have got half of the apartments in a building that are short stay, people are buying into these buildings to live there and they do not know that that is what is actually in the building. That concept that several floors are short stay, and everybody knows it is those floors, and residential is above — do you think there is a need for a planning process as well to keep them separate? The same building but on different floors so that it is much easier to control.

Ms McASEY — It is interesting. Two of our apartments are actually in a mixed tenure, as was described earlier. They are both basically hotel settings, but the hotel is mixing their residents with their guests and there do not seem to be any problems. It was actually recorded at their AGM that, 'Oh, we've heard there's an Airbnb property in the hotel', and it was basically, 'Yes, but we don't have any problems with them; they're fine'. We have been commended by another very high-end property that we have an apartment in. I will go in and say, 'Darren, any issues? Anything we need to know about?', and his answer is basically, 'I don't even know they're there'. Again, yes, potentially, maybe, but I think that if it is managed correctly, people should be able to live harmoniously together — —

Ms HARTLAND — The problem is that it is not being managed correctly.

Ms McASEY — I know, and that is what we have to do — —

Ms HARTLAND — And that is what we are hearing repeatedly. It is not an isolated story; we have been repeatedly told about it. Also, it is not an individual with a flat, it appears to be people who have multiples and then just have absolutely no regard for other residents in the building.

Ms McASEY — They are bad operators, and they should get out.

Ms HARTLAND — We have heard repeated stories of this and have been given repeated evidence of this behaviour.

Mr ACKERMAN — Anybody, any host, that is displaying that sort of behaviour, under our model, would be deregistered and would not be allowed to — —

Ms McASEY — But I do know what you are saying: would it be better to keep it separate? Perhaps yes. But I do not think it should be stopped, and I do think that no-one would want to stay in the sector with this bill as it is written at the moment.

Mr MELHEM — I am quite impressed with your business model, but I am somewhat a bit confused. On one hand the bill is actually designed to deal with the people who are doing the wrong thing.

Ms McASEY — That are what, sorry?

Mr MELHEM — To deal with the people who are doing the wrong thing.

Ms McASEY — Yes.

Mr MELHEM — Not people like yourselves — from what I have heard so far, you are doing the right thing. What you are saying to us is, ‘We’ll just leave it to self-regulation and just have registration instead and that’s it’. My question to you is: how specifically does the bill impact negatively on your business if you are doing the right thing and you have got all these processes in place? I am pleased that you actually meet your clients at the door and give them the induction et cetera. I think everyone should be doing that. It is the least you can do, and it is a great thing. Can you sort of specifically take me through how the bill will impact on your business, specifically where the bill is designed to deal with owners or providers who are actually not taking care of or control over their clients in relation to noise, damage et cetera?

Mr ACKERMAN — Well, one of our concerns is what we had in the handout: somebody left a towel on the chair, and that is a breach notice. As the bill stands at the moment, if we get two more towels on chairs, as we understand it, that is three breaches and we are out.

Mr MELHEM — No, that is not correct. It is a notice — not every Dick and Harry can make a breach notice or give you a breach notice or a complaint and automatically have you pay them \$2000. It is a process you have got to go through. Has the breach been rectified? Has the matter ended? The only parties that can actually issue the infringement is VCAT, is my understanding, and they have to satisfy a member of VCAT that the breach is serious enough, whether it is noise or damage et cetera. So there are a lot of steps you have to go through and prove. It is not sort of what you said — I think \$400 000 you quoted, or 400 people or 200 people put in a complaint and therefore you have to pay \$2000 each. It is not like — —

Ms McASEY — That is the way it is written, as we perceive it and as other people in the industry perceive it. That is what has got us very, very concerned, because the way we perceive that it has been written is that anyone who has an objection to short stays — and we know that they are out there, and we understand it to a degree if that is the sort of thing that is happening. We go out of our way to try and do everything right, but if they still do not like it, if they just do not like the idea of it in their complex — and there are some people like that — then they can trump up anything, collude with other people in the complex who also do not like it, and then suddenly we are getting multiple complaints where we are paying \$2000 apiece over something that we actually, the way it is written in the bill at moment, have no right of reply.

Mr MELHEM — That is not my reading of the bill, though.

Ms McASEY — There is no fairness in that, and there is no equality in it.

Mr MELHEM — And that is not the intention, no.

Mr ACKERMAN — If that is — —

Ms McASEY — But maybe that is something that needs to be clarified, because that is the way it is coming across and it is how the industry is perceiving it. So maybe that is something that needs to go back and be organised around that.

Mr MELHEM — Well, okay, but that is the problem — people want to advocate their own issues, and obviously they will run a particular argument. I get that. The bill is designed, in my view, to basically recognise good operators like yourselves who are actually doing the right thing and to protect you from dodgy operators that come in and basically do the wrong thing. On the other hand, it is how we can provide protection for residents who have moved in and are living in a particular building and who want to enjoy their home protected from noise, from damage et cetera. The bill is designed to make the providers accountable and to make sure their clients do not cause these issues. So if you are doing the right thing, you have got nothing to worry about.

Ms McASEY — I think you have more faith in owners corporations and people within the residential complex than we do, and I think we need to revisit the bill because — —

Mr MELHEM — But that is the point. You have said that the owners corporation is not equipped to deal with it.

Ms McASEY — The concept — the idea of it — is good, but I think the way it is written has left a lot of grey areas, a lack of clarity. What is a breach? What is the process? Can people go multiple? Can people collude? We were talking over the weekend. We had some short-stay children playing in the pool with some long stays. They were having fun — having a bit of a shriek, splashing around a bit. Now some people might decide to take umbrage to that because it was a lazy Sunday and they did not like that noise. So what happens? Do the short-stay guests get penalised and the long-stay guests do not? I know these are extreme and they sound ridiculous, but unfortunately some of these are experiences that we have been having as short stays. There are people that are doing that — making malicious comments and making malicious complaints. I think that is one of the problems.

Then the other side of it is that you will find that the owners will start running scared. We find our owners love us because they get their rent paid, the places are kept immaculate and they do not have any problems. But what we will find is that if this bill goes out as it is now, the owners will suddenly go, ‘Oh no, we think you’re great, but we’re a bit worried about this’. So suddenly we are not able to actually grow or expand or manage. Or we may even have owners who say, ‘Look, we’re really worried about this. I know you guys are great, but we are actually going to take it out of — —

Mr MELHEM — That is what I am trying to get at. So you are not advocating necessarily that the owners corporations should take full charge of the process.

Ms McASEY — Yes.

Mr ACKERMAN — Yes.

Mr MELHEM — I sort of understand that. I understand your anxiety about the definition of basically noise and what is unreasonable et cetera.

Mr ACKERMAN — Yes.

Ms McASEY — Yes.

Mr MELHEM — But that is where the bill specifically gives the interpretation of that definition to a member of VCAT, not a person who makes a complaint. That is not the person who makes the judgement about ‘unreasonable’ et cetera. An independent person would determine that.

Mr ACKERMAN — Well, having had a Facebook campaign acting against us in our complex with people who did not like short-term stays — one of whom, after he subsequently talked to us, changed his mind, I might add, rather than writing anonymously online — how do you define ‘noise’? How do you define ‘was too loud’?

Ms McASEY — How do you define ‘lack of amenity’?

Mr ACKERMAN — If you have 20 people coming up and saying, ‘I couldn’t hear myself think in the lounge room’, and us saying, ‘Well, we were there, it wasn’t a problem’ — —

Ms McASEY — Or they were not even there.

Mr ACKERMAN — It comes down to what we were talking about before about actually having a call-out where you can have an independent person come along and say, ‘Well, that’s not on; it’s too loud’. If that was the case and it was one of our places, we would preferably be given the opportunity to stop it ourselves. If not, if we were not available and it was found too noisy, we would have to wear that.

Ms McASEY — Yes. We will wear the cost of the call-out.

Mr ACKERMAN — We are all for the amenity of residents.

Ms McASEY — We are residents ourselves. We live in our complex.

Mr ACKERMAN — We have lived there for 20 years.

Ms McASEY — I hate parties. I seriously do. I am not a young chicken, you know.

Mr MELHEM — How could you hate parties?

Ms McASEY — I do.

Mr ACKERMAN — We have regularly gone and knocked on the door around the complex. We have regularly been going down to the pool —

Ms McASEY — To throw people out of class.

Mr ACKERMAN — at 2 o'clock in the morning to people with eskies down there in the pool area. Out of probably, I would say, 30 times that I have done that, one was short stays. They would not tell me where they were. I looked up and found where they were and contacted the host and they were out the next day.

Ms McASEY — So there are mechanisms that can be put in place.

Mr MELHEM — But that is the point I am making. The bill gives more teeth to what you are trying to achieve. Its provisions are basically saying that as an owner you have got to comply and you have to make sure your clients comply to make sure that residents basically enjoy their lives living next to you. But if you are doing the right thing — you are rectifying the problem as soon as you become aware of it — that is the end of it.

Mr ACKERMAN — Yes.

Ms McASEY — It should be.

Mr MELHEM — It is not enabling the owners corporation to basically write a resolution and say, 'Okay, you are banned for the next 12 months or two years for using that'. They do not have that right, but the court can.

Mr ACKERMAN — The idea behind the bill, we support.

Ms McASEY — Yes.

Mr ACKERMAN — It is really some of the finer points, as was mentioned by the Southbank Residents Association.

Mr MELHEM — I will finish off. Maybe we will see how the implementation goes and maybe do a review in a year or two or three and see how it goes.

Mr ACKERMAN — Well, exactly.

Ms McASEY — And get some data.

Mr MELHEM — And hopefully everyone will be happy.

Ms McASEY — Absolutely.

Mr MELHEM — And if people are not happy, then we might be able to change it.

Mr ACKERMAN — Yes.

Mr MELHEM — I think that makes sense. It is all about implementation and seeing the outcome, isn't it?

Mr ACKERMAN — Yes. Whatever is put in place should be an ongoing process that is refined.

Ms McASEY — Yes, and evolving. Can I finally just say to one of the other things you were asking about: how will it put it out? Our average guest stay is 4.3 nights. They come for the tennis, they come for the ballet, they come for this, they come for that. If you start saying they have to stay a minimum of seven nights, they just will not come. That is not what they want to do. They just will not come. That will put an end to our business as well.

Ms HARTLAND — This is actually more a statement. You were talking about the fines. I have just had a really quick whiz through the bill, and 169E ‘Loss of amenity compensation order’, clause (6) says:

Where VCAT makes loss of amenity compensation orders in favour of multiple applicants in relation to the same breach, in determining the amount of compensation to be paid under each order, VCAT must take into account whether the total compensation proposed is proportional to the harm caused ...

So if you have got 100 people making a claim, what I read there is that you are not going to have 100 people getting \$2000 compensation.

Ms McASEY — That is a relief to hear.

Ms HARTLAND — It is proportional to the actual damage done or the loss of amenity. That is the way I read that.

Ms McASEY — Okay.

Mr ACKERMAN — If that was the case, we would be much more comfortable.

Ms McASEY — But did you read also that they can put the same claim in multiple times over a period of time?

Ms HARTLAND — Yes, and that is why it is saying:

... orders in favour of multiple applicants in relation to the same breach ...

So it is talking about how even if there are multiple applicants to the same breach, my reading of that is that —

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

So if there is \$2000 worth of damage, I could not see that 20 people complain and each person is going to get \$2000. That is my reading of it.

Mr ACKERMAN — If that was how it was applied in practice, we would be a lot more comfortable.

Ms McASEY — Yes, we would be a lot more comfortable, but — —

Ms HARTLAND — And obviously there needs to be a review.

Ms McASEY — Yes.

Ms HARTLAND — I totally agree with that.

Ms McASEY — I guess just finally, in closing, I feel that if we did go down a line of what we are talking about, really it should not ever get to VCAT. Really you do not want VCAT tied up with all this stuff.

Mr ACKERMAN — With the exception of serious cases.

Ms McASEY — Serious cases — —

Ms HARTLAND — If you will not be able to resolve it yourself, yes.

Ms McASEY — Yes.

Mr ACKERMAN — Yes, that should be the first thing, first of all — collaboration.

The CHAIR — All right. I thank both of you for your evidence. It has been helpful. I indicate that the secretariat may be back to you to follow up some bits and pieces out of the evidence.

Witnesses withdrew.