

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

Dr Barbara Francis (sworn), Director,

Mr Marshall Delves (sworn), Director, We Live here; and

Mr Tom Bacon (sworn), Chief Executive Officer and Principal, Strata Title Lawyers.

The CHAIR — If I can ask you, Barbara, to lead off and provide a short submission, we will then follow with some questions.

Dr FRANCIS — Thank you for inviting us to take part in these proceedings today. Just first, you will note that you have another folder of documents that we have provided to supplement some of the things we want to talk about today. I will start the ball rolling by telling you a little bit about ourselves and then go on to the terms of reference for this inquiry and the bill itself. Tom Bacon will then give a brief overview of the policy position of We Live Here, the global expansion of Victorian data. Marshall Delves will then talk about the issues he has faced in the seven years he has been managing short stays at Watergate and will also introduce a short video.

Ms HARTLAND — Barbara, sorry — —

Dr FRANCIS — Am I not — —

Ms HARTLAND — No, I can hear. It is just that we would like lots of time for questions.

Dr FRANCIS — Yes, all I am doing is just a little bit of introduction — setting the scene — and then you can interview and interrupt at any time.

Ms HARTLAND — Interrogate you!

Dr FRANCIS — Sorry?

The CHAIR — Interrogate you. No, that is all right.

Dr FRANCIS — I have talked about Marshall. My next statement was that of course we expect a lot of questions along the way. If time allows, though, I would also like to provide some feedback on self-regulation and the holiday rental code that was discussed with two witnesses at the first public session. We have actually got some data to give to you if we have got the time.

So who are we? My name is Barbara Francis, a founding director of We Live Here and chairperson of the owners corporation of Watergate apartments in Docklands. I purchased my apartment off the plan in 2001 and have been a resident at Watergate since it opened in 2004. I would just at this point like to take issue with a statement that the previous speaker alluded to, which was that we only buy into apartments if we cannot afford to buy a house. I do not think he has done any studies on this to actually show that there are thousands of us out there for whom it has been a lifestyle choice to do that. It is not because we cannot afford to buy a home; we have actually sold a home to buy into an apartment. Marshall is building manager and resident at Watergate, owns an apartment at the Yarra's Edge in Docklands which he rents out long term and is also a director of We Live Here. Tom is CEO and principal lawyer at Strata Title Lawyers, was the legal adviser to Watergate throughout its journey through various tribunals and court hearings between 2012 and 2016 and advises We Live Here on matters relating to owners corporations law.

We Live Here is an advocacy group that arose from the long-running Watergate case that was established 16 months ago with the aim of giving a voice to and protecting the rights of owners and long-term residents in apartment buildings. Until now residents have been the forgotten people in the debate on short stays, particularly those of us living in buildings classified as residential, such as mine, which are not designed for quasi-hotel-style accommodation. We Live Here has a supporter base representing almost 200 buildings throughout the greater Melbourne area and beyond, including interstate and overseas, and also includes individuals such as architects, lawyers, town planners, academics, councillors, politicians et cetera who are interested in what we are doing. We note that there are over 1 million people living in an owners corporation in Victoria, which represents over a quarter of the total population, and that figure is only going to get bigger. So it is vital that our voice is heard.

About the terms of reference, we are very pleased with the terms of reference for this inquiry as they have provided the opportunity for all — and I mean all — stakeholders and interested parties to be involved and to have a say. For this I would like to acknowledge the shadow Minister for Planning and chair of this committee. This is so different from the independent panel on short stays which was a precursor to the bill we are here to discuss, with its narrow focus and terms of reference, conflicts of interests of some panel members and inadequate representation from residents.

A little bit about the bill and why we do not like the bill. It is simple: four years of hearings in the Buildings Appeal Board, VCAT, Court of Appeal and Supreme Court involving Watergate apartments, which started with the City of Melbourne using Watergate as a test case for the right of owners to use their apartments for quasi-hotel-style accommodation, revealed flaws in various planning laws, the Building Code of Australia and the Owners Corporations Act 2006 which could only be addressed by changes in legislation. None of this was taken into account when the bill was announced. Instead we have a bill that does not deal with the fundamental issue of whether owners corporations should have the power to make rules about short stays or not. It merely sets out the mechanisms for dealing with complaints and breaches of conduct in relation to noisy parties and unruly behaviour — powers that owners corporations already have — and sets the bar too high for owners corporations to seek redress through VCAT. Finally, it protects commercial short-stay operators at the expense of residents choosing to make their homes in high-rise buildings. In fact it is just a Mickey Mouse bill, in our view.

What is so disappointing is that the government has let a golden opportunity slip by to set an example to rest of Australia and take a stand on short-term lets that ruin the livability and amenity of high-rise strata communities. We hope that as a result of this inquiry the bill goes back to the drawing board and starts all over again and that We Live Here has a seat at the table. Proper regulation of the short-stay industry is critical, particularly with the rapid escalation of online booking platforms, but it must take into account all sides of the issue so that we have an equal debate with owners, long-term residents and hotel and short-stay accommodation providers so there is a level playing field for all.

Finally, short-stay accommodation in residential buildings not designed for the purpose should only be allowed if owners corporations pass a special resolution, and continuation of the trend towards multi-zone buildings where there is clear separation between hotel, short-stay and long-stay accommodation should be encouraged. Unless this happens, Melbourne will quickly become a city of ghettos in the sky. That is all I would like to say at this point. I will hand over to Tom to make further comments.

Mr BACON — Thank you, Barbara. From the *Hansard* transcript on the last occasion and from what I heard just before from the country manager of Airbnb, there is a real hunger on the committee for data and for qualitative studies. Well, we have got a brilliant one. In 2013 Griffith University did a study on crime in high-rise buildings. It was a study performed for the Criminology Research Advisory Council, and the report has been provided to you in your bundle. It is 140 pages long, but the executive summary is that residential tenure — that is, the length of stay — appears to have a relationship with the crime recorded at the building level. What this study found, after surveying hundreds of buildings in Queensland, was that buildings with mixed tenure — that is, which had a mix of both long and short-term tenancies — recorded the highest levels of crime. The buildings that recorded the lowest levels of crime were those where there were just long-term residents, and then in the middle were the buildings where they were perhaps all run as short-term lets.

Interestingly enough, the study also concluded that with those locations, those buildings, which had high levels of management and security — be it security teams or CCTV or a building manager or a caretaker — the presence of those staff or the presence of that security had no discernible impact on the levels of crime. So it was not a matter that if you had good place management, as they call it, or guardian management, that tended to have a good result.

The study went on to talk about what could be done about that, and it focused on the Building Act and the building code and what could be done to create safer buildings. It also did a qualitative study, and it interviewed hundreds of residents about their perceptions of safety in high-rise living. What that study came out with was that buildings where there were these mixed tenures of short-term and holiday letting and long-term residents in together were the most vocal and were the most concerned about the challenges of security and safety.

This is not an isolated report. The University of New South Wales, through the City Futures Research Centre and Dr Hazel Easthope, has been conducting some really good sociological studies in unpacking this link between tenure and a sense of house and home.

One of the reasons why we have come here before you today is to really counter these perceptions that the commercialisation of short-term letting should be put to one side at the expense of residents' amenity and security concerns. The primary policy position of We Live Here is the right of self-determination — that is, owners corporations would like the ability to pass and enforce a rule to restrict and regulate the conduct of short-term stays. We do not have a problem at all with people letting out their rooms or a couple of bedrooms

within their unit so long as they are there, and we think that that right should be enshrined in law and that should be something which should be safeguarded. We do not think that Airbnb should have a problem with that, because all of their PR and advertising is that that is all they stand for — that is, for genuine homesharing. But it is the commercialised short-stay sector that is unregulated at the moment.

We have got no issue with those owners that want to rent out their unit for, say, even six weeks when they go away to Europe for their family holiday, but it is the year-rounders — the ones that have commercialised these units and offer them for let 24/7, 356 days of the year. We think that that could be quite easily done in the form of a model rule so that the Victorian government can have some say over this. It can be introduced as an amendment to the Owners Corporation Act.

Of course the question was put on the last occasion to a previous submitter to the inquiry regarding self-regulation and whether there would be a cost to the government for setting that up by making everyone sign up to a government department. Of course it all costs money to the Victorian government to maintain that register and to have enforcement, and I am sure you would not want to pass the buck on to local councils to try to enforce these measures as well. That is why a rule, and a model rule, is going to cost basically nothing to implement.

Much has been made of the experience here in Australia as being in check with the rest of the world. That is not the case, because in the cities of Amsterdam and San Francisco you can only rent out your unit for a maximum of 60 days per year. In London it is 90 days, in Paris it is 120 days and in New York you can rent out as long as the minimum stay is 30 days in length. In Melbourne, of course, there is nothing; you can do it for 365 days at the moment. What we have put in our submission is that really Australia is the Wild West. A lot larger international cities have grappled with this and have regulated it. That is why in Amsterdam, in Barcelona, in London and in San Francisco, if you want to short-term let your property, you have to apply for a permit or a licence and get a habitability certificate, and you also pay tax. Again, here in Victoria there is nothing like that; it is just open slather. And we have to ask the question: why? Why are we being so lenient here when other cities have seen fit not to?

We are interested to see whether the introduction of these regulatory measures has harmed tourism. We appreciate that if there is going to be a regulation, and it depends on how far that regulation goes, how is that going to possibly affect tourism numbers and the economy? In fact what we have found is that in San Francisco, for instance, tourism numbers between 2012 and 2014 increased by 6.5 per cent, and the private home tourism — what they call the Airbnbs, the share homes — went up 6.5 per cent in the same period, and the spending by visitors, the actual dollars that they were spending in San Francisco, went up 13.7 per cent. In New York between 2006 and 2014 domestic and international visitors increased year on year, and in Amsterdam, where there is a 60-day maximum stay, there was a 3 per cent growth in visitor numbers in 2016. In Barcelona, where they also have very strict measures, in 2015 and 2016 visitor numbers increased by 9.2 per cent. What we call HTUs, which are these Airbnb-style lets — —

The CHAIR — What does HTU stand for?

Mr BACON — Homes for tourist use, and those that are exchanged or ceded to third parties in exchange for a price for a maximum period of 31 days two or more times a year, with a habitability certificate. Those figures went up by 11.5 per cent between 2015 and 2016, and the occupancy rates went up from 68.5 per cent to 75 per cent, so I do not think that Victoria needs to be worried that the tourists are going to stop coming. Melbourne is a world-class city. We have all sorts of wonderful sporting events here and cultural events, and it has been shown overseas that introducing regulatory measures — sometimes harsh measures — has had no impact whatsoever on the visitor numbers.

To the previous speaker from Airbnb there were questions put about data and about the reliability of that data, and he brought forth some figures. We Live Here has done submissions and studies and crunched the numbers based on the insideairbnb.com website, which is run by a New York statistician. He is actually Australian, but he lives in New York, and he became very concerned because Airbnb was not worldwide releasing its data and has refused requests from several governments around the world and from independent academics. I doubt very much whether you are going to receive the documentation that you are after from Airbnb; I would be very surprised. But we have had to go on what Mr Murray Cox, the statistician, has stated are the figures. He has produced an algorithm which simply crunches the data from Airbnb's listings in Victoria and then presented a

bit of a snapshot summary. It is not going to be 100 per cent accurate, but it does give a basis on which to start an analysis.

The CHAIR — Has Airbnb actually systematically refuted that at all?

Mr BACON — I am not aware. I think the evidence before us was that he stated the reliability of those figures was definitely challengeable, but until we actually have the data that is actually from Airbnb we have nothing else to go on. Those figures say that more than half the listings in Victoria are for whole-home listings, and of course 39 per cent of those listings are what we call multilistings — that is, from a host that has registered more than one property. That figure might be less; certainly that is what Airbnb have stated orally to you. The data would hopefully reveal what the true figures are.

What I heard the gentleman from Airbnb say was \$5700 per year is what every host on average earns from Airbnb. If we extrapolate that out over the 12 000 listings, we start to get an idea about how much revenue Airbnb makes and how much actually goes to Airbnb. The figures that we have got suggest that there was US\$103.6 million last year, or year on year, in Victoria that came from the activity of renting out on Airbnb, and because Airbnb take a 6 per cent commission split on that we can deduce that, once you allow for the exchange rate, this is worth \$8.09 million year on year to Airbnb in terms of their revenue.

We note with concern that an answer was not provided on whether or not they pay GST. I would suggest that the answer to that is — I am not privy to their tax returns, but I would suggest — that they do not pay any GST, and they certainly would not pay an income tax here in Australia on that. So there is a real incentive here for Airbnb to keep doing what it is doing and to spend a lot of money on advertising and to talk about homesharing and what a wonderful thing it is, but there is a real ugly underbelly here, and that is what owners corporations see, really.

It raises an important point as long as we are on the topic of taxes. What do we as taxpayers and as ratepayers and as residents get? What is the benefit to us in not having Airbnb or online share platforms taxed properly — them or the hosts? What is in it for us? Because it is not more tourists. The tourists do not come to Melbourne because of Airbnb or Stayz or serviced apartments; they come for Melbourne. They are not coming to bolster the economy. But if we are going to have a social contract — if the government is going to purposely choose to subsidise an industry by turning a blind eye to its taxation and by not taxing it — where is the analysis to show that there is a return on that investment? I put it to the committee that there is no analysis, because I struggle to see why there is any benefit as to why these people are not taxed properly. At this stage I might hand over to Marshall to talk more about — —

The CHAIR — I am just conscious of our time, as Colleen pointed out. We need some question time.

Mr DELVES — Thank you, Chair. I would just like to comment on myself as being a building manager and the day-to-day issues that I have. Going back last year we had an operator. He was an absentee landlord — or an absentee person — renting an apartment on Airbnb. He actually went through a real estate agent and made no mention to the owner or the agent that he was going to put it on Airbnb. In your folder there are a couple of statements. When I challenged him about this, there was an accusation made against me personally, and it is all in the documents there. He was investigated by the owners corporation and found to be false, and then there was an apology that followed that.

The second incident with Airbnb, which was recently — only a couple of months ago — was again people coming in, renting an apartment and putting it on Airbnb. Airbnb talked about their checks and balances insofar as people coming in goes. This particular person had leased the apartment through Airbnb and had a friend then come in, and then they went through our mailboxes and stole mail out of our mailboxes. When we informed the police and the police investigated, we suggested to them that they go back through Airbnb and find out who the person was that actually rented the apartment. Then the police did a check on her and found a number of accomplices along the way. With the pictures and photos we were able to give them, they were able to get the person. The person was arrested and charged and admitted what was going on.

The other point I would like to make is the HRIA code of conduct. The code of conduct is well and good, providing the operator follows the basic rules of the building. We have heard testimony from Mr Salter last week. He happens to be the operator in the building that I manage. Again in the documents you will find we have a short video that I would like to show. It shows that they do not clearly follow the basic rules of the

building. Communication with disabled people — I am responsible for people in the building. When you have a person running a short stay that says, ‘Disabled people are none of your business’. Well, it is my business because I have a responsibility for disabled people. In the fire panel room you see a couple of photos there where we have a noticeboard. Anyone that comes into the building that needs assistance during evacuation their names and details are listed on the fire panel where the fire brigade is the first point of call. I am told it is none of my business when disabled people come into the building.

The other thing too is there is no working relationship between Mr Salter and myself or the committee. He will break the basic rules of the building. He will block lift doors open with suitcases. We have a letter, as you will see in the folder, from the lift company saying that this has damaged the lift doors — lifts are out of action. He takes no notice. We have had a number of different operators in the building. We have had Boutique Stays, Corporate Housing, Corporate Keys, the Mercuri Group and single owners. With all of those people in the apartments I have had, they have created a lot of problems for the building and the staff. With one operator who had about 30 apartments, because we were holding them to account, there was a drug dealer in the building that they were hiding from the police. The police came to me one day and said, ‘Do you know this guy? Have you seen him?’. I said, ‘Yeah, he’s in one of the serviced apartments’. So the police then went to the operator, who had previously said they did not know him and had never seen him, but when the police went to them with evidence it was very upsetting for them, because then that particular person was let in by the serviced apartment operator to my office, where I was threatened. Later that person was convicted of drug possession and firearm possession. These are the types of issues that we have to deal with on a day-to-day basis. I would like to — —

The CHAIR — How long is the video? Is it very short?

Mr DELVES — You can view it for a couple minutes or a minute or whatever, and then you can stop it at any time.

The CHAIR — I am just conscious that we need some time for questions.

Mr MELHEM — We have only got 12 minutes remaining in the session so we will not be able to ask you questions.

Mr DELVES — That is fine. You can stop it when you want to. Matt, could we just play the first one?

Video shown.

Mr DELVES — This is a snapshot of our building. This is one of many, many buildings right throughout Melbourne. This is a place where we try to raise families, and that is obviously a buck’s night. Because you have two buildings together, you can see from one side to the other — there is only a podium in sight.

The CHAIR — There are a lot of people.

Mr DELVES — Yeah. Bearing in mind, this goes right across Melbourne in a lot of buildings. It is not a one-off. We are not a one-off building. Again with disabled access. This particular guy was let into one of Mr Salter’s apartments. He is high on ice. I had a contact from one of the neighbours saying, ‘There’s someone trying to break into our apartment’. If we go through the footage, he is trying to get into all the other apartments on that level. Matt, if you could stop that one and go on to the next one.

The next one is one that is only recent. We had a recent decision at VCAT where every person that comes into our building has a gym induction. This is something where the member at VCAT — Member Rowland — said, ‘Well, anyone should be able to go down to the gym’. This is 4 o’clock in the morning a few weeks ago, because we had to give access to all serviced apartment operators to go down and use the gym and pool without any induction whatsoever. At 4 o’clock in the morning they are trying to get into the pool area. As you can see, the girl with the black shorts on tries to kick the door in. What ends up happening is they end up banging on people’s doors at 4 o’clock in the morning trying to get into the gym and pool area. I have been there seven years and I have never had a long-term resident ever do that — never. This is only after the recent VCAT decision said we have to give carte blanche to all serviced apartment tenants. The video goes on and on. They come back and then start banging on the doors. At 4 o’clock in the morning people are startled. We received two complaints that night from residents in the building — one from the apartment on the left.

The CHAIR — Cut to the next one.

Mr DELVES — This is a laundry delivery for Mr Salter.

Ms HARTLAND — How many apartments does Mr Salter have?

Dr FRANCIS — Three hundred and forty-nine.

The CHAIR — Three hundred and forty.

Dr FRANCIS — Three hundred and forty-nine.

Ms HARTLAND — Three hundred and forty-nine?

Mr BACON — No, how many does Mr Salter have?

Dr FRANCIS — Oh, sorry, how many does Mr Salter have? I did not hear the question. Thirteen at the moment — 13.

The CHAIR — It is a far cry from renting the back room.

Dr FRANCIS — He has 13 at the moment — 13 — causing a disproportionate amount of — —

Ms HARTLAND — So this is your lift?

Mr DELVES — That is the loading bay at the top. You go up about six or eight stairs and at the top of the stairs is the loading bay, and he is throwing the bags down.

The CHAIR — And this is clean linen, is it?

Mr DELVES — That is clean linen, yes.

The CHAIR — It is clean linen coming in.

Mr DELVES — Yes. And you will see one of our staff members coming around at the moment and challenging the laundry delivery guy. These are just ongoing issues that we face all the time.

The CHAIR — So this is in effect an industrial-scale operation.

Mr DELVES — Absolutely.

Dr FRANCIS — And this is for only 13.

Mr DELVES — The apartments are scattered throughout the building. I have asked him for public liability insurance. He refuses to provide it to me. They have cleaners coming in. Every contractor in the building comes to my office and signs in. We have a copy of their public liability insurance. They sign in, they sign out and we give them a lanyard. He has cleaners that come into the building and he refuses to do that. He refuses to provide public liability insurance for them, and he refuses to supply WorkCover insurance as well. There is a code of conduct from the HRIA. They are pushing the code of conduct when they cannot even deal or provide that type of information. The code of conduct in a residential building has no standing, because they do not address it in the code of conduct.

The CHAIR — We are going to have to be very brief here. We are already over time.

Mr DELVES — I am good. That is fine.

The CHAIR — I am sorry to shorten it. If I can summarise what I think you are saying, you have no problem with Airbnb-style letting that occurs inside somebody's property where they are present?

Mr DELVES — No.

The CHAIR — You do not have any great problem where it is occasional letting that might occur when someone is genuinely overseas, but the key issue is these large-scale operations that occur where there are multi units within a building?

Mr DELVES — Yes. It is the absenteeism of the person providing the accommodation. As they would say, it is no different than having your mum and dad coming over, it is no different if you have an Airbnb coming into your apartment, no problems at all — because they are controlled, they are told what they can and cannot do and the rules are there. But when they are sublet out on Airbnb with no-one there to control them, that is where all the problems — —

The CHAIR — The criminology research that was presented, is there data of this type in Victoria that you are aware of? Is there any Victorian police data that would collect up information in this sort of way?

Mr BACON — It would be a wonderful research project for an academic to really rip into. I am not aware of it, no. It would be wonderful. Perhaps one of the recommendations of this committee, if I might be so bold, is to ask for that data.

The CHAIR — We might ask the police themselves. You made a number of suggestions; I will not rehash those. I will just take them as evidence, and we may come back to you with some further questions on those points.

Returning to the bill itself, you think the bill is inadequate, it actually is worse than the position that we have currently got. Am I summarising that correctly?

Dr FRANCIS — Pretty well. It does not anything for us. Because of a decision in the Supreme Court last year, we have actually got no rights about anything, so legislation of some sort is absolutely vital, but not in the form that is being presented.

The CHAIR — Not this legislation?

Dr FRANCIS — No. It does not address it at all.

Mr DELVES — It is designed more for commercial operators. If you go to VCAT, there is no sympathy in VCAT in the owners corporation — there is no sympathy whatsoever there.

We had a case before VCAT where a tenant of a serviced apartment came into the building and took a sprinkler head off. Obviously the MFB — three trucks turn up. They have got to then isolate the sprinkler head, and then — long story short — there is about a \$4000 charge. The assistant building manager took all the details of the person involved — had a licence, had a photo of the key, admitted to it. The tenant had then gone, and then there is no recourse, so it was put onto the owner. The owner refused to pay it and took it to VCAT. The member said, ‘Well, you didn’t really see him go into the apartment, so let all owners pay for that particular one’. That is where the frustration is, because we had an expert witness there, the assistant building manager, who had a copy of his licence and a copy of the key that had ‘Grand Harbour’ and the apartment number.

Ms HARTLAND — In terms of the legislation, you have talked about Mr Salter. What would you need in legislation to be able to manage someone like that who is not reading all of the emails, he is not a very cooperative or easy person to deal with and does not seem to feel that he needs to comply with any requests of the building management?

Mr BACON — Perhaps I will answer that from a legal perspective. As I stated, the primary policy position would be to pass an amendment to the Owners Corporations Act to impose a model rule. Now, the model rule and the wording of that model rule can impose certain restrictions, and we would suggest that there would be no restriction on, as I said, the partial letting of an occupied flat.

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

By imposing a model rule, it is not going to be that everyone in Victoria is going to be able to take up that rule, because to pass that would require a special resolution. So, 75 per cent of the unit entitlements would have to vote positively in favour of moving to that. When I say self-determination, the solution we say is that it is offered as a permissive. An owners corporation that might pass that special resolution amongst themselves may

choose to do it, or it may choose to say, 'Actually we're pretty open and pretty friendly to short-term stays. We want to keep that because we want to incentivise owners to do that if they wish'. It gives options.

Dr FRANCIS — One of the submissions by the short-stay lobby is to have a two-year trial of this self-regulation and code of conduct, and it has already been around for four or five years. I just wanted to pick up on something that happened at the first session. The first speaker talked about a study, a trial that was introduced into Flinders Wharf. Flinders Wharf is a building that is signed up to We Live Here, so I actually contacted the former committee member from there. There is a written testimony in the folder you will see, so I will not say too much about it, except that he denied all knowledge of this. He questioned other people; they did not know. He then questioned the former chairperson of the committee and discovered that there was some dialogue with this group. From being all owner occupied, this committee has now been taken over by the short-stay operator in the building. In fact there might have been some brochures that were just put in people's letterboxes. There was no meeting called to discuss it with anyone. My contact believed that all these brochures were consigned to the bin. So that is not a very good example of a trial to get some genuine data.

Ms HARTLAND — That is helpful.

Mr MELHEM — I understand that you are not totally happy where the legislation does not deliver on all the stuff you are advocating for, but surely this element in the legislation actually addresses some of the concerns raised by your members by addressing some of the concerns — I have seen some of it in the videos — where the host will now be liable, and there is a process in place to actually start addressing some of these problems. Surely there is some there instead of your preference, which my understanding is to give the owners corporation the ability to regulate everything. That is the gist of your argument.

Looking at the next witness, who is coming in about Southbank, for example, where they want to reach consensus about how to address the whole issue. How do you address issues where an owners corporation cannot have consensus about what the rules are? That is why you need some sort of legislation — to address some of the concerns. You have got to start somewhere. That is what I am saying.

Mr BACON — Yes, absolutely. I will do this in two parts because there are two questions there really. As a legal practitioner that advises owners corporations every day on these types of issues, I have looked at this bill in detail and I have proposed in the submission a whole host of amendments to this bill if the primary policy position is not taken up. But in truth I would not advise any owners corporation — any of my clients — to use any of these powers within this bill. It is a Trojan Horse. It provides little or no enforcement measures. It reads quite well when you first take a glance at it, but then you really start unpacking all of the provisions and cross-referring back from a practitioner's perspective of having to go to VCAT and present all of this evidence and try and get up an order — perhaps a prohibition order or a loss of amenity compensation order. As a practitioner in VCAT most weeks I can see this, and I just shake my head and say, 'I would never use it'. So if this bill was passed into law, I think owners corporations around Victoria would say, 'Thanks but no thanks'.

The CHAIR — It is window-dressing.

Mr BACON — It is; it is window-dressing. For instance, I could say that first of all to even get to VCAT to use these fandangled powers you have got to pass a special resolution. So you would need 75 per cent of your building to actually say, 'Yes, we will go there'. The second point is that it only applies to seven-day stays or less, so a simple way to get around this bill would be if you want to have your bucks party and go down to Etihad Stadium, just book it for more than seven days and off you go — the bill does not apply. We can just go through this. I mean, 159A, the complaints, talks about:

unreasonably creating ... noise likely to substantially interfere ...

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

Mr MELHEM — Compare that with the current situation where there are no regulations. So understand what you want and what you can get are maybe two different things. Compare the current situation — where my understanding is there are no rules and regulation — with this bill trying to do something. I understand that is not everything you wanted, and I accept that, but you have got to start somewhere, don't you, to basically — —

Mr BACON — Yes we do, and certainly the Labor government campaigned on — —

Mr MELHEM — At the moment there is no protection.

Dr FRANCIS — We do have rules about the common property that are valid, so that is where we can apply those rules to take action against bad behaviour. That already exists. What we do not have the power to do is to change the use of a lot. That is what was determined by the courts, that is what has given open slather to all these platforms that come on board and all these commercial operators. But at the end of the day we do already have the powers — and you would agree with that, Tom — to act against — —

The CHAIR — And you would use those powers rather than the powers in the bill.

Mr MARSHALL — Yes. The bill protects commercial operators because it is impossible for owners corporations or individuals to go to VCAT. The only protection in that bill is for commercial operators, and we are in a residential building. We are not in a hotel, we are not in a mixed-use place, we are in a residential building. We have every right to be able to enjoy our amenity without this type of activity going on. So owners — a million of them in residential buildings — need protection, and we look to lawmakers to give us that protection the same as we look for the lawmakers to give us protection from the Apex gang or any other gang, because that is what is bringing people into the building. In one of my building matters reports at the AGM you can see that criminal activity has been in the building over the last few years — drug dealers, and in a huge proportion. The hundred million dollars worth of cocaine brought into Australia was distributed out of our building — out of a serviced apartment. That is not on. We need protection from lawmakers to be able to make our homes our home, not a hotel or a part hotel, a quasi-hotel. We need protection as owners, and as Barbara and Tom mentioned, a million people in Victoria live in high-rise.

The CHAIR — Marshall, can I thank you and Barbara and Tom. No doubt the secretariat will be back to follow up with further information. I thank you for your very detailed submission, and please feel free to make any further points to the inquiry as we proceed.

Dr FRANCIS — Thank you very much for having us here today.

Witnesses withdrew.