

**Victorian Government response to the Environment and Planning  
Committee's *Inquiry into the Owners Corporations Amendment (Short-  
stay Accommodation) Bill 2016***

## Introduction

The Owners Corporations Amendment (Short-stay Accommodation) Bill 2016 (the Bill) was introduced into Parliament on 24 May 2016. Development of the Bill was driven by the findings of the Independent Panel on Short-stay Accommodation in CBD Apartments, established by the Government in February 2015. The Government concurs with the Panel's views that the short-stay accommodation sector is a significant contributor to economic activity and job creation in Victoria, and provides consumers and property owners with choice and flexibility about accommodation.

However, the Government also recognises that there are around 45,000 people living in central Melbourne, including Docklands and Southbank, a large proportion of whom live in apartment buildings. Unruly parties in short-stay apartments are a real problem and significantly affect residents' amenity in these areas. The Bill therefore seeks to strike a balance between this important emerging sector of Victoria's economy and the need to respect the rights of apartment building residents to quiet enjoyment of their property.

Aimed at implementing the Government's election commitment to introduce reforms to protect residents from unruly parties in short-stay accommodation in apartment buildings, the Bill seeks to:

- address the key problems with unruly short-stay parties, namely that difficulties identifying and locating disruptive guests make it practically impossible for owners corporations and aggrieved residents to pursue remedies and enforce orders against them, and that short-stay accommodation providers are not liable for the conduct of their guests
- deter short-stay providers from letting to problematic guests and encourage them to adopt screening practices, such as requiring payment of an adequate bond, and
- empower owners corporations and individual residents to address the problems caused by unruly parties in short-stay accommodation.

To achieve these aims, the Bill amends the *Owners Corporations Act 2006* (the Act) to:

- define the inappropriate conduct which characterises unruly short-stay parties, including excessive noise, interference with residents' enjoyment of their units and of the common property, creation of health and safety hazards, obstruction of the common property, and property damage
- empower VCAT to:
  - award loss of amenity compensation (up to \$2,000) to residents affected by an unruly short-stay party
  - make orders prohibiting the use of apartments for short-stay accommodation for a specified period if occupants have breached the Bill's conduct prescriptions at least three times within 24 months, and
  - impose civil penalties (up to \$1,100) on short-stay occupants for breaches of the Bill's conduct prescriptions
- make short-stay accommodation providers jointly and severally liable with their guests for loss of amenity compensation and civil penalty awards, as well as any award for damage to common property in the apartment building caused by their short-stay guests, and
- adapt the internal dispute resolution process under the Act and the conciliation powers of Consumer Affairs Victoria (CAV) to include all those involved in short-stay disputes.

The Bill was passed by the Legislative Assembly on 18 August 2016, and was introduced into the Legislative Council on the same day. On 9 November 2016, the Legislative Council passed a motion deferring the second reading of the Bill and referred it to the Environment and Planning Committee (the Committee) for a public inquiry. In examining the Bill, the Committee was asked to consider and report in relation to:

- a) "undertaking proper consultation with peer sector economy providers, individuals and owners corporations short-stay letting providers,
- b) the impact on individuals, families, apartment owners and owners corporations of short-stay letting in apartment buildings, and

- c) the adequacy of owners corporation rules in managing impacts on amenity, noting also the lack of adequate planning on the part of the building and construction sector to accommodate the impact of high intensity short-term lets”.

The Committee’s final report was tabled on 8 June 2017, making nine recommendations to the Victorian Government in relation to both the Bill and the short-stay accommodation sector more broadly.

Legislative Council Standing Order 23.30 provides that, if a committee’s report to the Council recommends that the Government take particular action, the appropriate Minister must provide the Council with a Government response to that committee’s recommendations within six months of the report being laid before the Council.

In accordance with this requirement, provided below is the Victorian Government’s response to the *Inquiry into the Owners Corporations Amendment (Short-stay Accommodation) Bill 2016* (the Inquiry), responding to each of the Committee’s nine recommendations.

The Victorian Government thanks the Committee for undertaking the Inquiry, and welcomes its report. The Government also acknowledges the important contributions made by the stakeholders who participated in the Inquiry, including representatives of owners corporations, short-stay accommodation providers such as Airbnb and Stayz, and key institutional stakeholders such as Strata Community Australia (Victoria), the Victorian Accommodation Industry Association and Tourism Accommodation Australia (Victorian Branch).

In responding to the Committee’s recommendations, the Victorian Government acknowledges the broader issues in relation to the short-stay accommodation sector which have been raised by stakeholders, including a lack of available data, potential regulatory imbalances between the short-stay and traditional accommodation sectors, and concerns regarding potential risks to community safety. Whilst these matters are not the focus of the Bill, the responses to individual recommendations below identify actions the Government will be undertaking to examine these matters. We thank stakeholders and the Committee for taking the time to raise these matters with the Government.

In particular, subject to passage of the Bill through the Parliament, the Victorian Government is committed to undertaking a post-implementation review within two years of commencement. This review, to be led by CAV, will examine the operation of the new regulatory requirements and investigate whether further amendments may be required to address issues such as the expansion of owners corporations’ rule making powers in relation to short-stay accommodation (**Recommendation 4**), and the potential costs and benefits of a registration and compliance framework for short-stay accommodation providers (**Recommendation 5**). It will also draw on relevant findings of work programs to be actioned by other agencies in response to the Committee’s recommendations, such as a review of the potential regulatory imbalances between the short-stay and traditional accommodation sectors, to be undertaken by the Office of the Commissioner for Better Regulation (**Recommendation 3**).

Finally, **Recommendation 8** and **Recommendation 9** of the Committee will be addressed by the owners corporations reform package arising from the Victorian Government’s review of consumer property law. Following the close of consultation on the Options Paper in December 2016, the Government has been carefully considering stakeholder feedback to develop a package of reforms to the Act. A Bill to enact this reform package will be introduced in early 2018.

## **Recommendation 1**

### **That the Victorian Government investigates a mechanism to improve data collection on short stay accommodation.**

This recommendation is supported in full.

Whilst this recommendation is not directly relevant to the Bill, the Victorian Government is supportive of new and improved data collection methodologies to ensure better public policy outcomes. The development of a short-stay accommodation-focussed mechanism has been the subject of significant internal discussion over the past 10 years.

Although a considerable amount of demand-side data exists, supply-side data is much more opaque. Much of the relevant supply-side data is held by short-stay accommodation providers, and there are limits on the Government's ability to compel the sharing of such information.

The involvement of short-stay accommodation providers will therefore clearly be critical to the development of a useful data collection mechanism. The Government also recognises that adequate privacy protections would need to be developed to enable the sharing of de-identified data.

The Department of Economic Development, Jobs, Transport and Resources will undertake an assessment of how such a mechanism could be implemented. Any potential pathways forward will be reported on either as part of the CAV-led post-implementation review to be undertaken two years following commencement of the Act, or as a separate complementary process.

## Recommendation 2

**That the Victorian Government amends the Bill, where appropriate, to address:**

- a) **the issues of affected parties as outlined in this report, and**
- b) **the current review into consumer property law, to the extent that it relates to short-stay accommodation in Victoria.**

This recommendation is supported in principle.

As noted in the response to recommendations 8 and 9 below, two proposals arising from the Government's review of the *Owners Corporations Act 2006* will address issues raised during the course of the Inquiry. These amendments will be facilitated as part of a Bill to be introduced into Parliament in 2018.

The Government notes the Committee's recommendation that the Bill be amended to address other issues raised by stakeholders during this Inquiry. As previously stated, the intent of this Bill is to implement the Government's election commitment to protect residents from unruly parties held in short-stay accommodation in apartment buildings. Many of the issues raised by stakeholders go to broader issues and require further consideration to determine what, if any, actions the Government could take to further strengthen regulation.

Whilst no additional amendments are contemplated at this stage, the Government is committed to ensuring the regulatory framework for short-stay accommodation remains fit-for-purpose. As noted earlier, subject to the passage of the Bill through Parliament, a post-implementation review will be undertaken two years after commencement to examine the effectiveness of the new laws, as well as any additional amendments or complementary measures that may be required. This review will be led by CAV, and will draw on relevant outcomes of other work programs identified below in relation to the Committee's recommendations.

### **Recommendation 3**

**That the Office of the Commissioner for Better Regulation reviews the regulatory imbalance between the short-stay and traditional accommodation sectors.**

This recommendation is supported in full.

The Government notes feedback from stakeholders that a regulatory imbalance may exist between the short-stay and traditional accommodation sectors. However, the extent of this problem is not widely understood.

In order to better inform future Government decision making, the Office of the Commissioner for Better Regulation will examine potential regulatory imbalances over the next two years. Any relevant findings of this review will be taken into account as part of the post-implementation review and associated work programs to be led by CAV.

#### Recommendation 4

**That, as part of its broader review of consumer property law, the Victorian Government considers the appropriateness of giving owners corporations of strata complexes power to regulate short-stay accommodation in their building.**

This recommendation is under review.

The Victorian Government understands that some stakeholders have suggested that owners corporations should have greater powers to regulate the provision of short-stay accommodation within their buildings, including the potential to prohibit such activity outright.

Whilst such powers may appeal to some stakeholders, they also carry a number of potential risks, including:

- infringing on the property rights of individual lot owners
- discriminating against lot owners that do not let to problematic guests, as well as well-behaved guests themselves
- encouraging divisiveness within owners corporations if a prohibition or control were not uniformly supported, and
- negative impacts on the tourism sector in the event of widespread restrictions.

Any change to owners corporations' powers would need to mitigate against these risks in order to ensure that no stakeholder is unduly disadvantaged.

The review of the *Owners Corporations Act 2006* as part of the broader Consumer Property Law Review has now concluded. As noted earlier, the Government has been carefully considering stakeholder feedback to develop a package of reforms to the Act, with a view to introducing a Bill in early 2018. It is important to note that issues in relation to short-stay accommodation were explicitly ruled "out of scope" at the time the Consumer Property Law Review commenced, given the Independent Panel on Short-stay Accommodation in CBD Apartments had only recently delivered its final report to the Government.

However, there is scope to examine whether the owners corporations powers need to be further expanded as suggested by the Committee as part of the post-implementation review to be led by CAV. This could consider the adequacy of existing rule-making powers, the need for new model rules to provide clarity for owners corporations, and/or the extent of any amendments required to provide new powers, as well as any relevant experiences in other Australian jurisdictions.

## Recommendation 5

**That, as recommended by the Tourism Accommodation Association (Vic), the Victorian Government investigates the costs and benefits of introducing a registration and compliance regulatory framework for commercial-residential short-stay accommodation providers where properties are listed for more than 90 days and a single owner, whether a person or entity, has multiple listings.**

This recommendation is supported in full.

The Victorian Government notes that some tourism sector stakeholders are in favour of a formal registration scheme for commercial-residential short-stay accommodation providers.

Whilst the establishment of such a regulatory framework is not contemplated at this stage, an examination of the potential effectiveness and costs and benefits of introducing such a scheme would be useful to inform future policy development. This will be undertaken as part of the post-implementation review to be led by CAV.

## Recommendation 6

**That the Victorian Government and Victoria Police examine issues relating to community safety in apartment complexes where short-stay accommodation is provided.**

## Recommendation 7

**That as part of the state review into consumer property law, the Victorian Government and Victoria Police consider establishing protocols with owners corporations to manage violent and/or disruptive incidents in apartment complexes.**

These recommendations are under review.

The Government notes the Committee's findings in relation to these two recommendations, namely that "[unruly] behaviour is confined to a minority of all short-stay accommodation guests, however instances where this occurs are real and must be addressed" (**Finding 3**); and that "there are apartment complexes where community safety has been negatively impacted by short-stay accommodation, causing residents to not feel safe in their own homes" (**Finding 4**). To some extent the Bill addresses these concerns by introducing measures which should deter short-stay providers from letting to problematic guests, such as by requiring payment of an adequate bond, which would be forfeited in the event of a breach.

Whilst there is currently insufficient substantive evidence of a systemic problem that would warrant the allocation of significant police resources, anecdotal evidence presented to the Inquiry indicates that some apartment residents currently feel unsafe in their buildings. The Government strongly encourages the reporting of any incidences of violent and/or criminal behaviour, whether in apartment buildings or elsewhere, to Victoria Police for response. Victoria Police will not be involved in issues related to residential amenity, as such disputes are not within its remit.

Victoria Police is committed to ensuring community safety, and dedicated to preventing, detecting and disrupting crime. If any members of the public have immediate concerns for their safety or the safety of others, or see an offence in progress, they should report the matter to Victoria Police through the emergency number '000'. Calls made to '000' are processed and responded to by the nearest available police personnel. Police are best placed to assess the circumstances of any incident and decide when police action is required.

Increasing its connection to the community is a priority for Victoria Police, and the Government is committed to ensuring the Victoria Police can delivery on this priority. The Government understands the importance of a strong and enduring relationship between Victoria Police and the community. As part of the Government's \$2 billion investment in Victoria Police outlined in the Community Safety Statement 2017, the Government is launching a Police Assistance Line and online reporting portal. The Police Assistance Line and online reporting portal will further enhance the ability of Victoria Police to appropriately respond to community safety and public order issues.

The Government will work with stakeholders, including owners corporations and key institutional groups, over the two years following commencement of the new provisions to take all reasonable steps to ensure that lot owners are aware of the powers and responsibilities of Victoria Police in managing incidences of violent and/or criminal behaviour. This may include the development of protocols for reporting such incidents to Victoria Police. Relevant outcomes may be reported on either as part of the CAV-led post-implementation review, or as part of a separate complementary process.

## Recommendation 8

**That the Victorian Government, in its review of consumer property law, considers the difficulty for owners corporations to properly regulate safety and amenity in their apartment complexes, in particular relating to short-stay accommodation disputes.**

This recommendation is supported in full.

The Victorian Government notes stakeholder concerns regarding potential impediments to pursuing legal action at VCAT. This is why, as part of our broader reform package for the regulation of owners corporations, we will be introducing reforms to enhance owners corporations' ability to initiate legal actions by applying different voting thresholds for actions in different courts.

Under these reforms, actions in the Magistrates' Court and VCAT would only require an ordinary resolution to initiate. County and Supreme Court actions would still require special resolutions, but VCAT's power to authorise a lot owner to commence an action on behalf of an owners corporation will be reformed to allow the authorisation of any legal action. If implemented, this will make it much easier for owners corporations to take legal action in a range of circumstances where it is not possible to resolve issues via other means.

The Government also notes stakeholder concerns regarding:

- the cost of initiating actions in VCAT
- the Bill's requirement that breaches of the code of conduct must be "substantial" to be actionable
- the complaints process under the Bill could be used to make frivolous or baseless complaints against short-stay providers, and
- the requirement that owners corporations should have "reasonable grounds" for a belief that a breach has been committed before taking action.

In relation to the first of these issues, VCAT has the lowest application fees of any Victorian forum, it does not normally award costs against the losing party and it controls the use of lawyers at hearings. Following the outcomes of the recent *Access to Justice Review*, the Government is not contemplating any changes to further reduce VCAT costs.

In relation to the second point, the Government wishes to clarify that the term "substantial" in the Bill is not meant to mean "large" or "significant". Rather, it is intended to mean "real or of substance and not insubstantial or trivial" or "more than trivial or minimal". Thus, it is not intended to impose an unnecessarily high threshold for taking legal action for a breach. Furthermore, taking into account this ordinary meaning of "substantial" would clearly preclude owners corporations (or individual lot owners) from taking frivolous or baseless action against short-stay providers.

Finally, the requirement for an owners corporation to have "reasonable grounds" for a belief that a breach has been committed before taking action is in keeping with the broader complaint handling provisions under the Act. Raising this to require an owners corporation to have evidence amounting to proof of a breach would place too high a barrier against the serving of a breach notice. Given the action to be taken is the serving of a breach notice (which carries no penalty in itself), it is entirely appropriate that the threshold should be a "reasonable belief" based on some objective evidence of a breach.

## Recommendation 9

**That the Victorian Government, in its review of consumer property law, considers allowing owners corporations to levy fees on short-stay accommodation providers to cover increased maintenance and repair costs caused by their guests and the usage of these apartments. This should include a fair and equitable cap on the percentage of fees that may be levied.**

This recommendation is supported in part.

The Victorian Government recognises that some stakeholders have raised concerns that short-stay accommodation letting is having an impact on the wear and tear of common property, the costs for repair of which must be borne by owners corporations.

In recognition of these concerns regarding the potential impacts of particular lot uses on common property, the Government is proposing to reform the *Owners Corporations Act 2006* to enable owners corporations to separately levy lot owners for a range of matters:

- the cost of building insurance premiums on the basis of lot entitlement and differential risk
- insurance excess and increased premiums resulting from culpable actions
- insurance excesses relating to single-lot claims
- unrecoverable damage to common property, and
- maintenance costs arising from particular use of lots.

This reform will complement the provisions of the Bill, enabling owners corporations to recover costs for damage to property in a range of circumstances, including where it has been caused by short-stay accommodation guests.

The Government has also considered the Committee's recommendation that a "fair and equitable cap" should be imposed on the percentage of fees that may be levied and is of the view that this may enable short-stay providers to avoid paying the full amount attributable to the letting of their apartments. The Government considers that the existing requirement under the Act for any resolution to impose such extra fees not be oppressive or unfairly prejudicial to, or discriminate against, the lot owner is sufficient protection. Any dispute regarding the fairness of extra fees would be a matter for adjudication by VCAT.