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Victorian Parliament's Environment and Planning Committee Panel Hearing Owners Corporations Amendment (Short-Stay) Accommodation Bill 2016

Thursday 13 April 2017

About SRA

SRA is a volunteer driven, not-for-profit organisation. Our purpose is to improve the liveability of Southbank and all who live and work within postcode 3006. The committee consists of 9 volunteers and we meet on a monthly basis. Most of us are also active members of owners corporations and are a combination of renters, owner occupiers and investors.

Membership

Individual Membership is available for people who rent, reside or own residential property in Southbank or live in the area.

Individual membership costs \$10 pa and includes:

- Tenants;
- Owner occupiers with only one property;
- Owner occupiers with one or more additional investment properties that are available for rental as long, medium or short term or indeed to actually manage as short-stay accommodation.

Building Memberships, via their Owners' Corporation, are available to buildings located within Southbank. We currently have 23 buildings memberships. The chairs of the OCs of these buildings meet every second month to discuss common issues at our Southbank Owners Corporation Network (known as SOCN). Guest speakers are often invited and last month we had delegates from Airbnb and Holiday Rental Industry Association (HRIA).

According to our President, when a building joins SRA, we can claim membership of 1.6 people per lot. This equates to a membership representation of 11,000 people in Southbank. Given there are currently 52 buildings in Southbank and the total population is 21,000 we represent half of the Southbank residential population.

Consultation

We regularly engage in consultation and have made submissions on the following:

- CAV Property Acts review;
- Better Apartments Draft Design Standards discussion paper;
- Amendment C270 City Central Built Form Review.

Planning

Every Future Melbourne Committee (FMC) and Council Agenda is read and reviewed and submissions are made on planning and development applications related to Southbank.

Infrastructure projects

Provide input and consultation on projects in Southbank including:

- City Road Master Plan
- Sturt Street Bridge widening
- Transform Southbank Boulevard
- Boyd Park

Local Community

Support through:

- Monthly column in the Southbank Local News;
- Boyd Community Hub events;
- Recently launched presentation for new residents to the area;
- Community events such as trivia nights and meet the candidates.

Communication

We communicate with our members and residents of Southbank via the following:

- Monthly column in the Southbank Local News;
- Member newsletters;
- Facebook and Twitter channels;
- SRA website.

Owners' Corporation Amendment (Short Stay) Accommodation Bill

SRA supports the creation of legislation to better govern the short stay accommodation industry in all its forms by providing OCs and short stay operators with better guidelines. We hope the legislation should enable them to co-exist harmoniously. Today we'd like to make some comments on the Bill and propose some changes.

Suggested changes and comments on the Bill

1. Definitions

In the Definitions section of the Bill, the definition for *short-stay accommodation arrangement is a lease or licence for a maximum period of 7 days and 6 nights*.

Change: we'd like to change the definition from '*7 days and 6 nights*' to '*28 days and 27 nights*'.

Reason: There are tourist related events that go beyond 7 days (such as the Australian Tennis Open) so a longer time is needed. Indeed it could be argued that the Act should cover any short-term occupancy that does not have a tenancy agreement. A maximum period of 28 days should cover most situations.

2. Section 159A Complaints - short-stay accommodation arrangements

Add: Clarification of 'reasonable grounds' for each type of breach identified in 159A. We believe that evidence and proof is required to substantiate any complaint in this section.

Reason: The nature of the evidence for the different types of breaches varies significantly. For (e) about damage, there is physical evidence, for (c) and (d) about causing a hazard or obstruction, there is likely to be CCTV footage. On the contrary, for (a) and (b) noise and behaviour, the evidentiary record is likely to be anecdotal. For type (a) and (b) breaches, there should be corroborating evidence from security personnel or police.

It is our belief that OCs should not restrict short-stay occupants or operator's access to facilities, however there is currently no option within the legislation to complain if this occurs.

Add: A new paragraph to follow Section 159A Part (2) on alleged breach by an owners corporation by engaging in any of the following conduct:

(a) restricting the access of a short-stay occupant to the facilities in the building, except in situations where:

- i) the lot owner has requested the restriction,
- ii) the building requires an induction program to be completed prior to access to gym facilities and the like;
- iii) there has been a breach of the building's rules by the short-stay occupant.

Reason: A short-stay provider should be able to offer the same access to the facilities of the building as other residents.

3. Section 159B Decision whether to take action in respect of alleged breach by a short-stay occupant

Section 159B Part (3) currently states the '*the owners corporation must not take action in respect of an alleged breach by a short-stay occupant unless it believes on reasonable grounds that the short-stay occupant has committed the alleged breach*'.

Add: the definition of 'reasonable grounds' needs to be defined here, and could be subjective or objective.

Reason: We believe 'reasonable grounds' needs to constitute firm evidence of a breach in the form of CCTV footage, fob evidence, security report or police report. A breach such as a bottle falling from a balcony is difficult to prove, whereas a breach such as a person drinking in the pool can be corroborated by CCTV footage, fob access and a security report.

4. 159C Notice of decision not to take action - short-stay accommodation arrangement complaint

There don't appear to be any time frames associated with the notice of decision not to take action on a complaint.

Add: A new paragraph after Section 159C Part (2) specifying the time frame in which notice must be given and the time frame in which it must be processed.

Reason: This seems to be an omission from the Act. A reasonable time frame would be within two months of lodging of the complaint.

5. 159D Notice to rectify breach - short-stay accommodation arrangement complaint

Query: Section 159D Part (1) (a) states that the *owners corporation must give notice of the allegation to the lot owner and the short-stay provider*. We believe the notice must also be given to the party who made the complaint and to the respondent to the complaint.

Reason: this is purely to keep all parties informed.

Query: Section 159D Part (1) (b) says the owners corporation '*may give notice of the allegation to the short-stay occupant*', whereas section 169H says that the short-stay occupant is liable for satisfying any order by VCAT. If the short-stay occupant is potentially liable, then they must be given notice.

Reason: There is an inconsistency between 159D Part (1) (b) and 169H that may infringe the rights of the short-stay occupant. This anomaly should be corrected.

Query: Section 159D Part (2) (b) uses the phrase '*in any case*' in reference to taking the matter to VCAT. The interpretation of this phrase could be problematic, as it suggests the owners corporation may take the matter to VCAT, even if a notice to rectify the breach has been issued.

Reason: This seems to complicate matters with possibly two actions in place at the same time; the first a notice to rectify the breach, and the second a VCAT application. This does not seem like natural justice.

Query: Section 159D Part (2) (b) uses the word '*dispute*' for the first time in the Act without defining the term. What is the mechanism by which a complaint about an alleged breach becomes a dispute and does this require a notice to be issued first?

Reason: Section 159D Part (2) (b) seems to suggest that the owners corporation can decide there is a dispute, prior to issuing a notice.

Query: Section 159D Part (2) (b) has three possible orders by VCAT, whereas Section 169C has four possible orders. You will note '*the loss of amenity compensation order*' is missing from Section 159D. Should these two sections be the same? Also does the list need to be mentioned twice?

Reason: This appears incomplete, misleading or unclear.

Add: A section after Part (3) specifying the time frame in which notice must be given.

Reason: This seems to be an omission from the Act. A reasonable time frame would be within two months of the lodging of the complaint.

6. 169B Who may apply to VCAT in relation to a short-stay accommodation dispute?

It is possible that a short-stay occupant may wish to apply to VCAT and the facility should be in the Bill to do so.

Add: a new category of persons (a short-stay occupant) who may apply to VCAT to resolve a dispute.

Reason: The option is unlikely to be taken up, but given the current list, it seems appropriate to include the short-stay occupant.

7. 169D Prohibition order

Section 169D Part (1) (a) currently states *that a notice has been served on a short-stay provider on at least 3 separate occasions within 24 months*.

Change: change the period from '24 months' to '12 months'.

Reason: A shorter time is more indicative of a serious sequence of breaches, although there is an argument that the period could depend on the nature of the breach. For example a shorter time for less serious breaches such as noise and behaviour and a longer time for breaches involving damage, hazard and obstruction.

8. 169H Joint and several liability of short-stay provider and short-stay occupant

Query: This section seems inconsistent with 159D Part (1) (b), which says that the owners corporation only '*may*' give notice to the short-stay occupant.

Reason: If the short-stay occupant is potentially liable they should be informed of the notice. It is likely in some instances that the short-stay occupant might have left the country.

Query: Section 169H Part (3) seems to allow the short-stay provider to avoid responsibility for any loss of amenity.

Reason: The phrase '*the short-stay provider took all reasonable steps to prevent any relevant breach*' seems loosely defined. It could simply mean that the short-stay provider hands the short-stay occupant a list of rules for the building. This seems at odds with the principle that the lot owner is ultimately responsible. Either the meaning of 'reasonable steps' needs to be more specific and particular to each type of breach or Section 169H Part (3) should be removed.

Additional Issues

1. The Act should specify the obligations of the owners corporation to a short-stay provider.
Reason: The rights and responsibilities of all parties need to be specified if complaints are to be resolved amicably and expeditiously.
2. We are unclear as to how the grievance committee process fits in with this Bill in terms of resolving disputes prior to lodgement of a complaint with VCAT.
3. Section 169D Part (1) (a) currently states *that a notice has been served on a short-stay provider on at least 3 separate occasions*". It is not specified that the notices should relate to an individual lot. It could easily be interpreted that a short-stay provider in a building with 10 lots only needs 3 breaches in order to be subject to a prohibition order.