

**REPORT ON PROCEEDINGS BEFORE**

**COMMITTEE ON ENVIRONMENT AND PLANNING**

**ADEQUACY OF THE REGULATION OF SHORT-TERM HOLIDAY  
LETTING IN NEW SOUTH WALES**

**At Macquarie Room, Parliament House, Sydney on Monday, 30 May 2016**

**The Committee met at 9:15 am**

**PRESENT**

Mr M. Coure (Chair)

Mr G. Provest

Mr. A. Chanthivong

Mr J. Parker

Mr M. Taylor

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**The CHAIR:** Good morning and thank you for attending the public hearing of the Committee on Environment and Planning. Today we are hearing further evidence for our inquiry into short-term holiday letting in New South Wales. The Committee has received 212 submissions from people across the State. Nearly one-fifth of the submissions were received from the Far North Coast, which is why the Committee held its public hearing in Tweed Heads on 7 March this year. We heard valuable evidence in Tweed Heads from Tweed and Byron councils, several holiday accommodation providers, local businesses and tourism promoters, and importantly from local residents.

The Committee held its second public hearing at Parliament House on 14 March. At that hearing we heard from Sydney and Randwick councils, and a large number of major accommodation providers and advocacy groups. These included Stayz, Airbnb, Tourist Accommodation Australia, the Holiday Rental Industry Association and the Real Estate Institute of New South Wales. We also heard from the insurance industry and from owners corporation networks representing people who live in strata properties and from strata residents themselves. Finally, we heard from the NSW Department of Planning and Environment, which has responsibility for formulating the land use planning rules for the whole State.

Following our second public hearing the Committee met and identified a number of areas where it felt it needed more information or clarification. We received an important briefing from NSW Fair Trading on 2 May 2016. Today we are hearing from additional stakeholders in the regulation of short-term holiday letting in this State, including local government, the backpacker industry, the holiday letting industry and the NSW Business Chamber. I now declare the hearing open.

**ROBERT HENKE, Honorary Secretary, Backpacker Operators Association NSW Inc, affirmed and examined**

**JULIAN LITTON LEDGER, Chief Executive Officer, Youth Hostels Association Ltd, affirmed and examined**

**The CHAIR:** Do you have any questions about the information that you have been sent or our Committee process today?

**Mr HENKE:** No.

**Mr LEDGER:** No.

**The CHAIR:** Would you like to make a brief opening statement?

**Mr LEDGER:** Yes. Thank you for the opportunity to appear at this important inquiry. The Youth Hostels Association [YHA] is a not-for-profit organisation and a member of the International Youth Hostel Federation known as Hostelling International. We provide a network of youth hostels and accommodate some thousands of mostly young people every night. A substantial proportion are international backpackers and working holidaymakers. I spent my career working in youth tourism and previously served on the board of Tourism New South Wales prior to the establishment of Destination NSW. I chaired the Youth and International Education Panel of the current Government's Visitor Economy Taskforce. I also participated in the previous State Government's 2005-2006 taskforce into illegal backpacker accommodation.

Things have changed with respect to how accommodation is booked, which has increased the extent of unregulated accommodation. This in turn has increased the impact on residential amenity, increased the issues around strata building wear and tear and increased the numbers of visitors staying in property with lower building and safety standards. In our submission we set out how and when short-term letting increases in frequency in a precinct or strata building and amenity deteriorates. One point to make is that the issues are not new but what has changed in Sydney is a shift from unauthorised hostel buildings to multiple occupancy and strata apartments.

The same has happened in Melbourne and many cities around the world. Over the years I have been closely involved with these matters, including the loss of community support for tourism when residents' lives are adversely affected. What I have learnt in this is that it is very localised depending on where a resident lives and the source of the noise and behaviour and the intensity of the holiday letting. So on the South Coast holiday letting is seasonal and rarely a problem. In the Northern Rivers it can be year round and so-called weekend warriors down from south-east Queensland have had a big impact.

We operate two hostels near Central Station, one in Glebe and one in The Rocks, altogether about 1,000 beds. The Youth Hostels Association [YHA] also has a regional network. In total there are about 8,000 approved backpacker beds in Sydney. One observation is that only two significant hostels have been added to the stock of buildings in the last ten years and some existing stock will inevitably close in the future due to redevelopment for higher and better use. We think it important that the inquiry consider the likely growth of tourism and recommend solutions not just for today but for the future. The size of the global middle class, being potential international travellers, will increase to 3.2 billion by 2020 and 4.9 billion by 2030. By 2030 two-thirds will reside in the Asia Pacific and that is why tourism has been identified as one of five super growth sectors in the Australian economy. Another of the five is international education. Tourists and international students need accommodation. As the inquiry has heard Sydney visitor accommodation is already very busy.

In 1989 there was a fatal fire in Sydney, Kings Cross, at a hostel, in which six young people died. There was a back-to-base fire alarm that worked. One of the reasons people died was that a fire door was chocked open. The Coroner's report included the recommendation that there be a responsible person on the premises in charge overnight. In 2000 there was a fatal fire at a hostel in Childers, Queensland, in which 15 young people died. The fire alarm was faulty and had been switched off. One of the other reasons people died was that some bedrooms had windows barred for the security purposes. In 2014 there was a fire at illegal student accommodation in Alexandria, Sydney. There were fortunately no casualties. As a result of the fatal fires the New South Wales and Queensland governments tightened fire safety regulations but only of properties registered as hostels: hostels require annual fire safety certification, hard-wired smoke alarms and in most cases back to base.

We believe the lack of adequate control of non-approved accommodation is a safety hazard. With respect to a question put by Mr Provest regarding the absence of a level playing field, it has been put to the inquiry by the Department of Planning that someone who is operating a youth hostel is offering a certain

number of beds that are available every night with an expectation that they will be occupied every night, so there are more stringent fire safety standards around how frequent the turnover would be and how informed people need to be about evacuation procedures, alarms and the building code requirements that are caught up in that situation. It is an acknowledgment of the development consent that they are operating a commercial business with an expectation that it will be constantly occupied, or the hope that it will be.

With respect to short-term holiday lettings some properties might have those characteristics, but many would be more frequently occupied on a sporadic basis. It seems to us that there is a flaw in this logic. It is a bit like arguing that a bridge that is mostly used by cars need only be strong enough to take car traffic. If there is no restriction on trucks then it needs to be built strongly enough for them, too. If you are a tourist staying in an apartment building with many other tourists on a particular busy night and something goes wrong, it is of no help to you that the building normally had a much lower occupancy. Youth Hostels Association was a founding member of the Backpacker Operators Association more than 20 years ago. We helped set it up in part to deal with standards and the unauthorised and overcrowded accommodation where vulnerable and inexperienced visitors were being taken advantage of. We have supported that organisation since.

**The CHAIR:** Thank you Mr Ledger. To Mr Henke.

**Mr HENKE:** Thank you for asking the Backpacker Operators Association [BOA] of New South Wales to participate today. BOA was founded in 1992 and represents 80 businesses, many operate authorised backpacker accommodation in New South Wales. BOA is concerned about the explosive growth in the number of unregulated accommodation providers in New South Wales, particularly in Sydney. There are several platforms that facilitate the marketing of unauthorised accommodation in Australia, but it is the explosive growth of Airbnb that raises most concern. When I prepared BOA's submission into this Committee's inquiry in early November 2015, based on September 2015 figures, Airbnb had 10,473 listings in Sydney. Today there are 15,648 listings, that is an increase of 49 per cent in just eight months.

When the director of public policy from Airbnb addressed this Committee on 14 March he said, "In terms of policy recommendations I think it is very important to understand where Airbnb comes from and how we differentiate ourselves from the traditional holiday letting industry. We fall into the category of home sharing. I define home sharing as an individual who is renting out the principal place of residence. So this could be a spare room or it could be their entire home when they are travelling. This is a very different thing from commercial holiday letting, which is somebody who is doing this on a consistent basis throughout the entire year or managing multiple properties". BOA is not concerned with such home sharing, individuals renting out their home from time to time when they are travelling, but the truth is that 28.5 per cent of the properties listed on Airbnb are run by so-called hosts managing multiple listings.

When combined the ten hosts with the highest number of properties in Sydney have 595 listings on Airbnb and their share of the listings is growing. Lisa now lists 156 properties, up from 136 in September last year; Vincent now has 136 properties, up from 108 last year; and Bondi Beach holiday homes, 48 up from 36 in September last year. BOA calls upon the New South Wales Legislative Assembly to develop a framework for a host registration system to regulate short-term letting by resident landlords and seasonal short-term holiday letting in coastal and regional areas of New South Wales. To effectively regulate online non-commercial short-term letting it is essential to require online platforms to cooperate with new home share rules. Without such cooperation it is the taxpayers who pick up the costs associated with investigation and enforcement.

Amsterdam, the city from which I emigrated to Australia, signed an agreement with Airbnb in 2014 and regulated that short-term letting was permitted for a maximum of 60 days a year and for no more than four guests at a time. Unfortunately Airbnb refuses to assist with the enforcement of these regulations. Today, of the 11,300 properties in Amsterdam on the Airbnb website, 74 per cent are listed as being available for more than the legal limit of 60 days per year. Furthermore, 25 per cent of hosts list more than one property and more than one in 10 flats offered for rent is available to more than four guests at a time, in clear breach of the agreed regulations. Since April 2016 the authorities in Amsterdam started to scrape, or automatically collect content from Airbnb's booking data base. Officials are looking for landlords who no longer live in their homes, rent multiple properties to tourists, rent for more than 60 days per year, or to more than four people at once. The city of Amsterdam had to invest one million Euro to develop the technology required to do this.

Finally, there have been some suggestions that in order to create a level playing field, rather than regulating non-commercial home letting a better solution would be deregulating commercial accommodation providers such as hotels, motels, backpacker hostels and bed and breakfasts. Nobody particularly likes regulation, but this suggestion is unrealistic to put it mildly. Regulation is usually a response to something that went wrong in the past. For example, people die in a fire and more stringent rules about egress, sprinklers or

smoke detectors are put in place to prevent it happening again, just as they should be. The safety of our guests should always be our highest priority. Thank you for the opportunity to address the Committee.

**The CHAIR:** Thank you to the member for Macquarie Fields. My question is to Mr Henke. On page 1 of your submission dated 6 November 2015 you talked about the impact such platforms are having on the safety of short-term visitors to the State. Can you expand on that point?

**Mr HENKE:** Yes. Young people are always looking for a cheap place to stay. Most of our guests are here on working holiday visas; they combine their holiday to Australia with doing work on the side. They are often driven to the cheapest backpacker accommodation they can find, and it is tempting for them to end up in unregulated accommodation. If you do not have to adhere to the rules and regulations in place for more regulated accommodation, obviously there is an opportunity to run these properties at a lower rate. Thus it happens often that they end up in overcrowded accommodation and there are risks to their safety.

**Mr JAMIE PARKER:** I thought the point about the increasing professionalisation and concentration of Airbnb hosts was interesting. There have been many assertions about it involving renting out the unused back room. However, it is clear that there has been an increasing concentration of hosts and a professionalisation of the process. That is obviously presenting a challenge to people who run backpackers accommodation, the YHA and so on. Mr Ledger, you talked about the requirements. The Committee has heard evidence from organisations representing the hotels industry and so on with regard to the regulatory requirements on their industry. You mentioned hardwired fire alarms, annual fire inspections, and evacuation processes. What other types of safety regulations designed to protect the people staying in accommodation are imposed on groups like YHA and so on? Is it different for general backpackers' accommodation? Can you expand on that?

**Mr LEDGER:** I mentioned that one of the Coroner's recommendations as a result of the inquiry into the Kings Cross fire in 1989 was that someone be on the premises in charge overnight.

**Mr JAMIE PARKER:** Was that recommendation implemented?

**Mr LEDGER:** It is generally a requirement of consent. Whether it is always enforced is another matter. We certainly adhere to it ourselves. The key thing is that if you live somewhere you are familiar with the place, the way out and the fire escape. When you arrive as a tourist late in the evening the only way in and out that is familiar is the way you arrived. You do not know the premises well. That is one of the reasons there are more stringent fire egress provisions in tourist accommodation.

**Mr JAMIE PARKER:** That makes sense.

**Mr GEOFF PROVEST:** I take a different slant on this. I am a great believer in that whatever the Government or the Committee recommend it must be enforceable and common sense. Councils struggle with the number of regulations they must enforce. I always come back to issues with Uber and the taxi industry. Uber is here to stay and we are trying to provide a level playing field. You are talking about more than four people in backpacker accommodation and youth hostels—10, 20 or 30 people. You also spoke about the number of days that people stay. The Committee has had many representations about that, whether it is 60 or 120 days. How can we enforce these regulations? Your premises would have annual council inspections, and you would have to tick all the boxes or you would not get a permit. From your professional knowledge, how do you think we can introduce further regulations on the industry that would be enforceable?

**Mr HENKE:** That is a crucial question. I repeat what I said earlier: It is essential that the online parties cooperate with authorities. It is very easy to say, "Okay, there are now regulations in place." To put it correctly, they say themselves that this is home sharing. However, there is a limit to what you can call home sharing. Is it home sharing if it occurs 300 days a year or 200 days a year? We do not think so. We think that is operating as a commercial accommodation provider. True home sharing means that someone actually lives on the premises at least for a significant part of the year, or that someone rents out a spare room while they are there. It would be easy if the online platforms would share their database with the authorities to enable them to regulate this. It is the anonymity that they guarantee for people listed on their sites that makes it so hard for the authorities to do anything about it. If they were genuine about truly wanting to move into the space of home sharing, why is it that across the world authorities are struggling to get Stayz or Airbnb to cooperate more fully and to make the names and addresses of the parties listed on their websites available for enforcement purposes?

**Mr LEDGER:** I share some of your concerns about the government resources available to enforce regulation. I think the primary concern relates to strata schemes. It is curious that a 75 per cent majority of the owners in a strata complex can decide to redevelop the site, but the same majority cannot decide that they do not want holiday letting occurring in the place they thought was their residence. I would be looking at clearly empowering strata schemes in that regard. I note that one submission suggested that if more than 25 per cent

were unhappy with holiday letting that it not be permitted in a complex. That would be worth consideration as well.

**Mr GEOFF PROVEST:** One of the issues with the legalisation of Uber in New South Wales is ensuring that the records are kept here and that someone is seen to be responsible so that when it goes pear-shaped we have someone to approach. At the same time, we are moving to remove some of the restrictions on the existing taxi industry. Do you think that is the way to go in addressing this issue?

**Mr HENKE:** Progress has been made to guarantee the safety of passengers who travel in what is effectively a private car. I hope the same progress can be made with online listed accommodation. Without that cooperation, you are absolutely right, enforcement would be very costly and practically impossible. The key lies in the agreement that can be reached with those providers. However, that agreement should not be struck on a voluntary basis; it should be mandatory. The track record of providers across the world has been poor. If you do not put them in a situation where they cannot get away with it, you are keeping your fingers crossed that you are getting the right data. That is not good enough.

**Mr MARK TAYLOR:** What benefits does your organisation provide for your members?

**Mr HENKE:** We try to get across the message that by using us you get to meet other people. Young people travel not only to visit sites but also to socialise. We like to emphasise that if they stay in a backpacker hostel where there are 80 or 90 other backpackers in more or less the same age group and they will have a better time than if they stay in someone's apartment.

**Mr LEDGER:** Was that the intent of your question?

**Mr MARK TAYLOR:** Yes.

**Mr HENKE:** Probably not.

**Mr MARK TAYLOR:** Do you have a code of conduct, et cetera, for your operators and owners?

**Mr LEDGER:** The Backpacker Operators Association [BOA] certainly has put a lot of effort into standards and has worked with Sydney City Council, North Sydney, Leichhardt, Waverley, Randwick and Manly councils over the years and has had good success in dealing with houses and large boarding houses that have been converted into backpackers, which have caused a lot of problems for the neighbourhoods. Once that was dealt with we then saw a migration of that behaviour into apartment buildings in places like Ultimo, Chippendale, Glebe and the central business district where in some cases there might be 20, 30 or 40 apartments being used as de facto backpacker and student accommodation with gyprock walls built down the middle of lounge rooms, bunk beds and people sleeping on balconies. So an apartment that might have been designed for four or five people is being occupied by 14 or 15 people.

**Mr HENKE:** If I can just add to that?

**The CHAIR:** Sure.

**Mr HENKE:** What the entire hospitality industry has in common is that we are dependent on the support of the community. There is tremendous growth opportunity for tourism in Australia, but that cannot come at the cost of the amenities of neighbours because you lose support for it and that would not be good for anyone.

**Mr ANOULACK CHANTHIVONG:** What has been the trading environment for both of your organisations? Have you seen changes in the number of bookings? Has business dropped substantially?

**Mr LEDGER:** Australian tourism is a relatively stable industry. It is vulnerable to things like the strength of the Australian dollar.

**Mr ANOULACK CHANTHIVONG:** Taking all of that into account, how have the new platforms, in the generic term rather than focussing on one, impacted on your members in your industry?

**Mr LEDGER:** In the backpacker sector the average price point is about \$35 per night. The Airbnb average rate in Sydney now is more than \$150 a night.

**Mr ANOULACK CHANTHIVONG:** We are in different markets now are we not?

**Mr LEDGER:** It has evolved and as Rob has referred to it, we are providing a place where people meet a lot of other people and that does not generally happen when you are in an apartment on your own.

**Mr ANOULACK CHANTHIVONG:** In one sense you are targeting markets so the operation of an online platform provider is really going after different sections, that is, people who rent out backpacker accommodation are not the same as those who would go to a house in east Balmain or the inner city?

**Mr LEDGER:** Some of the people looking for twin accommodation with us may also consider renting an apartment.

**Mr HENKE:** If I may add to that, working holiday makers who usually stay for longer really would be looking for the cheapest place they could find.

**Mr ANOULACK CHANTHIVONG:** Mr Henke, you talk about deregulating the current industry. What specific areas do you have in mind?

**Mr HENKE:** As a matter of fact I don't. I think it is a bit of a furphy. I have heard talk of that, but I am yet to hear good examples of regulation that could be stopped. I have an open mind, but a lot of the regulation is about safety, health and as I said, is a response to things that have gone wrong in the past. And things will go wrong again and that will end up in regulation. It is not something we like, but it is the world we live in. Except, of course, when you run an unauthorised accommodation because then you shrug your shoulders and move on.

**The CHAIR:** One of your recommendations on page 2 of your submission is that clear boundaries need to be developed to clarify the difference between non-commercial short-term lettings and commercial activities. Mr Henke, will you expand on that point?

**Mr HENKE:** I do not think that anyone would have any objection against true home sharing. Airbnb makes great play of that. Its origin is somebody sleeping on an air mattress, hence the name. But it is rapidly shifting away from that. Unfortunately there are people in society who see this as an opportunity to make a quick buck. There are positive sides of the sharing economy and we see that it can help an individual pay the mortgage or get the kids to school or whatever if they have a spare room or if they make a little bit of extra money to go on holiday and rent out their home. But that is something totally different from running a commercial operation and having your house permanently rented out to tourists. That is why I think it is so important and, in my view and also in the interests of platforms like Airbnb, to make that separation much more clearer by defining the difference between a commercial operation and what is truly a house share.

**The CHAIR:** For example, Mr Henke, if somebody was renting a spare bedroom for 90 or 120 days in your view that would be a sort of non-commercial short-term letting compared to somebody who is renting out a whole house for an entire year or a number of investment properties?

**Mr HENKE:** Absolutely, and it would also mean that the guests who are staying there, their safety is not jeopardised because the host is there and the host can make sure that they know how to get out of the place if there is a fire rather than somebody just entering into an apartment with no responsible adult there where they have never been before.

**The CHAIR:** You talk about safety throughout your report and you have both just raised the issue today. In your view if I were to rent out an investment property, if I had one, on a long-term basis who would be responsible for the necessary checks to ensure that I am doing the right thing as an investor for those who are renting out the rooms or the house? Do you ask council to do that?

**Mr LEDGER:** I think that is probably the case at the moment. There is legislation around residential tenancies. There are already things in place. I think we would be saying that there is a need for a higher standard when tourists are involved with people coming and going, possibly higher density of accommodation. Just last week Sydney City Council was successful in a prosecution and somebody got fined \$100,000, I believe. But that case has been going on for two or three years. You have heard from the people that council has had to employ to bring it about. It is the exception rather than the rule. Sydney City Council is a very well resourced entity and even it has struggled. So we have observed over the years that the Department of Planning has not made it easy enough for councils to act in this regard and the balance needs to be tipped back the other way.

**Mr HENKE:** Can I just add that BOA has a button on its website where neighbours can dob in illegal accommodation anonymously. We then contact council and provide it with the details. What we hear all the time from council, other than "We have a resource problem" is "We simply do not have the legislative tools that are sufficient for us to deal with this."

**The CHAIR:** Are you referring to councils?



**Mr HENKE:** Yes, I am referring to councils. We have also been in communication with the Department of Planning within the New South Wales Government. They assert that there are plenty of tools for councils to deal with it and so it goes on.

**Mr JAMIE PARKER:** This issue of commercial or non-commercial use is very important to councils because in a residential zone people are only paying residential rates but if a property is being used for a commercial purpose they want commercial rates. Airbnb says that "only" 7 per cent of their properties are leased for more than 180 days, which is six months. That is still several thousand properties. A council would probably like to see whether they could get commercial rates from them but that is by the by in one sense. I think we all agree that enforceability is what it is all about for this Committee. The question is how do we make it enforceable?

At the moment every single Airbnb property in a strata building in the Leichhardt municipality and in Sydney is not permissible. It is very clear. A court matter has resolved that. The court has made a decision that it is not permissible. In the Leichhardt municipality and the City of Sydney as well any Airbnb stay or any other form of short-term stay accommodation like it is not permissible. If it is in a residential zone, it is not allowed. But, of course, enforceability is the problem. We know as a Committee that all the councils have basically said that they are waiting for us to tell them what they should do. If we do not do anything there will be a lot of letters going to people and court action. It will be a real mess.

You know that one of the things councils have done is change their local environmental plans [LEPs] to incorporate some thresholds, be it 60 days or 90 days. They say if you comply with these thresholds you will not have a problem with zoning. Do you have any views on what that should be? Should councils be permitting a 60-, 90- or 120-day threshold? Or, in your view, does there need to be some other way to deal with individuals who want to provide short-term stay accommodation? For example, if someone had 150 listings and they were only permitted to do 30 or 60 days would that satisfy you? Would you not be concerned about that?

**Mr HENKE:** I think there are two ways to go about it. First of all is the zoning measures. You could say in certain zones we simply do not allow it at all or we do it through the body corporates. In the areas where you would allow it I would say letting out a spare room, in my view, should be permissible year round for a maximum of four people at a time. As far as renting out the whole house, you need to ensure that the person who rents it out is actually doing it on a temporary basis, whether that is 60 days or 30 days. In my view it sits somewhere between 30 and 60 days. You would have to live there most of the year yourself in order to make the case that this is truly non-commercial short-term letting.

As far as the implementation of those matters go, at the risk of sounding repetitive, the key lies with an agreement with those platforms. I could, for example, see a licensing system where these platforms could only list properties that have a licence number so it can be verifiable that it is indeed known. The issue is the anonymity. Why is it that they do not want to make the names and addresses of the properties listed on those sites available? I can see no clear reason for that other than to continue this grey area.

**Mr JAMIE PARKER:** There has been a proposal that councils should not do all of the enforcement. As was discussed, it is a multimillion dollar effort for councils to follow up each house and check how long the guests have been there. How do you know if they have been there for 60, 30 or 90 days? You basically have to have an investigator sitting out the front of the house if they do not share the information with you. Another suggestion was something you mentioned—that is, a host has to declare that short-term stay accommodation is permissible at their property. It could be a section 149 certificate; they just have to declare that it is permissible. That is pretty easy to find out if the property is in Glebe or the CBD because short-term letting is not permissible there at the moment. Unless the councils change the rules—and I suspect some will—the host will need to declare that it is permissible. Do you think that would be a way to deal with hosts who are providing short-term stay accommodation in areas that are not approved by councils and zonings?

**Mr HENKE:** Yes, but only if you get access to Airbnb's database. That is the key.

**Mr ANOULACK CHANTHIVONG:** What do you think should be the criteria for a licence?

**Mr HENKE:** First and foremost that it is actually legal, that it is allowed in that area. You need to start with a clear set of criteria when this is authorised and when this is not authorised, in which zones it is authorised, in which buildings it is authorised and whether you need permission of the body corporates. Once that is enshrined in the regulations then you can make a start on outlining in which case it is allowed and in which case it is not allowed.

**Mr GEOFF PROVEST:** When the Insurance Council presented here they said there were various claims and various insurance policies out there but in the fine print it clearly reads "provided it is a lawful activity". From what we have heard there appears to be a significant risk that they are not actually covered by

their insurance. I note from what you said in your opening remarks that a lot of regulations flow from disasters. There is a real potential out there. It just seems to me that short-term letting is here to stay and it is about how we can best accommodate it, look after the existing industries and also respect the neighbours. I think that is a real issue that this Committee is struggling with.

**Mr LEDGER:** The risk for the other residents is that something happens and then the insurance policy is invalidated because the person who set off the fire should not have been there. I would go back to the strata Act and give greater powers to body corporates to run the building in the way in which they would like. That would seem to me to be an exercise in local democracy. If the submission from the Department of Premier and Cabinet is to be believed, that is not the case at the moment.

**Mr JAMIE PARKER:** The Government is not big on local democracy at the moment.

**The CHAIR:** Order!

**Mr LEDGER:** I think the Committee could also have a look at recent developments in Victoria where, as I understand it, there are changes being brought into the Owners Corporations Act. An additional power has been granted to the Victorian Civil and Administrative Tribunal [VCAT]. That is similar to our NSW Land and Environment Court. That includes fines for guests, compensation for neighbours and fines for the apartment owners. We always bring it back to the owner.

**The CHAIR:** Thank you. Do you want to provide any additional comment now?

**Mr LEDGER:** No, thank you.

**The CHAIR:** We may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be published. Would you be happy to answer any additional questions at a later stage?

**Mr LEDGER:** Yes, that is fine.

**The CHAIR:** Thank you again for appearing today.

**(The witnesses withdrew.)**

**DONAT KOBELEFF, President, Holiday Letting Organisation Central Coast Inc., sworn and examined**

**DANIEL DONAT KOBELEFF, Vice-President, Holiday Letting Organisation Central Coast Inc., sworn and examined**

**The CHAIR:** Thank you both for appearing before the Committee today. Do you have any questions about the information that you have been sent or about the process today?

**Mr Don KOBELEFF:** No.

**The CHAIR:** Would you like to make a brief opening statement?

**Mr Don KOBELEFF:** Yes, please. Thank you for the opportunity to speak to this inquiry. Holiday Letting Organisation Central Coast [HLO Central Coast] was established in 2008 to assist the development and ongoing management of the sustainable short-term holiday letting accommodation sector on the Central Coast and in the Hunter Valley. HLO Central Coast assists members to comply with mandatory council requirements and to implement the Holiday Rental Code of Conduct. HLO Central Coast comes to this inquiry with a unique perspective as, unlike the situation presented to the Committee at the public hearing in Tweed Heads, Central Coast councils have legally recognised and supported the industry. Our local government areas have faced many challenges, including a standard instrument that did not define short-term holiday letting, illegality via council notifications and a court case that deemed short-term holiday letting illegal.

The Central Coast now has a legal definition for short-term rental accommodation, approved by Parliamentary Counsel. It has local environmental plan [LEP] provisions that legally support the majority of existing operations while ensuring that their use operates on a scale that is compatible with the residential living environment. The Central Coast has a development control plan [DCP] that references the New South Wales Holiday Rental Code of Conduct, endorsed by the Minister, which defines the minimum standards of management and behaviour required and has been effective in addressing recognised community amenity challenges. The development application process allows dwellings that do not meet the exemption conditions to operate with approval. There is a code of conduct implementation system that assists compliance, enables quality improvement and assures the resolution of complaints. There is also a strata by-law that works in tandem with the Gosford LEP, the New South Wales Holiday Rental Code of Conduct and the Real Property Act 1900, which requires stratas to comply with council LEPs.

This regulatory approach enables the industry to proactively address challenges, empowers councils to react through their compliance department when required and enables the community to quickly resolve legitimate complaints. The Gosford and Wyong planning policies have been placed on public display a number of times and have been overwhelmingly supported each time. Despite our region's regulatory success, there is one significant challenge that must be addressed, which is the lack of transparency and accountability in the governance of the Holiday Rental Code of Conduct. At this point the code cannot be referenced from any legitimate authority other than HLO Central Coast and there is no New South Wales code administration committee.

An example of this problem is the Land and Environment Court case in 2013 in which the court ruled short-term holiday letting illegal in Gosford. The case involved a dwelling advertised through an online portal. There are many dwellings advertised that clearly do not comply. Participating organisations have an obligation to ensure compliance with the code. The Code Administration Committee [CAC] has an obligation to ensure that participating organisations uphold their obligations. The same portal was not sanctioned in 2013 by the New South Wales CAC and is not held accountable today. This distorts the market and undermines the attempts and ability of industry and government to proactively implement the code as intended. It creates a reactionary approach whereby pressure is put on councils, police and other services to deal with noncompliance. History tells us that such a reactionary approach has undermined confidence in the industry's ability to effectively and proactively self-regulate behavioural management concerns and has placed the industry and many councils in an uncertain position.

Version 1 of the New South Wales code is the only code that has been endorsed by all parties that developed it. It was endorsed by the former Minister for Planning and Infrastructure. Gosford City Council has supported it in its planning provisions. To address this challenge, HLO Central Coast requests that the New South Wales Holiday Rental Code of Conduct, version 1, be regarded as the minimum standard policy, under the custodianship of a New South Wales Government authority. We request the appointment of an industry based committee to administer the code. The original code, supported by LEP provisions such as those in the Gosford local government area, is adequate, fair and effective.

Our region has overwhelmingly supported the provisions. With a legitimate government minimum standard code we are very confident that the Central Coast, and indeed the short-term holiday letting industry throughout New South Wales, will be adequately regulated, able to address many of the recognised stakeholder challenges and contribute positively to the economy in the future. I request that the document that I have provided to the Committee be tabled and published. It was written and provided to correct the public record in response to a number of incorrect assertions made by Mr Trevor Atherton in a document dated 11 March 2016 and tabled at the second public hearing of this inquiry. We hope that this inquiry will be successful in its mission to provide certainty, transparency and sustainability for the New South Wales short-term holiday letting industry. Thank you for the opportunity to comment.

**The CHAIR:** Thank you, Mr Kobeleff. Mr Daniel Kobeleff, would you like to add your comments?

**Mr Daniel KOBELEFF:** Yes. I have a short statement as well.

**The CHAIR:** Mr Don Kobeleff, I will respond to your comment about the document. The Committee has received a copy and will table it after it has examined it.

**Mr Don KOBELEFF:** Thank you.

**Mr Daniel KOBELEFF:** Members of the Committee, thank you for the opportunity to appear as a witness at this very important third public hearing. Hearing number one took place in Tweed Heads and heard from representatives from a region that has had significant challenges in the regulation of short-term holiday letting. For that reason, HLO Central Coast appreciates this opportunity to appear as a representative of a region that has successfully addressed most challenges. Hearing number two provided a voice to large corporate industry, notably online advertising portals. While it acknowledges that portals are industry stakeholders, HLO Central Coast does not want the inquiry to overstate their position. Advertising portals are simply that: websites that connect dwellings with guests through pictures and money transfers. Unless the portals are directly and legally responsible for the outcome of those transactions, the reality is that their main focus is to protect their business model.

Worthwhile industry disruption should not allow the portals, the so-called disrupters, to be immune from disruption. The truth is that a sustainable short-term holiday letting industry, which by default means an adequately regulated industry, will always need advertising. The Central Coast has a thriving short-term holiday letting industry that mostly operates in harmony with the community. This has not always been the case and the road to this point has been very challenging. We are proud of what our industry, councils, community and association have achieved. The Central Coast has developed, adopted and implemented sustainable regulations that address many of our region's recognised challenges and as a result we have a profitable and sustainable industry that contributes positively to our region's economy.

Don has briefly outlined the various positive aspects of our region's regulations and has identified poor governance of the code of conduct as the most significant challenge that must be addressed. I will explain how this affects our region with a simple practical example. HLO Central Coast receives many calls and emails from non-member dwelling managers who are experiencing challenges. These can be complaints from neighbours, guests, the council or the police. Often they request that we communicate with council or neighbours on their behalf, provide legal advice and support their operation. The obvious first question we ask them is: Do you comply with the Holiday Rental Code of Conduct? Many times their answer is that they have never heard of it.

The next obvious question we ask is how they advertise their dwellings and whether they accept guest numbers that exceed two adults per bedroom, with a maximum of 12 adults. Invariably the answer has been that they advertise on the usual online portals—Stayz, HomeAway and Airbnb—and often they do not comply with those guest numbers. If a dwelling manager is willing to comply with the code, HLO Central Coast can assist. Unfortunately, though, many managers explain that they cannot comply with the requirement about guest numbers as they have extensive forward bookings. They comment that plenty of other dwellings do not comply with that requirement so why should they.

If, as a participating organisation, we are to represent and support these dwellings, as a condition of membership we are required to ensure their compliance, as are the other participating organisations. The difference is that we are at the coalface and have to deal with the results of non-existent enforcement of compliance by other participating organisations. This unproductive and reactive process is not what the code was developed for. It makes all stakeholders down the line from the portals directly responsible and legally liable for the outcome while the portals remain immune. It places stress on the resources and budgets of councils, police and associations such as HLO Central Coast and undermine the industry's ability to self-address behavioural and management challenges, ultimately affecting the most legally vulnerable stakeholders—that is, dwelling owners, managers, neighbours and guests.

This is a very significant problem. It has a very simple solution. The industry requires a legitimately administered and governed code of conduct. I echo Don's request regarding the original New South Wales Holiday Rental Code of Conduct. Lastly, the other critical challenge that must be addressed for the broader New South Wales industry is that of legal certainty. The Central Coast has addressed permissibility concerns by an industry definition approved by Parliamentary Counsel included in our council's LEPs. Thank you for the opportunity to comment at this public hearing. I am happy to expand on any of the points I have raised and I look forward to your questions.

**The CHAIR:** Thank you both for your opening remarks. On page 16 of the submission you provided the Committee in November 2015 you talk about the changes that Gosford City Council adopted in an amended version of their draft LEP 2009 in terms of short-term holiday letting, including planning provisions via the New South Wales Department of Planning and Environment Gateway Process and so on. Can you talk us through that and what changes took place?

**Mr Don KOBELLEFF:** Basically we already had a draft LEP in front of the Department of Planning and Environment, so a lot of work had already been done on our LEP. We then had the court case which deemed short-term holiday letting illegal, which created a massive shock wave through our region. The council had to move very quickly. Because we already had something developed it moved very quickly. We put it through the gateway process and it was approved and it was looked at by Parliamentary Counsel and approved. Is that the information you are after?

**The CHAIR:** You talk about the fact that it "provided effective significant sustainable controls". Can you talk us through those?

**Mr Don KOBELLEFF:** I can read them out to you if you like.

**The CHAIR:** Yes, please.

**Mr Daniel KOBELLEFF:** Can I just butt in there? Would you like to know the difference between the first version and the—

**The CHAIR:** That would be great. That is what I am getting at.

**Mr Daniel KOBELLEFF:** The major difference was that they changed the maximum adults per bedroom number from 10 to 12.

**Mr JAMIE PARKER:** Are you talking about the code or the LEP?

**Mr Daniel KOBELLEFF:** The LEP. From memory I think the definition was amended a little bit as well. They were the major changes that occurred, and there are reasons behind both those things. I am happy to go into that if you would like.

**The CHAIR:** Don, did you want to add any comment to that?

**Mr Don KOBELLEFF:** Only if you want to know what the specific LEP states.

**Mr GEOFF PROVEST:** You have said eight to 10. What about the length of stays?

**The CHAIR:** I want to try to dissect that. What is the major difference there?

**Mr Don KOBELLEFF:** I am happy to discuss the LEP if you would like.

**The CHAIR:** Yes.

**Mr Daniel KOBELLEFF:** To start off with, I think it is really worthwhile for the Committee to thoroughly examine this LEP. It is very cleverly written and it has lots of layers in it.

**The CHAIR:** We need to know what those layers are. You have mentioned them a couple of times in your report.

**Mr Daniel KOBELLEFF:** The difference between our region and other regions—you talk about 60, 90, 120 days—is that this LEP was designed with the intention of keeping operations within domestic scale. The defining of short-term holiday letting was keeping it within residential scale, and that was two adults per bedroom and a maximum of six bedrooms. Up to four bedrooms is conditionally exempt development. So that is a major difference between our LEP and other LEPs that you are talking about. There are layers that are built in there. So the conditionally exempt development requires operators to ensure that they do not negatively affect the amenity of their neighbours. If two or more complaints are received by council and they are legitimate complaints, council can then either opt to shut that property down or require that property to go through a 12-month period in which they can be assessed. The five- and six-bedroom properties have to go for a development

application because that was deemed to be more difficult to manage than a four-bedroom property because of the increased numbers. The cap of 12—because that would be two adults per bedroom for six bedrooms—more was deemed to be in excess of domestic operations. They are the major—

**Mr GEOFF PROVEST:** So they can just run the whole year?

**Mr Don KOBELEFF:** Yes.

**Mr Daniel KOBELEFF:** Absolutely.

**Mr GEOFF PROVEST:** There is no 60, 80, 120—

**Mr Don KOBELEFF:** Our council advised that it discussed that limit of 90 days and felt the limit would not be sustainable for the industry and was unnecessary, basically. The council would prefer to have this process in place, especially the exempt development part of it, because that again protected the existing operations that were doing the right thing and those operations would not be affected.

**Mr GEOFF PROVEST:** Did you differentiate between strata title and houses?

**Mr Don KOBELEFF:** No.

**Mr GEOFF PROVEST:** It is all—

**Mr Daniel KOBELEFF:** There is a reason why not, and that is because stratas are required to comply with LEPs as part of the Real Property Act.

**Mr Don KOBELEFF:** The minute you have an LEP, the strata has to comply with that LEP. If the LEP states that they reference a code of conduct, you can then build a by-law around that code of conduct that gives the power to the strata to control what goes on from a financial perspective as well as from a behavioural perspective.

**Mr Daniel KOBELEFF:** The whole LEP has been developed—which is why we are so adamant about the code of conduct—so that the industry can proactively address the challenges. If we do not proactively address those challenges, council is going to have lots of complaints and it is going to be shutting people down. That is not what we want; that is not what council wants; that is not what the neighbourhood wants. So proactively addressing these issues is what is required.

**Mr Don KOBELEFF:** With a code you can then be proactive in how you take a booking and how you vet your clients and what they agree to, because you have these proactive systems in place in your booking processes that are built around the code.

**The CHAIR:** In your view who should enforce that code?

**Mr Don KOBELEFF:** We are saying that we want the custodianship to be with the Government. That way it can be referenced. When you put it in your LEP it can reference it somewhere. That was a major issue when we were developing the by-law—there was nowhere to reference the code. You could not reference it. The minute a government body has it on their website it can be referenced.

**The CHAIR:** Sure.

**Mr Don KOBELEFF:** Then obviously council has a role in that. If there are complaints, council already has a mechanism in place. That becomes a reactive approach. We are really about a proactive approach. If you have a proactive approach all the way around, you very rarely get complaints.

**Mr Daniel KOBELEFF:** So who should be responsible for it? As Don says, the Government holds it. That protects that document. But you have an industry code administration committee very similar to what was already in the original document that communicates between the Government and the industry associations, tourism and visitors centres, councils and those kinds of things. So the responsibility is shared between all the different layers, all the different stakeholders, but ultimately it takes the resource and financing issues away from the Government. From our perspective, councils have been loath to throw money at this—to have council people knocking on doors, checking houses and that kind of thing—but they also want to retain the ability to address issues if we cannot proactively do it.

**The CHAIR:** Let's open it up to questions from other members. Mr Chanthivong?

**Mr ANOULACK CHANTHIVONG:** No, I am fine.

**The CHAIR:** Mr Taylor?

**Mr MARK TAYLOR:** Just concerning insurance and insurance policies, are there any positives, negatives or comments about that?

**Mr Daniel KOBELEFF:** I might jump in on this. First of all, I was asked to write a paper on that for a previous parliamentary inquiry. I am not sure if you are aware of that document.

**The CHAIR:** Which inquiry was that?

**Mr Don KOBELEFF:** The tourism—

**Mr JAMIE PARKER:** The upper House one.

**Mr Daniel KOBELEFF:** The General Purpose Standing Committee No. 3 [GPSC3]. It was a couple of years ago. The reality is that an insurance policy or an agreement is a contract between an owner and the insurance provider. The onus is on the owner to comply with the law. It was stated earlier that if the dwelling is operating in a region that is not recognised in an LEP, that is an illegal operation, therefore that insurance contract must be deemed as being invalid. The associated issues with that are significant not only for the homeowner or guests—travel insurance and things like that. The list is endless. It is a significant problem.

**The CHAIR:** Mr Provest?

**Mr GEOFF PROVEST:** Are the amount of complaints that you get on the Central Coast dramatically reduced to what you were getting before?

**Mr Daniel KOBELEFF:** We can only speak on behalf of our organisation and, yes, that is provable from our perspective within our association. Council would have the numbers on the complaints that they are receiving.

**Mr Don KOBELEFF:** In 2009 when we started all this—we have not done the statistics on that now—but in 2009 it was 0.7 per cent of complaints, so there were not a large amount of complaints anyway and that was in total; that was not over a year, so the complaints were not that huge anyway.

**Mr GEOFF PROVEST:** It has been stated with previous witnesses that there are several major online platforms?

**Mr Don KOBELEFF:** Yes.

**Mr GEOFF PROVEST:** What is their acceptance of what you have done?

**Mr Daniel KOBELEFF:** They have not accepted it; it has been a major challenge. It is simple as that. That is why we are sitting here.

**Mr GEOFF PROVEST:** I like simple things.

**Mr JAMIE PARKER:** I might ask the secretariat to see whether Gosford council actually included in consents, not just zoning, whether or not short-term stay accommodation was permissible. One of the problems we had with the City of Sydney and other councils is that the development consent specifically excluded short-term stay accommodation and other forms of hotels in the site. Maybe the secretariat could check that. We did not get a submission from Gosford council so we need to follow that up.

**Mr Daniel KOBELEFF:** I could provide a little comment on that. Firstly, the standard instrument prior to now did not have any definition and did not exclude it. Once we had a court case in Gosford, that deemed it illegal, therefore requiring either the State Government to provide a solution to that or the council; that required a definition and I think that definition is quite a clever definition, but that is a major difference; that it never excluded it but once the court case happened it was clearly illegal, in Gosford city at the very least.

**Mr Don KOBELEFF:** What happened is that the original local environmental plan [LEP] did not exclude it but then the new standard instrument did not have any room to move in it and it would have made it illegal immediately because the only definition was visitor and tourist accommodation and you cannot have visitor and tourist accommodation in residential zones, so that was a major hurdle that we had to climb to ensure that that LEP was not completed until there was an inclusion for short-term holiday letting as a totally separate operation and we were able to achieve that.

**Mr JAMIE PARKER:** I think one of the challenges we have here is that not just LEPs but development consents have been issued and councils want them to be excluded from short-term stay accommodation and it is the CBD, which is full of short-term stay accommodation, so that is a challenge that this Committee has to look at. I want to ask about the code. Obviously we have heard from a lot of local tourist accommodation organisations who are doing the right thing, who have developed codes, are good neighbours and are trying to have the right policy but the portals basically are not interested in ensuring that their hosts

comply with the code. That is the problem that we have. It goes back to the question of who is going to enforce it? In my electorate there are about 600 Airbnbs so council is not going to go to 600 properties to try to ensure compliance. When there is a complaint they can try to follow it up. What is your experience in terms of your code as to how compliance works proactively to deal with issues raised by residents or by hosts?

**Mr Daniel KOBELLEFF:** I might have to put on a different hat to answer that question. It is not the reason why I came here. I came here under the Holiday Letting Organisation Central Coast [HLO] banner but we did develop a system of implementation to assist with that particular issue.

**The CHAIR:** When you say "different hat"?

**Mr Daniel KOBELLEFF:** It is a business hat rather than an association hat and I can explain to you why that is the case. The code needs to be implemented properly and needs to be enforced for it to be effective. It cannot be reactionary. There is a document produced by the Australian Competition and Consumer Commission about how you adopt and implement codes of conduct. We followed that document. The system is a quality assurance system so basically goes through the whole document and pulls apart the document and provides practical implementation assistance and tools.

Once you are deemed to be meeting those requirements—that is a self-assessment system—you are then quality assured. That then allows you to access all the other layers in the process, which is security. A security system—it seems so simple. You have a complaint, a security guard comes out, kicks the people out or addresses the issue. I pose this question: the security guard arrives at the home and the complaint is that there is overcrowding in the building. How does the security guard know how many people are allowed in that building? How many bedrooms does the house have? What are the conditions of consent between the owner and the guests? Have they allowed visitors up to a certain amount of time? That is what our system allows. If there is a complaint the security guard is called out by the neighbour. When he turns up he knows exactly who is allowed in that building, how many people, what are the conditions of consent. He can make a practical assessment on the spot and actually remove those people with consideration to the laws around those things. They are just a couple of the layers built into our system.

**The CHAIR:** How many members are part of your organisation and how does your organisation work?

**Mr Don KOBELLEFF:** I did the rough figures about two weeks ago. We have most of the major professional advertising agents as members and they cover approximately 800 properties. The membership is not huge.

**The CHAIR:** Did you say advertising?

**Mr Daniel KOBELLEFF:** The real estate agents.

**The CHAIR:** Property managers and so forth.

**Mr Daniel KOBELLEFF:** Property managers.

**Mr Don KOBELLEFF:** Specialists in the short-term rental field. They are specialists in what they do.

**The CHAIR:** How many did you have?

**Mr Daniel KOBELLEFF:** Roughly 800.

**Mr Don KOBELLEFF:** There are 800 properties covered by those organisations.

**The CHAIR:** How many organisations?

**Mr Don KOBELLEFF:** I do not have those figures.

**Mr Daniel KOBELLEFF:** There are about six major real estate agencies and excess to that are owner managers.

**Mr Don KOBELLEFF:** We then have a very large database so we probably have about 3,000 people on our database that we provide information to, so when this Committee is finished and you have decided what is going to happen, we will send that information out to our database.

**The CHAIR:** How does your organisation work?

**Mr Don KOBELLEFF:** We hold the code of conduct. If someone rings me up and needs help, I help them if I can help them. If they are not prepared to comply with the code of conduct I say that I cannot help them.



**Mr Daniel KOBELLEFF:** We have a partnership in place with our quality assurance system, which all the real estate agents are members of. We have various experts on our board—legal advisers, accountants, people like that.

**The CHAIR:** So property managers would pay an annual fee to be part of the Holiday Letting Organisation Central Coast?

**Mr Daniel KOBELLEFF:** That is correct. They pay a fee to HLO Central Coast. We are a not-for-profit organisation, and it is a very minimal fee. The business side of things, the quality assurance system, is a separate issue and there is a fee associated with that as well.

**The CHAIR:** I want to add to that, if I can. How does your organisation work with local councils to maintain a good relationship between council and its members?

**Mr Daniel KOBELLEFF:** That is a difficult question to answer. I would like to say that Gosford council especially has been very proactive in this compared to a lot of other councils.

**Mr Don KOBELLEFF:** It is pretty arm's-length. We do our bit; they do their bit and we do not try to cross paths so that there are no legal issues involved. That is really how it works. They have their compliance and they have supported the code, so we work around that.

**Mr Daniel KOBELLEFF:** We advise them on what we believe to be the best course of action. I think what you are getting at—and in my opinion should happen—is that communication channels between government and industry need to be strengthened.

**Mr Don KOBELLEFF:** Yes.

**Mr Daniel KOBELLEFF:** That is a very significant issue. I know it is difficult for lots of different reasons but especially in this case. Generally what happens on the Central Coast is if council has a problem with a house, that house finds its way to us.

**The CHAIR:** How? Does council provide that?

**Mr Daniel KOBELLEFF:** Council has provided that, yes .

**The CHAIR:** Did you want to continue?

**Mr Daniel KOBELLEFF:** No, that is the simple answer.

**The CHAIR:** Can you expand on the LEP changes mentioned in your report? Do residents get an information brochure?

**Mr Daniel KOBELLEFF:** It is on the council website.

**Mr ANOULACK CHANTHIVONG:** With your work with Gosford council and the code of conduct, have you seen an increase or decrease in the number of incidents?

**Mr Don KOBELLEFF:** What we have seen is an increase in the number of people that comply with the code. There is conflict between the houses that do comply and the ones that do not, because it creates market failure.

**Mr Daniel KOBELLEFF:** It creates a point of difference in the model for each dwelling. We have 800 properties that comply. We cannot force anybody to do anything but they make the decision to comply with the code of conduct, which limits their guest numbers, and they comply with that. They have to compete with other properties that do not comply with that. That is a marketing point of difference.

**The CHAIR:** Two questions: the first, can you tell us how many properties are not part of your organisation?

**Mr Daniel KOBELLEFF:** On the Central Coast? I think in Gosford there are 3,000, we have 800 over Wyong, Gosford and the Hunter Valley. A large proportion are not, that is the fact.

**The CHAIR:** How many complaints does your organisation receive?

**Mr Daniel KOBELLEFF:** From members?

**The CHAIR:** Yes.

**Mr Daniel KOBELLEFF:** None. No legitimate complaints. Any complaint that has been recorded over the years has either been deemed to be illegitimate or has been addressed.

**The CHAIR:** Expanding on that, how do you deal with those complaints when they do come in?

**Mr Daniel KOBELLEFF:** That is another reason why we have to have a system in place where we can be assured of what systems the dwelling manager has. We have to check their systems. What are they doing? What are their licence to occupy requirements? What exactly is the issue? We get a report from the security guard and the neighbour. We discuss it with the neighbour.

**The CHAIR:** That is something you actively pursue?

**Mr Daniel KOBELLEFF:** Yes, on a number of occasions.

**The CHAIR:** And refer it to council or police?

**Mr Daniel KOBELLEFF:** We do not refer it to council. As far as we are concerned if it gets to council that is a failure.

**The CHAIR:** Thank you for your time today in the hot seat. We may wish to send you some additional questions in writing, your replies will form part of your evidence and be published. Will you be happy to answer further questions?

**Mr Don KOBELLEFF:** Yes.

**(The witnesses withdrew.)**

**DEAN GORDDARD, Executive Manager, Tourism, NSW Business Chamber, sworn and examined**

**LUKE AITKEN, Senior Manager Policy, NSW Business Chamber, affirmed and examined**

**The CHAIR:** Thank you for appearing before the Committee today. Do you have any questions about the information sent to you or today's process?

**Mr GORDDARD:** No.

**Mr AITKEN:** No.

**The CHAIR:** Would you like to make a brief opening statement?

**Mr AITKEN:** The NSW Business Chamber represents more than 19,000 businesses across the State. Tourism Industry, a division of the chamber, helps businesses operating in the visitor economy to maximise their potential to ensure that New South Wales remains the number one tourism destination in Australia. The division aims to represent and to enhance the needs of tourism businesses across the State by working with government, industry and community stakeholders to boost investment, employment and promotional opportunities while providing business support, communication and advocacy for our members. The chamber and the division recognise the enormous opportunities and the challenges emerging from the sharing economy.

Our recent paper "The Sharing Economy: Issues, Impacts, and Regulatory Responses in the Context of the NSW Visitor Economy" identified five principles to which regulators and legislators should refer when considering regulatory options. Those principles were: regulation should encourage the growth of commercial activity, not restrict it; opportunities should be taken to reduce overall regulation across the visitor economy; self-regulation should be encouraged before government intervenes; a cross-governmental approach is required to develop an efficient regulatory framework; and regulatory responses should be designed based on strong empirical evidence. I thank the Committee for the opportunity to discuss these issues, and we are happy to take questions.

**The CHAIR:** Page 2 of your submission states that self-regulation should be encouraged before the Government intervenes.

**Mr AITKEN:** Obviously with the emergence of the sharing economy there are probably some opportunities where the Government does not necessarily need to step in, but it could facilitate opportunities for the community to make decisions about property. The one that comes to mind most readily relates to strata apartment owners who might be utilising Airbnb. We think that it is probably appropriate for strata groups themselves to make determinations around the use or non-use of Airbnb within their buildings. That is probably an opportunity for government to step back and simply to give strata groups the ability to make bylaws in relation to those issues. We are looking towards those sorts of opportunities where there can be a discussion between property owners about the appropriate use of a property.

**Mr GORDDARD:** We are led to believe that advances have been made with some global online platform companies in that regard in recent months. They are looking at complaint management. However, it is fair to say that perhaps that has been focused a little more on the hosts. Our understanding from our members' feedback is that they are also looking at the communities living around the hosts and implementing some measures online around that self-regulation to address the people who may be affected by these issues.

**The CHAIR:** I would like to draw out that point about strata corporations. How would you see that operating and working if we were to give more power to strata corporations?

**Mr AITKEN:** I suggest that it be a simple majority rule being implemented by the strata corporation in relation to whether or not Airbnb or a sharing platform can be used for short-term accommodation opportunities. There could be suitable decisions around the length of time involved and so on rather than the Government mandating the length of time. It also allows the opportunity for those owners to have a discussion about other things that might be impacting them, such as use of the common property and other things, as a result of short-term accommodation being allowed in the area.

**Mr GEOFF PROVEST:** The NSW Businesses Chamber represents businesses in New South Wales. What would be your response if I owned a commercial property such as a motel, hotel or caravan park and was paying commercial rates and just down there was a short-term accommodation provider paying residential rates? Is that not unfair?

**Mr AITKEN:** We discussed that just prior to appearing before the Committee today. We do think that that potentially is unfair. The rates are there to allow councils to address public infrastructure that tourists might use. Councils create their rating structures and address commercial properties because they have more people coming in. They might increase that. It would be useful to discuss that with the platforms—that is, whether a fee could be charged that would fill that gap potentially on a pro rata basis. For example, if you lease accommodation for three days, a fee would be imposed on the platform owner. In the case of Airbnb or Stayz, they would collect the fee and then forward it to the council. There is potential in that regard because that can be a gap.

**Mr ANOULACK CHANTHIVONG:** Do your members include those in the tourism industry and hotel owners?

**Mr GORDDARD:** Yes.

**Mr ANOULACK CHANTHIVONG:** The Committee has heard evidence from the Australian Hotels Association about online platforms taking their business. Are you being stretched in both directions? That is, you want to facilitate online platforms and short stays, but some of your members are saying that it is unfair and they are losing business. What is your position given that you represent opposing objectives?

**Mr GORDDARD:** Strengthening the visitor economy, creating flexible opportunities for overnight spend, and enhancing the performance of the New South Wales visitor economy is a paramount principle. There is a variety of different accommodation providers, and some of them are utilising these platforms and others less so. It is important that whichever way you look at this, whether or not it is a case of implementing measures designed to create a level playing field, it must not be to the detriment of growing this economy.

It is also not a one-size-fits-all approach. There are service providers, and what I mean by that is whether they are bed and breakfast owners, motel owners, people who often rent out their properties in regional areas, for example. There is a real mixed bag in terms of how they use these platforms. We see it very much as a challenge to market. So some are used to liking and embracing them, others less so. So it is a mixed bag in terms of usage.

**Mr MARK TAYLOR:** From your experience how effective is web-based consumer feedback as opposed to regulation as far as providing quality and consumer safety?

**Mr AITKEN:** From a personal perspective I find it highly effective. I will not deal with anyone that I cannot actually Google and find out a little bit about the business if it is an online platform or if I am going to go and spend my money on something. If I can find out some information I will utilise it. If I see some negative feedback that will weigh on my mind. So from a personal perspective that does work for me.

**Mr GORDDAD:** I think there is no doubt that in recent years there is a market trend to people wanting to trust peer-to-peer commentary when they make decisions. I think in this case whether you are choosing a space somewhere for description and offering the experience it offers, or whether you are actually, I guess, trying to validate that decision by what other customers of that property are saying, is very, very valid in this current market place.

**Mr MARK TAYLOR:** Do you see how that particular system could be improved or enhanced?

**Mr GORDDAD:** I think probably going back to what I just mentioned earlier, consumer feedback on a particular host or host property when we are looking at these platforms. It may be that you are leasing out a room for a couple of nights, or an apartment, the gap there in terms of the feedback from the community that live around that host in that building or that area I think is equally as important. I think that has been the missing link thus far, but we know at least one global platform is addressing that now.

**Mr AITKEN:** I think also feedback on the customers. Obviously if you have people who have been problematic, sharing that with the community is also vital.

**The CHAIR:** Absolutely.

**Mr JAMIE PARKER:** I talk particularly about my electorate, which includes the City of Sydney and Leichhardt—formerly Leichhardt municipality.

**The CHAIR:** I think that was an indirect dig.

**Mr JAMIE PARKER:** When the digs are there I will say it openly. I said that because it is factual and I know it is now Inner West Council. Obviously, one of the problems is that short-term stay accommodation in the central business district, outside serviced apartments, is not permissible. It has been in the court and it has been determined that they are not permissible but how do we fix that? What do we do to try to resolve that? You talked about empowering stratas. The Committee has heard from the owners network, the Fair Trading

Commissioner and others talking about that. It is tricky because even if the owners corporations said "We are going to do this" a lot of money will have to be spent to go to court to try to enforce it. It is a very expensive challenge and process to try to manage that.

People have also talked about data information. How do we know that? In your submission you said that self-regulation should be encouraged and this may mean that these companies, referring I think to the online platforms, will have to be willing to share more data with governing bodies to ensure public expectations are being met. The problem is that globally the online platforms do not cooperate in relation to collecting money for other people and doing those types of things. They are very reluctant for understandable reasons. What do you mean by "this may mean companies will have to be willing to share more data"? A lot of people complain and are concerned about the process and have said they want more information from these portals. Do you support that? Is that what you are presenting in that section to get more transparency in the system?

**Mr GORDDAD:** Transparency is the challenge and it is striking a balance here. As you alluded to, we understand that you can identify listings, but you cannot identify the providers of those listings. We believe that in this situation it is a real weakness for the industry at the moment not to be able to truly measure this market. There really are estimates that have been given so unless there is some sort of mechanism to be able to identify those providers to then garner the empirical data that we are all looking for, it is very hard to actually step forward and make progress from where we are at today.

**Mr AITKEN:** Maybe just to reflect, while it may not be permissible it is still occurring regardless of decisions around it. I think the definitional issue is a really difficult one around timings and things like that because realistically the enforcement around these things is going to be challenging for whichever tier of government chooses to pick that up. So I think there does need to be some further consideration made around keeping it as simple as possible, but allowing some opportunities for review. Data is the most appropriate one. If platforms do not want to comply I think the response would be to try to regulate more strongly, which is not probably the way in which they want to go.

**Mr JAMIE PARKER:** Finally, when we talk about the sharing economy, Airbnb data says some hosts have more than 100 properties that probably 400 or 500 people are staying in any one night if they were renting out all of those properties—it is like a big hotel—to individual groups. So it is a bit more than sharing in some parts of that platform. You talk about regulation. A suggestion has been made that in order to advertise the host, or the owner of the property, would have to confirm that their property complied with the code or with permissibility. They would have to say whether it is on their section 149 certificate and say "Yes, we can actually legally lease this property" and that would be required in order to advertise. Is that an example of a light-touch regulatory approach where a whole government department was not licencing and registering, but it was that basically they cannot advertise unless they comply with government provisions.

**Mr AITKEN:** Are you referring essentially to a disclosure statement?

**Mr JAMIE PARKER:** I think you just tick a box on the website before you are allowed to advertise.

**Mr AITKEN:** Some of what we are hearing from industry around these commercial operations that are running significant numbers of properties up to 50 is probably an area that should be targeted. Whether you could limit the amount of listings any single holder might be able to put on Airbnb that could be an option. Would it be too hard to actually cloud that though? So I do not know how successful it might be. That would be something potentially, depending on how it is designed in terms of your disclosure statement you are suggesting, that could be open to explore.

**Mr GEOFF PROVEST:** Considering the experience of the NSW Business Chamber with Uber, do you think it could similarly apply to this issue? Part of the trade-off with Uber is that it has to keep financial records in Australia and have somebody responsible, et cetera, because like it or not, it is here to stay and these other providers are here to stay no matter what we do. We are just trying to put it into some regulation to be fair.

**Mr AITKEN:** I guess Uber is a little bit different. The areas in which they are operating are quite different. Something that Mr Goddard touched on is lack of data around impact. We do hear about the party houses and the problems with stratas, but there is not much hard data about more police call-outs or more noise complaints. It would be good at a threshold to actually identify those impacts. I know there has been discussion around registers and things like that, but a simple register around noise complaints to a property that might be able to be shared with platforms might be useful. I think the approach with Uber has been a good one. Maybe there are some learnings from within that, but it is a vastly different industry sector so we do need to balance that as well.

**Mr GORDDAD:** Obviously in the Uber case there was a compensation package. One of the concerns we have had is what role local government plays in this. We are very much of the view that—

**The CHAIR:** That was my next question. What role do you think local government should play in this particular instance?

**Mr GORDDARD:** Arguably I would say the challenge of disputes—whether that is noise or loss of amenity—sits a little bit more in the local government basket. But we are well aware of the practicalities of local government having the resources to be able to manage this. Some sort of compensation mechanism whereby some systems were put in place for local government that were consistent across the State to address the additional work that they had to do in whichever area we are talking about I think needs to be considered. But time and time again what we see with this is we have got a very fragmented industry with a very fragmented approach from local government. Those two factors at the moment are difficult to manage.

**Mr ANOULACK CHANTHIVONG:** You both spoke about the guiding principle of the New South Wales economy as a whole and self-regulation being the preferred model. What self-regulation model are you thinking would work best given that the hotel industry and the platforms are challenging for the same market?

**Mr AITKEN:** It is not a model. It is probably suggesting that we should explore self-regulation opportunities before government steps in. Whether or not there can be agreement between industry and platform providers around the opportunities like I suggested around rates, filling the gap between a commercial and residential rate where you are leasing out a property could actually address one of the impacts that people talk about. Some of that transparency sort of stuff can help. Some of the points that Mr Taylor raised around some of that feedback that you might be able to have, more transparency about both hosts and people going to Airbnbs may help to address some of the problem people who go and rent out properties. I think some of those things should be explored before we look towards a regulatory response to try to deal with them all rather than more police powers for noise complaints or anything like that. We should put it in at that level.

**Mr ANOULACK CHANTHIVONG:** Do you have in mind an industry body or just self-regulation between the participants for dispute resolution rather than having to go to a non-government third party to resolve it?

**Mr AITKEN:** Probably within the participants. Like I suggested at the start, stratas should be empowered to make some decisions around these things. Hosts and their—for want of a better word—tenants that come in and spend some time, there should be a feedback loop on how that relationship works.

**Mr GORDDARD:** Just to add to that, we also have to keep bearing in mind there is a real distinction between this challenge in Sydney and metropolitan areas and the regional areas. That issue around providing more powers to stratas or owners corporations is really important because it gives them the flexibility in highly densely populated areas of the city, for example, to have the flexibility to be able to regulate as they see fit. But I can say, looking from a regional perspective, holiday lettings are the heartland of regional tourism and have been for decades. It is really, really important that the Government takes on board the fact there is not a one-size-fits-all approach between the two.

**The CHAIR:** Very good point.

**Mr JAMIE PARKER:** It is all good for stratas to make a law, but you have to do the investigations. The City of Sydney proposed some amendments to the Environmental Planning and Assessment Act which they have tried to get up to give them more powers to be able to do this work around illegal over occupancy and that kind of thing. Does the chamber have a view about council powers and being able to increase their ability to ensure compliance?

**Mr AITKEN:** In this aspect I think we would be open to taking a look at it. What we have been discussing as well is that, like Mr Gorddard touched on, metro and regional areas are quite distinct. We are happy to try and pilot something before we go and change the Act if there is the opportunity to pilot some of these powers and see how they might work in practice. Maybe a three-month trial to see if they can address some of the issues would be good.

**Mr GORDDARD:** I think again the key thing here is striking a balance. My understanding from the City of Sydney was that it was looking at some means by which they could strike a balance perhaps in a building where some floors or levels are designated for short-term letting and others are not and they have separate access points and lifts, et cetera. We are not saying that is specifically the answer but it provides a sense that they are trying to strike a balance without shutting down the opportunity for this innovative phenomenon that has occurred to grow the New South Wales economy. That is our main concern. It is really important that the New South Wales visitor economy prospers.

**The CHAIR:** Thank you very much for attending today. We may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be published. Would you be happy to answer any additional questions at a later stage?

**Mr GORDDARD:** Yes.

**Mr AITKEN:** Yes.

**The CHAIR:** Thank you again for appearing.

**(The witnesses withdrew.)**

**GORDON CLARK, Strategic Planning Manager, Shoalhaven City Council, sworn and examined**

**MARK CARLON, Manager of Strategic Planning, Sutherland Shire Council, sworn and examined**

**MICHAEL RYAN, Manager of Building Compliance and Tree Management, Sutherland Shire Council, sworn and examined**

**The CHAIR:** Thank you for appearing before the Committee today. Do you have questions about the information you have been sent regarding our process?

**Mr CARLON:** No.

**Mr CLARK:** No.

**The CHAIR:** Would you like to start by making an opening statement?

**Mr CLARK:** I will. Shoalhaven is the number one tourist destination in New South Wales outside of Sydney. Holiday homes have been a feature of our tourist economy for a long time. The tourist industry is one of our main economic drivers, generating an estimated annual spend of between \$623 million and \$750 million. We are visited by approximately 2.7 million people annually. A lot of those people choose to stay in our estimated 4,000-plus holiday homes that are a feature of our local government area.

Some 10 years ago now following one of the court decisions on this issue, and I guess in the absence of a statewide approach, the council acted early given the importance of holiday homes in our area. We were perhaps the first council to amend our local environmental plan [LEP] to enable the practice of holiday homes to continue without the need for consent. That saw clause 20BB "Short-Term Accommodation" introduced into our LEP. To support this step and to stress the need for owners or managers to manage their holiday homes, council has produced and widely distributed a range of pamphlets and other material encouraging responsible management of holiday homes.

We have also, from time to time, promoted the various voluntary codes of practice that have been released by the industry. However, council and the police are often called upon to manage complaints in accordance with existing legislation. That relates to things like acting in a way that is consistent with the dwelling's development approval, antisocial behaviour and the like. More recently we are seeing the issues created by absentee landowners or landlords and the changing management and letting approach. Previously most of the holiday homes in our area were managed through local real estate agents. Adjoining residents knew who they were. They knew where they could go if there was an issue. Now that there are online companies and online bookings there is no local contact at all when an issue arises.

From 2006 until 2014, when our new citywide local environment plan [LEP] came into force, we operated under the previous clause in our LEP. However, since 2014 the clause has slightly changed. Basically it still says that a person does not need consent for a holiday home. However, if there is an amenity impact then council can choose to step in. The new clause in our LEP also sets a maximum period for "short-term" and is backed up by the development control plan. From experience, most holiday homes in our area largely operate without too many problems and do not need to be overly regulated. Our revised LEP clause is based on one from our neighbour, Kiama Municipal Council. We stole it from them. I acknowledge that.

**Mr JAMIE PARKER:** You borrowed it.

**Mr CLARK:** It is a way of council potentially being able to step in where houses are problematic. We do not want to regulate the 4,000-plus holiday homes, but it certainly gives us an opportunity to step in and regulate the problematic party houses that we can identify. At this stage we have not had to use that provision. It is there as a threat as much as anything. In other words, if homeowners continue to do the right thing then council will not step in. However, if we start to see issues arising and there is an amenity issue then council can step in and require a person to seek development consent. I note that in recent weeks the Victorian tribunal system has begun to look at a three-strikes approach: after three complaints things start to become regulated.

I will mention in closing some of the emerging issues that face our area. One of them is the contribution to tourism marketing. Holiday homes generally benefit but do not financially contribute at present because they are not commercially rated. We acknowledge that that would need some form of legislative change. The question is how you identify where all those holiday homes are. Some are clearly identified. Some are not because they are rented out through word of mouth, through family and friends. In recent years the



biggest issue we have seen is the holding of functions at holiday homes. That is where holiday homes are rented out as pseudo function venues. There is a growing wedding economy in our area. It might be due to our proximity to Sydney. The Shoalhaven is obviously a nicer place to get married than in Sydney.

**Mr GEOFF PROVEST:** You have to love the Sydney air.

**Mr CLARK:** Perhaps it is nice to get married at Hyams Beach and Callala Bay and shout your family and friends to accommodation. We have seen reserves adjoining holiday homes being used for quite large functions. That alienates public reserves. Council has had to take steps to enforce compliance in that regard and come up with a policy to try to manage that. The Committee may have already heard about the last issue we are facing, which has been raised by the Rural Fire Service. It suggests that there is the potential to implement a special fire protection purpose for holiday homes. That has been raised with us on a number of occasions. For us the question is how this can be triggered if we do not require consent for the practice of holiday letting. That is another agency stepping into the fray and somewhat greying what is a rather grey area already.

From Shoalhaven's point of view, holiday homes are an important part of our economic fabric. As such, overregulation may not be the answer. Councils do not necessarily want to take on another regulation task. A consistent policy approach is definitely needed. It would be good, for example, if councils had a suite of agreed provisions or approaches to choose from to ensure consistency. However, we do not necessarily want to see an approach where things are markedly different from one local government area to another. It really does not make sense to the public. Thank you.

**The CHAIR:** Thank you very much, Mr Clark. Mr Carlon, would you like to make an opening statement?

**Mr CARLON:** Yes, please. Sutherland Shire Council made a submission to the inquiry on the basis of the difficulty in regulating short-term accommodation. Sutherland Shire Council is flatly opposed to short-term letting. The eastern part of the Sutherland shire, around Cronulla, has a strong tourism role. Council is doing a lot to facilitate that and it sees tourism growth as an answer for jobs and employment locally. However, council has been frustrated by a lack of traditional tourist and visitor accommodation. Operators are simply not setting up in the area. There are a few reasons for that. At the moment 30 properties in the region are tourist and visitor accommodation. Together they provide 456 rooms. In comparison, Airbnb has 293 in the shire, of which 61 are in Cronulla and 26 in Bundeena, which is nearby. Stayz lists 30 in Cronulla and seven in Bundeena. Part of the problem with getting traditional tourist and visitor accommodation in Cronulla is its premium residential value. Hotel operators are always outbid by residential flats.

Despite that number of holiday premises, we receive very few complaints. I will leave it to Mr Ryan, who looks after compliance issues, to elaborate on that. From our council's perspective, the key issue that determines the success of short-term letting or how problematic it is is the behaviour of the clientele and the proximity of outdoor areas to the neighbours. Shoalhaven has already talked about problem households. It must be acknowledged that they will occur. It is particularly a problem in Cronulla because it has a night-time economy as well. That is quite attractive to people organising buck's nights. We have good pubs and clubs. It is a little different from a holiday house down the coast. Yes, the neighbours can call the police, but that gives them very little comfort if it is a regular occurrence.

The proximity of an outdoor entertaining area to the neighbour is an issue, particularly in a block of units. Say the balcony is within two metres of someone's bed. When someone comes home from a night out they would expect to be on that balcony enjoying the view and continuing to drink and talk. Even reasonable noise levels have an impact when they are within metres of a sleeping person. I fully accept that when that happens every weekend it is a reasonable amenity impact and something that is problematic. That can occur when houses have decks in very close proximity to one another and everyone lines up to look at the same view.

Our approach to date has been based on a 2003 court case, *Sutherland Shire Council v Foster and Anor*. It was our first court case that said that short-term letting was prohibited as a commercial use. We have operated on that basis since. The only area where short-term letting is permissible is in the business zone and a small tourism area in Cronulla. From my count, only 12 Airbnb listings fall within that area where they would be permissible. I have not said they have consent; I have just looked at the map versus what is there.

From council's perspective there are two categories of holiday let. Mr Ryan and I will suggest some ways to manage the situation. The first category is where the holiday accommodation is part of a dwelling or a within a dwelling on site. That includes boatsheds and granny flats, for example. A large number of listings are rooms within a house. We think they generally function well. The owner is on site. They are there to accept complaints. We really think that that could be a form of complying development. We think that the standard instrument already sets up a potential for that.

A number of home based businesses already fall under the standard instrument. There is home-based child care, home business, home industry, home occupation. We cannot see why there could not be a definition called "home based short-term letting", either in the home or on the land belonging to the home. Bed and breakfast does that but it is unworkable and old-fashioned. You have to serve a meal. The accommodation has to be within the dwelling and, surprisingly, it also has to be an existing dwelling. You cannot build one. We are happy to leave bed and breakfast as it is, but we think that there needs to be a more general provision to cover other holiday accommodation. We also think that, as with home occupation and home industry operations, there should be an amenity test. As the occupier of a home you can do virtually anything provided that it does not interfere with the amenity of the neighbourhood. So we think that sort of approach could work very well for the first category within the home.

The second category is harder with the absentee landlord because there is not that person to complain to. We really believe that needs a more rigorous assessment and enforcement environment so the council can be empowered to take action. We think the best way to do that would be to separate the two definitions and then have it as a permissible form of use or a defined use under the definition of tourism and visitor accommodation—it would be one type of tourism and visitor accommodation. Council could then nominate the zones where it was permissible and make it permissible everywhere, but it would give some discretion to that. So, for example, we might favour the tourism zones rather than the straight residential areas because there is that advantage of trying to build up the local economy in that area.

If it was there, we then have the option of also making that a form of complying development or development with consent—there are options. One of the things we think would help would be to include perhaps a time limited consent the same as licensed premises often have—the same kind of legislative environment. If there is a problem house, at least compliance can say to the neighbours, "They only have another year on this consent." It gives the neighbours some comfort that the situation will not last forever. We think those sort of teeth might help. We also think—and I will ask Mr Ryan to elaborate—the idea of a State register would help, particularly when it has a 24-hour contact person so that the grief goes to a third party first, not to council first. The other thing Mr Ryan will also talk about is that we also think there is a need for compliance issues to be addressed—to know that when you are renting a property it meets fire safety requirements and pool safety requirements—and perhaps even insurance for commercial lease.

**The CHAIR:** Thank you, Mr Carlon. Mr Ryan?

**Mr RYAN:** As previously stated by Mr Carlon, Sutherland Shire has approximately 300 properties advertised on Airbnb. In the last year the council received a small number of complaints—approximately five—relating to short-term holiday letting. These complaints related to noise and parking. As the complaint numbers are small, it has not been a big impost on council's resources to date. However, there are complexities in investigating these complaints and there is an expectation from residents that council will intervene where there is a breach of planning law that results in their amenity becoming impacted upon. Council does not attend sites after hours to investigate amenity complaints relating to noise stemming from parties and the like when they are occurring. This is done by the police. Council is not resourced nor do we have the necessary work health and safety security to do so.

In conducting enforcement action to cease an unauthorised use there are evidentiary issues in proving that the premises is being used for short-term letting. This evidence would generally be circumstantial, such as advertising and statements from complainants. Council has issued notices and orders in relation to short-term letting to achieve compliance. However, these notices and orders to date have not been tested in court. The owners of premises council has investigated have been cooperative and appeared genuinely unaware that they were breaching planning controls.

Provided that the use is permissible under the LEP, from a compliance perspective I am supportive of using the SEPP complying development provisions to regulate short-term letting. This would assist in providing a suite of standardised conditions that in effect control the use and consequently regulate behaviour. The standard condition could also address Building Code of Australia and safety concerns. For example, short-term letting under a complying development would require conditions that include signage with after hours contact details, hardwired smoke detectors, emergency lighting and swimming pool compliance certificates. A further condition of the complying development certificate [CDC] to include the premises on a statewide register similar to the swimming pools register which has been set up would provide both the public and the council satisfaction that the operation is legal and complies with minimum acceptable standards. Further information could also be available on the register including a contact number, CDC number or other relevant information pertinent to the premises.

**The CHAIR:** Mr Carlon, can you provide the Committee with further information on that case in Forster in 2003?

**Mr CARLON:** I am happy to provide a copy later. It is kind of a little bit of folklore for me. I have not read that case for a long, long time, but it has been the foundation of our approach.

**The CHAIR:** Fair enough. Moving on, both of you talked about a standardised set of conditions. Are you looking at limiting the number of days—30, 60, 100 or whatever—as part of those conditions?

**Mr CARLON:** We think that is impractical from an enforcement point of view. Who monitors the number of days? Who do we believe? Is the neighbour counting? Is the landowner counting? We just think that is going to create fights about something we as local government have absolutely no control over knowing.

**The CHAIR:** Mr Ryan, how many complaints did you receive?

**Mr RYAN:** Five.

**The CHAIR:** And what was the nature of those complaints?

**Mr RYAN:** Noise and parking.

**The CHAIR:** So it is always those two issues. I open questions to other Committee members. Mr Chanthivong?

**Mr ANOULACK CHANTHIVONG:** Thank you for coming in, gentlemen. We have also had evidence from other local government areas as part of the Committee's hearings so far. Your low number of five is in keeping with other evidence we have heard. How does that stack up against your general complaints? Those who are in local government, for example, like I am, get complaints all the time about noisy neighbours, bad parking or trucks in the street. How does the figure of five compare with your general complaints that you get ordinarily?

**Mr RYAN:** We average about 4,500 complaints a year for building and development related issues.

**Mr ANOULACK CHANTHIVONG:** So in Sutherland you get 4,500 complaints around building and amenities and you are only getting five for short-term accommodation?

**Mr RYAN:** Correct.

**Mr CLARK:** I would suggest that in Shoalhaven holiday homes are a very minor area of complaint when you put them alongside things like barking dogs, building development et cetera. Council staff know which are the problematic properties. For places like Callala Bay and Hyams Beach you can ask the staff which ones are the most complained about—it tends to be the same ones. It is usually around how they are let out—absentee owner, online platform and no contact. Quite often neighbours will try to manage things themselves by talking to the real estate agent or the owner, but if they do not even know who that is or they cannot reach them, they cannot manage it.

**The CHAIR:** From that last answer, I take it that your council does keep a record of all holiday homes in the local government area?

**Mr CLARK:** We do not, unfortunately. As I said, the figure of more than 4,000 came from some work our tourism manager did some years ago. It was basically just a search of all of the online platforms at the time and all of the real estate agent websites. The reality is we have a lot of holiday homes that are just let out amongst families and friends—through networks. But if you look at places in a city, you just need to look at the census data to get an idea of the flavour. If you look at places like Hyams Beach, Callala and further south, they can have anywhere up to 70 to 80 per cent of their dwellings vacant during winter. That gives you an indication that they are holiday homes of some description.

**The CHAIR:** Which residents receive your council's information brochure?

**Mr CLARK:** Shortly after we introduced the clause into our LEP back in 2006, we sent a guideline or a request for people to do the right thing. That went out through all local real estate agents and so on, but then one of the later pamphlets went out to all ratepayers with their annual rates notice.

**Mr ANOULACK CHANTHIVONG:** This follows on from my question. Mr Ryan, is it not a bit of a mismatch if you are only getting five complaints and you are suggesting maybe we do a standardised SEPP across this industry?

**Mr RYAN:** I think one of the problems with short-term letting is that complainants are very aware that the use is not permissible. Because they are aware of that, they want it pursued. I think the solution is there

through the complying development and starting up a register. It does not appear to be a huge cost for the owner of the short-term letting.

**Mr ANOULACK CHANTHIVONG:** So if we go down the path of a SEPP and then permissible use and compliance, does that not bring enforcement back to the council as well? For five complaints I just wonder whether that is worth the resources of the organisation—and that is across all local government areas.

**Mr RYAN:** The SEPP, with all the complying development, can be resourced by the private industry as well through the certification process and then just because we regulate it does not mean we are going to get more complaints about it.

**Mr ANOULACK CHANTHIVONG:** That is right.

**Mr JAMIE PARKER:** It is really interesting, is it not, looking at the different impacts in different areas? Obviously I am more inner-city focused and then you have the holiday letting traditional environment and we do need to have a balance between all those different areas. In my mind—and most people in the community have been exposed to this for some time—developing a generic or template amendment to the template LEP would allow for some kind of complying development certificate or some other approach to manage this and complying is probably a good way forward—16 councils have already done it, including Shoalhaven council, so giving some direction is probably a good idea.

I will ask you, Mr Ryan, about the compliance issue. Obviously people feel a real sense of injustice, even if there are only five of them, when they say, "Well, you know that the building next-door is not permissible. You know that, I know that. I am complaining about it. How can they break the law whereas I do a little dormer window and I cannot get approval or I have to paint my wall blue instead of what I want to paint it but that person can have a commercial activity in a residential zone. That is wrong." If I came to you and said, "That property next-door is paying residential rates for a commercial business. They are annoying me with noise. It is not permissible. What are you going to do about that impermissibility?" What does a council staff person do in that situation?

**Mr RYAN:** In a lot of these instances where people complain about next-door neighbours they will bring you the evidence. They are online, downloading information. The people we have dealt with have been very compliant. We have issued notices and they have complied by taking those properties off the market. That is not to say they are not going to be back on the market in a year's time.

**Mr JAMIE PARKER:** These are notices like Leichhardt Municipal Council similarly had with the \$1.1 million fine for not complying, that kind of thing?

**Mr RYAN:** All that sort of stuff.

**Mr JAMIE PARKER:** You mentioned before that it has not been tested; no-one has actually tried to test those notices?

**Mr RYAN:** That is right. No-one has taken them on.

**Mr GEOFF PROVEST:** I am a great one for no overregulation but I am also a great one for recognising the rights of individuals. If we make this too hard councils are not going to have the resources to investigate—pure and simple. I have made this comment before with respect to illegal brothels where there are probably only a handful in most areas yet they are really hard to deal with. I am getting the overall picture from both councils that you are pretty happy with what you have put in place to keep the traditional people in your area happy while also fostering and recognising that level of business operation within your area. Is that too simplistic a view?

**Mr CLARK:** No, certainly from Shoalhaven's perspective, I think you saw where we are at. From our perspective overregulation is not the answer. If I could take you to all the things that councils are now having to regulate, we are finding it increasingly difficult, particularly down in the Shoalhaven, to get appropriately trained staff to look at regulation of swimming pools or regulation of on-site effluent disposal systems. Things that councils now have to regulate are quite long and varied. We struggled to get particularly building inspectors, who traditionally do this type of work. We cannot get them for love nor money basically. If we have to regulate something else using that same group of staff it will be very difficult.

In terms of the approach that we currently have, it is certainly moving in the right direction. It is saying, from our perspective, the use is permissible without consent unless you impact on the neighbourhood amenity. If you impact on the neighbourhood amenity, then the council may step in. I think the biggest issue that we have is the inconsistency of approaches or the lack of an approach in terms of some councils. Every time there is a court case on this issue we get calls saying, "Well, is it permissible or prohibited in Shoalhaven?" We keep

saying, "No, it has always been permissible in Shoalhaven as far back as 2006". At the moment we just have this mosaic of approaches across New South Wales. That is perhaps the biggest issue I see with councils. We are all doing it differently.

**Mr GEOFF PROVEST:** But you are happy in Shoalhaven with the way it is heading?

**Mr CLARK:** We are certainly happy in that we do not want to step in and regulate those four plus thousand holiday homes. But what we obviously do need to do to be able to assist our residents is regulate or step in to those problematic houses that become an ongoing problem. At the moment we have that clause in our LEP. It is largely yet to be tested. We have only had it in place for two years now. I guess if anything it is more at this point a threat than a reality. We have obviously written a number of letters to the individual saying, "We have had complaints. If these continue or there is a pattern then obviously we may step in and require you to get development consent." So in short, do the right thing and things are okay. Do the wrong thing and we step in.

**Mr CARLON:** Sutherland's position too is that it does not want any more work than it has. I think that is fair. At the same time I do not like to have to turn a blind eye every time I go on to Stayz to 300 properties that do not have consent or cannot get consent. It is very grey at the moment. We only take enforcement action on the basis of complaint. I get why we do that and it makes sense but it still seems a pretty poor approach and I do think some common ground rules make a lot of sense. If we had a major accident on one of these—a balcony collapse or a drowning in a pool—I had not thought about it before until Mr Ryan mentioned it but even liability insurance probably would not hold up.

**The CHAIR:** It does not.

**Mr CARLON:** And being a regular user of South Coast B & Bs I had never thought of that before. I do think we need something and from council's perspective, it is very, very muddy water.

**The CHAIR:** And that is the purpose for holding this inquiry.

**Mr JAMIE PARKER:** We should clarify for the record that it holds up if the use is permissible.

**The CHAIR:** Yes, it does.

**Mr JAMIE PARKER:** We do not want to verbal the insurance industry.

**The CHAIR:** Mr Ryan, did you want to add anything to that?

**Mr RYAN:** No, thank you.

**The CHAIR:** Mr Clark, in this document you talk about the holiday rental code of conduct. Do they get a copy of this and the code of conduct as well?

**Mr CLARK:** No, when that was sent out, that was basically a DL flyer that went out with everyone's rate notices so it very much encourages them to go online to that code of conduct.

**The CHAIR:** To read it.

**Mr CLARK:** Because at that point in time the Department of Planning was certainly promoting—

**The CHAIR:** Encouraging—

**Mr CLARK:** —that code of conduct as a way forward, so council did the right thing and said, "We want you all to do the right thing. It is an important sector of our tourism economy. There is this new code of conduct. Think about ensuring that you comply with it."

**The CHAIR:** What is council's experience with the code of conduct?

**Mr CLARK:** To be honest with you, I really do not know how much use it has had in our area. Realistically, the stuff that council had already been doing in that space had already been happening. The code of conduct stuff came in some years later. Basically, I do not know how many of our operators, real estate agents, obviously passed the point of "Here it is"; that is probably where it started and ended.

**The CHAIR:** Did you want to add to that?

**Mr CARLON:** No.

**The CHAIR:** Mr Clark, you talked about Kiama council and them doing things in a similar way. Is that the case?

**Mr CLARK:** Essentially, Kiama's new standard LEP instrument came into force before ours.

**The CHAIR:** They are not amalgamating, Jamie, just to let you know.

**Mr JAMIE PARKER:** Everyone keeps talking about amalgamations now.

**The CHAIR:** Sorry, Mr Clark.

**Mr CLARK:** I could have said something about that too.

**Mr GEOFF PROVEST:** I am sure you could.

**Mr ANOULACK CHANTHIVONG:** Please do.

**The CHAIR:** Order!

**Mr CLARK:** From our point of view, they had already gone another step down the path than we had. They had a standard clause in their LEP which basically enabled the use to continue without consent, which was council's basis, but then went a step further, which basically said, "unless you impact on the amenity of the neighbourhood". Our council was saying "That's an improvement on the clause that we had from 2006. Let's go with that." I think it really gives that belts and braces approach; that we do not want to step in and regulate everything but if that problematic house is there, we have something that is legally enshrined that gives us the ability to step in. That was the strength of Kiama's approach.

**Mr ANOULACK CHANTHIVONG:** I ask Mr Carlon and Mr Ryan: you said you had 300 properties, did they register that with the council or is it a web search?

**Mr CARLON:** That was me counting the website.

**Mr ANOULACK CHANTHIVONG:** You do not have a registration process?

**Mr CARLON:** There is none.

**Mr JAMIE PARKER:** Mr Clark, the mechanism that engages the need for development consent, at the moment it is complying and if it impacts on residential amenity you said that the compliance staff know the problem properties. What is the mechanism to go to the next step? From a procedural perspective how would you make that decision, what is the threshold?

**Mr CLARK:** At this point in time we have not been required to test that clause. Essentially you have to go to the wording of the clause. Basically it says development consent is not required for the use of residential accommodation for the purposes of tourism visitor accommodation except backpacker accommodation or bed and breakfast accommodation if the use is only short-term and does not interfere generally with the amenity of the neighbourhood in any way, including by noise or traffic generation. From our perspective there are some words that relate to type of complaint, number of complaints and the ongoing nature of the complaint. Staff would form an objective opinion based against that clause that in that case that premises are having an ongoing impact on the amenity of the neighbourhood and we have a strong case to require it to obtain development consent.

The development control plan is somewhat of a guiding document as well. It only kicks in when you need development consent. It puts some numbers around you should only have X amount of car parks on site, you should keep noise to a minimum after such and such hours, signage, garbage bins, etcetera. If they are regularly stepping outside that development control plan we would argue that they are impacting on the amenity and we would potentially step in and say you now need to obtain development consent. At this point we have not had it tested. I am not sure Kiama have had it tested either.

**Mr JAMIE PARKER:** Sutherland shire said if it was to be compliant there may be a requirement with regard to hard wire fire alarms, evacuation procedures and so on. It is probably not so much for the holiday house on a big block of land. You do not have any requirements for short-term letting accommodation to have any of those measures?

**Mr CLARK:** Essentially the clause enables it to continue to be used as a dwelling. If it is operating as originally approved under the development consent we do not have the ability to step in and say because you are renting this out now for short periods of time you have to put fire alarms in. There is an area where you have different pieces of legislation crossing over. In council's submission we referred to the regulation of swimming pools. Certainly there is a legislative challenge there in terms of councils now to regulate those. We have to ensure they are safe and in good functioning order. Again, there is a crossover: Are we doing that for all these rental properties? We are not at present because they are considered to be dwellings.

**The CHAIR:** Mr Clark, you mentioned the local environmental plan [LEP] refers to a maximum period of 45 consecutive days in any 12-month period. How do you monitor that?

**Mr CLARK:** This was a standard LEP instrument approach that was a set of words we were given by the Department of Planning. It was: Here is our clause, take it and use it. It is largely untested as well. Again we would look at complaints. From our point of view it is hard. Who keeps the record? Does the neighbour keep the record or does the council keep the record? It was intended by the Department of Planning as a mechanism to say: You cannot have it open ended, you need something so you can step in if you have to, let's put something in there.

**The CHAIR:** We heard from Sutherland of the number of complaints. What are your numbers? I don't think you gave us any.

**Mr CLARK:** I did not. I tried to do a search, but it crosses those different platforms. We are not being flooded by complaints. It would be one of our lower complaint areas compared to others. When you look at it in terms of 4,000 plus dwellings, I suggest we are getting less than 10 per cent of that number of complaints. It is a handful of houses in the dominant holiday home areas that you can pinpoint and say we have ongoing issues with them.

**Mr ANOULACK CHANTHIVONG:** You have repeat offenders?

**Mr CLARK:** It is usually absentee owners with an online presence that are problematic. It is not the ones rented out through the local real estate agent because largely the neighbour knows it is the real estate agent down the road letting it out. If I had a problem last night I am going in first thing tomorrow morning to get it sorted out. If there is only an online presence you cannot reach the person, all you have is an email address or website.

**The CHAIR:** What is your complaint mechanism? If someone complains to you what do you do?

**Mr CLARK:** Council has to manage complaints in accordance with existing legislation, basically noise complaints. That is usually a phone call or written complaints. We will take logged calls, for example. As Sutherland council said, we do not send staff out to investigate. We went through an interesting episode with these functions where there was some kicking around of: Let's send council staff out to shut them down if they are operating past their point of operation. But our staff are not trained or qualified to do that. They are not allowed to shut things down.

**The CHAIR:** Or be on roster if it is midnight

**Mr CLARK:** We have 4,500 square kilometres and 120 kilometres of coast with two rangers who operate on weekends to cover the whole of the city. That includes dog attacks through to their normal compliance range of activities. It is usually based upon written complaints, phone calls and emails. Usually we will send out a letter to someone reminding them we have the clause and if they impact on the amenity then council can step in. The more problematic ones, not that we have to do it often, we can issue noise abatement orders if there is an ongoing pattern of noise interference. Other issues of amenity are managed by local police. They are somewhat over worked but they are the first point if it is two o'clock in the morning, people ring the police

**The CHAIR:** Thank you for joining us, Mr Ryan, Mr Carlon and Mr Clark. We may wish to send you additional questions in writing, any reply will form part of your evidence and be published. Would you be happy to answer any additional questions?

**Mr RYAN:** Yes.

**Mr CARLON:** Yes.

**Mr CLARK:** Yes.

**(The witnesses withdrew.)**

**JODIE WILLMER, Co-founder, Guest Ready, affirmed and examined**

**The CHAIR:** Thank you for appearing before the Committee today. Do you have any questions about the information sent to you or the process today?

**Ms WILLMER:** No.

**The CHAIR:** Would you like to make a brief opening statement?

**Ms WILLMER:** I thank the Committee for the opportunity to participate in these proceedings. My background is in the tourism industry. I have been involved in accreditation standards, legislative reform, and working with small- to medium-sized tourism businesses, major attractions, accommodation providers, and tour operators. I now also coach, train and support Airbnb hosts to be responsible, and I work with a number of micro enterprises that provide services to hosts, including cleaners, check-in services, concierges, and a range of other micro businesses. I also do strategic planning, governance and risk assessment in the not-for-profit sector.

I have a number of different strings to my bow, but I am here in my capacity as an Airbnb guest and host. I and my partner Robert have travelled extensively around the world and have had fantastic experiences. We are also Airbnb hosts in Melbourne, Victoria. As a result of the knowledge and expertise that we have built up and learnt we are now coaching, training and supporting other hosts to do that very well. I am also a co-convenor of the Melbourne Finest Hosts group, which is a host-led community of about 2,800 in Melbourne. We regularly hold meet-up events, networking activities and educational seminars.

**The CHAIR:** Can you provide the Committee with further information about your organisation and its business model?

**Ms WILLMER:** When we met my partner and I considered whether we would move in together or stay in my apartment. We were vacillating and trying to work out what would work best for us. A friend was hosting through Airbnb at the time and we had been guests. I had also hosted a number of guests from regional Victoria who were students working in hospitals or on placements. I was familiar with hosting guests and I enjoyed the experience, so we decided to list our apartment on Airbnb. We wanted to put my tourism background and my partner's great project management skills together to provide a terrific experience for our guests. We developed a house manual and ensured it was prepared and ready to meet their needs. We put ourselves in our guests' shoes and thought about what we would like.

As a result, a number of friends and family members started asking us for advice and tips about how they could do the same. Typically, the people approaching us were travelling for work and considering renting their homes on a short-term basis. There were family members in different circumstances who were thinking of ways to earn additional income. I had also just finished working as the chief executive officer of a not-for-profit organisation. We decided to put our skills to good use and we started Guest Ready.

**Mr MARK TAYLOR:** What advice do you give your contacts, clients or hosts about insurance policies?

**Ms WILLMER:** That is a terrific question. When we started hosting in January 2014 we struggled to find an appropriate insurance policy. At that stage, the host guarantee was not necessarily available in Australia to the degree that it is now through Airbnb. We contacted an existing company that does short-term holiday insurance to check that we had the appropriate public liability policy. Through the coaching work we do we found there were permutations and combinations of different circumstances that were not necessarily covered by existing policies. We worked with an insurer in Western Australia to develop a program to ensure there was appropriate insurance for hosts who live with their guests above and beyond what is available through the Airbnb platform. That \$20 million public liability insurance policy is now available nationally for people who host in their home.

**Mr MARK TAYLOR:** I asked a witness earlier about the web-based feedback system and ensuring quality and safety, and a couple of suggestions were made. What is your experience and what do you suggest?

**Ms WILLMER:** It is a terrific way to keep people honest and accountable—both the hosts and the guests. The people we coach directly encourage their guests to provide verbal and online feedback. We find there is a big conversion from the people who stay to the number of reviews that they leave. The great thing about the two-way review platform is that they can also get private feedback. For example, if there is a small maintenance issue, the guests can let the hosts know and they can deal with it. It also works the opposite way. If the behaviour or conduct of a guest does not meet expectations, we encourage hosts to communicate that clearly and to explain the ways people can improve for the future. We like to encourage people to be diplomatic and



fair. There have been many problems with some of the online review platforms like TripAdvisor, which is a one-way street. Sometimes the reviews provided by guests or visitors are not fair or balanced. That is what we enjoy about the Airbnb platform where both the host and the guest can review each other.

**The CHAIR:** What is your understanding of the Holiday Rental Code of Conduct?

**Ms WILLMER:** It is an industry code that has been developed in conjunction with a number of players around Australia who provide online platforms for holiday rental businesses. It is a well-thought-out, comprehensive document. However, it does not necessarily fit the experiences of home hosts; it is not a one-size-fits-all approach.

**The CHAIR:** What improvements could be made to the code?

**Ms WILLMER:** First, hosts should be informed that it exists. It was interesting to hear what previous witnesses said about the ways in which they are trying to educate ratepayers about the existence of the code. We must be innovative about the ways in which we engage with people. For example, one of the key improvements that could be made would be to provide a series of webinars that people could consume in their own time anywhere, regardless of their location. The code requires hosts to provide a printout in their house manual and any owners' corporation rules. To be frank, having been a guest I know that it is a lot of paper that no-one really reads. We advocate very clear, succinct house rules that are easy for people to understand, especially if they speak different languages. I think the more we can do to communicate clearly and succinctly, the better outcomes we will have about people understanding what is expected of them as both the host and the guest.

**Mr ANOULACK CHANTHIVONG:** You mentioned a \$20 million public liability cover. How many claims by your clients have actually been made under that policy?

**Ms WILLMER:** No claims to our knowledge. This program was only really launched in Melbourne in January of this year so it is relatively new. But there are other accommodation rental insurances that already exist in the marketplace. But again through our experience of coaching with Airbnb hosts there have been no incidents or accidents. We actually developed a hosting toolkit to help hosts develop a maintenance schedule of the things that need to be done to make sure that their place is safe and appropriate for guests, and to our knowledge of the more than 80 people we have coached and trained there have been no incidents or accidents.

**Mr ANOULACK CHANTHIVONG:** How many of your clients or customers actually take out that policy?

**Ms WILLMER:** This new policy that is available?

**Mr ANOULACK CHANTHIVONG:** Yes, this \$20 million cover policy.

**Ms WILLMER:** All of them. Particularly when we talk with people about really fundamentally helping them understand the new ways that people want to travel, and the sort of experiences that they are looking for, it is really about getting to know a local. And even people who are travelling or absent landlords, as was described before, you can still have a very authentic connection with people, but it is important that people understand that they have got appropriate coverage.

**Mr GEOFF PROVEST:** Do you offer your hosts guidance in dealing with local government authorities? I am a big believer in not over-regulating the industry to make it as simplistic as possible. At the moment each council is dealing with it in a different way.

**Ms WILLMER:** That is correct. If I may step back, in my previous roles in tourism I started a workshop called Starting up in Tourism, which was designed to help people understand their obligations and to navigate through the bureaucracy of different types of permits and licences. Rob, my business partner, and I firmly believe that people need to make every effort to understand what are the local laws and regulations. Unfortunately it is not helped by the minefield of contradictory information or even misinformation. We did some audits of some council websites, and if you think about things again from the point of view of a host who wants to do the right thing and understand their local bylaws or regulations, often when they use search words like "short-term rentals", "holiday rentals" or "Airbnb" they often do not come up on the website to give you any relevant information.

**Mr JAMIE PARKER:** It is great to see entrepreneurs getting involved and filling in a space where it is needed. The Committee is trying to harmonise the situation across the State, but allow flexibility for individual local governments. Will you tell us a little more about the San Francisco issue where a register has been introduced?

**Ms WILLMER:** Yes.

**Mr JAMIE PARKER:** What has troubled me is the issue of permissibility. How do we ensure that there can be an enforcement and a regulatory arrangement that does not basically impose on police, courts and councils? A suggestion is that before a host can advertise, they need to confirm to the advertiser, an online portal or whatever body, that they are compliant in terms of land use permissibility. Do you think that would be a problem? Will you give the Committee some comments on that and a run-down on the San Francisco feedback?

**Ms WILLMER:** With regard to people who are listing on the platforms to nominate or indicate if they are aware of the local laws and bylaws, that is already the case. On Airbnb, for example, the terms and conditions actually highlight to hosts that they also need to be responsible and be aware of any taxation laws that are pertinent to them. I think part of the issue is because it is not clear to people, particularly around the use of dwellings in different jurisdictions. Remembering as well not only are people travelling to different destinations but sometimes hosts or owners might have dwellings in multiple locations in different jurisdictions. I think it would go a long way to having very clear State-based regulation or clarity about what is expected so that people can understand and consume that information with confidence.

With regards to San Francisco, Rob, my partner, and I went to San Francisco to the Airbnb open in November 2014. We actually made contact with Peter Kwan who is the Chair of the Home Sharers of San Francisco. Peter is actually from Sydney originally but is now living in San Francisco. We have been in touch with him and many other hosts through this period of time where the Prop F and other new regulations have been introduced. I have to say, if we are in an era of constrained resources of governments and local councils the system that San Francisco has developed is unwieldy. It is difficult to complete the information. It is not a seamless online platform, for example, for a host to be able to register and comply. It is also difficult to enforce. One of the problems about it is also the number of days that people can rent out their property. Again how can that be enforced? Who is responsible for monitoring it? At the end of the day what value does that add? I would certainly caution not going down that route of San Francisco.

Some good examples in Australia of some standout changes that have been made in a State-based way, I think, are some recent amendments in Victoria to the Owners Corporations Act that provides for a three strikes and you are out policy for hosts who may not be doing the right thing. That provides some protection for neighbours and owners corporations. It is also with an independent mediator through the Victorian Civil and Administrative Tribunal, and a penalty of \$2,000. So that is a simple and clear way for people to have an avenue if they are unhappy with the conduct. Just recently South Australia made some clarification of its planning laws that helps make it clearer and easier for people to do short-term accommodation.

I think, just finishing on that, one of the things that Airbnb has pending is the introduction of neighbourhood tools that will enable neighbours to make complaints directly to Airbnb for them to take up with the owners or the home shares. Again I think that will be an effective way to actually connect people directly without burdening local government on trying to regulate or somehow monitor home-sharing.

**The CHAIR:** Earlier you briefly answered these questions, but you mentioned in your report the San Francisco model, and the rules around short-term holiday rentals in Victoria and Queensland. Will you expand on what San Francisco does differently compared with Victoria and Queensland, if possible?

**Ms WILLMER:** From my understanding about the new laws that have come into place in San Francisco it is really targeting people who do not live in the apartment or the house. So they are primarily trying to reduce the number of people who can have a whole of an apartment or house listing. They require people to actually register with the councils or with the city, they call it, by paying a fee. I think the problem about that is that it just creates a lot of bureaucracy and at the end of the day if we are trying to monitor and enhance quality guest experiences and also reduce any potential impacts on residents and neighbours, I cannot really see how that is achieving that outcome. It just seems to be quite a burden on both the city and individual hosts.

**The CHAIR:** You have mentioned what South Australia is doing, but what is Victoria and Queensland doing? Do you want to expand on that?

**Ms WILLMER:** I think Queensland has some good things in place to deal with sort of "bad actors" or people who are not managing their properties very well.

**The CHAIR:** Boarding houses and so forth?

**Ms WILLMER:** That is correct, but if we think back through time there has always been a range of different types of ways that people live and different types of legislation to protect vulnerable and disadvantaged people. I think the key here is about ways that we can provide opportunities for people to earn different forms of income. Certainly many of the hosts who we work with need that income to meet daily living costs. They might be self-employed or micro-entrepreneurs. I think there are definitely opportunities for State-based legislation that makes sense and that people can understand, that is not onerous and that is fair and reasonable and that is

not a one-size-fits-all approach. If there are people with multiple dwellings or running it as a commercial business they might need some other requirements.

**The CHAIR:** That leads me to my next question. You are reading my mind today. You talk about multiple dwellings and obviously excluding ones that are not their own place of residence. From my point of view that makes perfect sense and I think that is what a few people have gauged today. Do you want to expand on that point as well?

**Ms WILLMER:** Could you repeat the question, please?

**The CHAIR:** It is about the need to treat an owner-occupier who is renting out a room or a couple of rooms while still living at the dwelling differently from someone who has 100 properties.

**Ms WILLMER:** I would like to suggest there needs to be a differentiation even in a greater detail. For example, if someone lives in a house or an apartment and they have a spare room and guests are staying that is the typical sort of stay and that is the origin of Airbnb. The requirements on people in that situation should not be onerous and should enable people to be flexible and provide that sort of in-home hosting experience.

Some people have a dwelling or a residence that they do not live in. That is my situation. I have a two-bedroom apartment that I do not live in but we have a range of things in place to make sure that the guests are met on arrival. We have a fantastic house manual and we have emergency contact information of three different people. If I am not available today because I am at this hearing and our guests in Melbourne require something they have two other options of people who are confident, capable, knowledgeable and have keys and can act on my behalf. When people talk about one dwelling with an absent landlord I think there is definitely great things that people can put in place that protect the amenity for neighbours but also provide a quality guest experience.

Then a third category is people who have commercial businesses that are managing multiple dwellings, whether they own them or manage them on behalf of other people. I think that is a completely different kettle of fish. There are already existing frameworks through the Holiday Rental Code of Conduct that manage that very well. There are also regulatory requirements through taxation to make sure that people are doing the right thing. Again, there is no reason to overcomplicate it too much. There are already existing frameworks in place that I think work very well.

**Mr JAMIE PARKER:** This thing about stratas has been niggling at me. We have heard convincing evidence that turning residential dwellings into serviced apartments is very onerous on stratas because of the electricity, water and other costs. What do you say about the suggestion that people who use online portals to rent out accommodation are basically freeloading on the strata? The strata is providing all of the collective costs and is essentially subsidising those people to rent out apartments. Has anyone raised that with you, have you put your mind to it and do you think it is an issue?

**Ms WILLMER:** I do not think it is an issue, to be quite frank. The apartment that we have is in a residential building. The owners corporation rules actually specify that it can be used for short-term accommodation rental. As owners we cover all of the electricity and a proportion of the water anyway. Again, if people are using that apartment for normal residential purposes they may have friends and family coming to visit. That would ebb and flow over time. I cannot see how having it on a short-term portal like Airbnb or something else would increase the usage of those things. In my experience most of the people who have apartments have lived in the apartment themselves or they continue to do so and they want it to be a good experience for everyone.

The neighbours are also the people on the owners corporation and it is in their best interest to maintain goodwill and good relationships. I have also been a chair of an owners corporation. One thing that does concern me is the influence that some owners corporations have in trying to restrict short-term accommodation rental. Part of that is because they do not really quite understand it. I think that they are not impartial. That is where different frameworks like the new legislation in Victoria with changes to the Owners Corporation Act do not give owners corporations increased powers but provide an option for a sort of third party mediation.

**The CHAIR:** Thank you very much for that. We may wish to send you some additional questions in writing further down the track. Your replies will form part of your evidence and be published. Would you be happy to answer any additional questions at a later stage?

**Ms WILLMER:** Yes, I would.

**The CHAIR:** Thank you again for appearing today.

(The witness withdrew.)

**(The Committee adjourned at 12:45.)**