

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON ENVIRONMENT AND PLANNING

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

At Sydney on 14 March 2016

The Committee met at 9.00 a.m.

PRESENT

Mr G. Brookes (Chair)
Mr M. Coure (Deputy Chair)
Mr A. Chanthivong
Mr J. Parker
Mr G. Provest

ANDREW THOMAS, Executive Manager Strategic Planning and Urban Design, City of Sydney Council,

ROY COTTAM, Investigative Specialist, City of Sydney Council,

SUE MCMAHON, Area Planning Manager, City of Sydney Council,

ROMAN WERESCZYNSKI, Manager, Health Building and Regulatory Services,
Randwick City Council,

DONNA RYGATE, Chief Executive, Local Government NSW, and

JENNIFER DENNIS, Senior Policy Officer, Planning, Local Government NSW, sworn and examined:

CHAIR: Good morning, thank you for attending this public hearing of the Committee of Environment and Planning. My name is Glenn Brookes, I am the member for East Hills and the chair of this Committee. The other members will introduce themselves.

Mr MARK COURE: Mark Coure, I am the member for Oatley, deputy chair and deputy Government whip.

Mr GEOFF PROVEST: Geoff Provest, the member for Tweed.

Mr ANOULACK CHANTHIVONG: I am Anoulack Chanthivong, the member for Macquarie Fields.

Mr JAMIE PARKER: Jamie Parker, member for Balmain.

CHAIR: Today we are hearing evidence for our inquiry into short-term holiday letting in New South Wales. The Committee has received 210 submissions from people across the State. Last Monday we met at Tweed Heads where we heard valuable evidence from regional witnesses. Today we will hear from council, the insurance industry, accommodation providers, strata owners and the New South Wales Government. I now declare the hearing open. Everyone please switch off your phones. Do you have any questions about the information you have been sent and our process today? Would any of you like to make a brief opening statement?

Ms RYGATE: As we said a moment ago we are here representing Local Government NSW which is the peak organisation representing all the general purpose councils in New South Wales as well as county councils, the Aboriginal Land Council and some other associate members. Our job is to advocate for local government and provide services to our sector and we, in that sense, do a lot of work on policy issues such as this one. The first thing I wanted to say to the Committee is that local government is a pretty broad church. Short-term holiday accommodation has been an issue for local government for a long time but the views on it vary quite considerably across our sector.

Factors that influence are whether the location is a popular tourist destination, whether residents are generally supportive of tourism or not, whether people want to bring tourism in or whether they have ample amount and want to manage it, all those kinds of things. We have quite mixed views across the local government sector on this issue. I think it is also true to say that it has become more difficult with the growth in the sharing economy and the advent of things like Airbnb, which have put a rocket under the short term accommodation industry and made it more challenging for councils to manage. We think that the key problem is about defining the range of activities that fall under the heading of short-term rental accommodation.

The activities, as you know, can be intermittent and vary in terms of their intensity, and so they are hard to define, particularly under the local environmental plan that applies to each council area. Potential impacts also vary significantly from minor, almost invisible, minimal impacts to the classic party house scenario that is rented out for those kinds of purposes and causes negative impacts for neighbours. The activities fall under or between a lot of definitions in the standard instrument local environmental plan template and that is obviously critical in determining whether the activity is permissible in the zoning or whether it needs consent.

The sorts of definitions you could put it under are dwelling or dwelling house, serviced apartment, bed and breakfast or tourist and visitor accommodation and there is a lack of clarity on those things, which we think

is part of the problem. As you know some councils have developed specific planning controls to deal with this issue in their area such as development control plans and there have been some legal conflicts around those sorts of things. Just in closing, what we would advocate to the Committee for consideration is that it recommends that the Government provide clearer rules regarding short-term rentals that then can be effectively and efficiently enforced by councils through their local environmental plans.

We would suggest in particular the definitions in the local environmental plan [LEP] template provide clarity through reviewing the definition of dwelling to clarify that it can be rented but the ongoing continual rental of a property might change its use to become "tourist and visitor accommodation"; also clarify the number or proportion of rooms that can be rented out within a dwelling allowed under the definition of "dwelling"; and also to clarify the number of days a dwelling can be rented in total before it becomes another more intensive use, unless it is under a long-term lease. We would also suggest a review of the definition of "bed and breakfast" to clarify the point at which sharing a house constitutes a bed and breakfast, which then helps to clarify issues about car parking and fire safety requirements under the Building Code of Australia [BCA]. Thank you very much.

CHAIR: Thank you. Mr Coure, do you want to ask the first question?

Mr MARK COURE: Does anyone else have any opening comments?

Mr WERESCZYNSKI: As detailed in Randwick City Council's submission, Randwick has a number of international visitors to the area each year. Together with the Prince of Wales Hospital and the University of New South Wales there is a significant demand for various types of short-term accommodation. Over the past few years the number of resident complaints about short-term tourist accommodation has progressively increased. The complaints generally relate to the behaviour of the occupants, disturbances and parking concerns, although in some cases the concerns may only relate to the nature of the occupancy and the presence of non-permanent residents in the dwelling.

When investigating complaints regarding possible unauthorised short-term accommodation, council officers need to investigate the particular nature, scale and scope of the occupancy and obtain evidence accordingly, which is easier said than done in most cases. Council must determine whether or not the particular use is unauthorised, having regard to the relevant planning controls for the site. These investigations can be very resource intensive and time consuming, which impacts upon other possibly more important regulatory activities. It is evident that there is a substantial demand for short-term accommodation through Airbnb and other websites, which on face value may not be unreasonable. In my view the external environmental and amenity impacts are generally not that significant, although this may depend upon the scale and nature of the occupation and in particular the behaviour of the occupants themselves.

Randwick City Council is of the view that short-term accommodation that is ancillary to the normal use of a dwelling should not require further consent, providing the short-term accommodation remains ancillary to the dominant use of the dwelling. This opinion is consistent with council's legal advice in recent cases. However, in cases where the provision of short-term accommodation in a dwelling takes on a character that is distinct or discrete from the primary residential use, then this would currently require specific planning consent. In this regard, the permissibility or otherwise of the use of a dwelling for short-term rental accommodation should be clarified within the existing planning framework.

In council's opinion, the provisions should be implemented statewide for greater consistency and as surety for owners and business. Whilst councils may seek to amend their local environmental plans to provide for short-term rental accommodation in residential premises, it may be preferable and beneficial to make amendments to the New South Wales code State environmental planning policy [SEPP] to set parameters for the use of residential premises for this type of accommodation as either or both exempt or complying development. Development standards could be included to address the scale and nature of the short-term accommodation together with criteria relating to the operation of the premises and potential noise and amenity impacts.

However, if exempt development provisions are introduced then we need to make sure that the use of the premises does not affect occupant safety or result in a change in the classification of the building under the BCA. However, this may be acceptable as complying development along the lines of the current provisions for bed and breakfast accommodation. In council's opinion, introducing statewide provisions would provide greater certainty and could aim to achieve the objectives of web-based short-term accommodation providers whilst minimising potential external impacts upon surrounding residents. Thank you.

CHAIR: I note that Ms McMahon has now arrived. We will now swear her in. Does anyone else wish to make an opening statement?

Mr THOMAS: None from the city.

Mr MARK COURE: Thank you to all the stakeholders who have attended today's hearing. City of Sydney Council, your submission talks about your approach to holiday letting and the guidelines that you have put in place. Do you want to talk briefly about what you have done as a council in terms of short-term holiday letting and maybe talk about some of the challenges, particularly around 119J of the Environmental Planning and Assessment Act and the need perhaps to strengthen that?

Mr COTTAM: We are not going into the executive summaries. We are open to Airbnb and the regulations around Airbnb for the future, because it is a big organisation and organisations like that are probably here to stay. In terms of the challenges, I can probably talk to this area. I run a small investigation team that looks at the high-risk area of illegal accommodation. That is certainly by the people that are making lots of money doing it the illegal way—as in, setting up a number of units and running it as an organised illegal network. That is one area that our City of Sydney is focusing on—making sure we are looking after vulnerable people, making people safe and doing what we can as a council to ensure that that type of illegal accommodation is not in our area.

On the other side of the coin—completely different—is Airbnb and Stayz, which from an investigations point of view we have not had many complaints about in terms of that type of high-risk illegal accommodation, so I separate those and put them in different areas completely. One thing that I will back up that my colleagues have said is that we do receive complaints for technical breaches of the Environmental Planning and Assessment [EP&A] Act for Airbnb activity—for instance, a person may have bought a unit for a few million dollars and next door has been rented out on a temporary basis on Airbnb and it annoys them. Technically we have to investigate these breaches. We are open to any guidance around changes and the regulation side in the future, because resources and investigation time is used for those, where I and the council prefer to be looking at the high-risk area.

In terms of the challenges, as a council we have welcomed and used the new amendments to a great extent. We have probably used most of the areas of the new 119 amendments under EP&A. In terms of notices under 119J, the requirement to provide information, we have had some challenges asking our customers for information, and we have pushed those challenges and we have got the information back. I think it is for a number of reasons. The first is that it is new and the second is that we are councils—we are not the police service or anything like that. So, I suppose, from the customer side, they say, "You have a lot of power here. You are asking us for these notices or banking records." However, having said that, we welcome those powers. We have certainly used them and are using them to our benefit. It has made a huge difference in how we investigate the high-risk illegal side.

Mr JAMIE PARKER: There is a significant problem and we know that it is in two areas. The first area is that of the amenity issues which people have raised with us and the second is that of the technical compliance issues. "Does it comply? Does it not comply? What is the definition?" I ask Randwick and the City of Sydney: What is ancillary use? That is a challenge that we have to grapple with. Why is it that you are proposing a SEPP rather than, say, a development control plan [DCP]? In the SEPP proposal I think the City of Sydney is saying it should be exempt. Why not complying? We might first go to the City of Sydney and then to Randwick for some feedback about those issues.

Mr THOMAS: The city's recommendation is exempt, because it takes away the discretion or the interpretation of what is ancillary and what is not ancillary. By defining the number of days and the number of occupants, then that discretion goes away and then the arguments about whether it is ancillary, et cetera, always goes away.

Mr JAMIE PARKER: You are talking about 90 days?

Mr THOMAS: No, we do not put a number in. We talk about a range. There are some reference points that you may wish to look at, other jurisdictions. For example, London is 52 days a year. We need to be mindful, if we are setting a number of days, about quantifying a number that would mean every weekend of the whole year that the property could be let through short-term letting, but an exempt criteria takes away unnecessary

regulation. With complying, you still need to notify councils, you need to put some paperwork together and submit it. Our view is that given the risks and the amenity impacts, they can be managed through an exempt framework, and you are not imposing unnecessary paperwork or regulation red tape on a proponent.

Mr JAMIE PARKER: There was a question about some councils developing development control plans [DCP]. You are being asked to do a State Environmental Planning Policy [SEPP]. This Committee is being asked to investigate that issue. What is your feedback on the issue of letting councils do DCPs or allow adjustments to the SEPP?

Mr THOMAS: The Local Environmental Plan [LEP] sets the legal framework. You cannot have a development control plan that is inconsistent with an LEP. It is okay to prescribe some standards around this if your LEP generally permits short-term visitor accommodation in a residential development. The city's does not—I am not too sure about others—manage the amenity impacts that come from commercial activities in residential premises.

Mr JAMIE PARKER: Randwick, do you have any comments?

Mr WERESCZYNSKI: Along similar lines. The creation of a DCP or some sort of standard DCP would not take away the need to apply for a development consent in every case. So we would have to be a bit mindful if a development application had to be lodged for every Airbnb. It would be quite significant. Yes, it would require provisions to be in the LEP as well. In my view, exempt or complying development would be the preferred option. I agree with my colleagues at Sydney, probably for Airbnb, exempt development is more appropriate. I was, I guess, suggesting potential for complying development if it results in a change in the classification of the dwelling from a 1a classification, which is a typical house or dwelling, to a 1b dwelling, which is more of a place or type of preferred accommodation. That has more fire safety accessibility requirements. Exempt development for the easier stuff and complying development where there are more significant fire safety and access type issues.

Mr ANOULACK CHANTHIVONG: City of Sydney Council, if you have a threshold of X days and if someone goes over that, are you suggesting we should request landlords or owners of properties to make adjustments to their property for public safety, such as having to retrofit for safety and fire and emergency exits? Is that something any council would be considering?

Mr WERESCZYNSKI: Generally the changes in fire safety would only click in if there is a change in classification of the building under the Building Code of Australia. Having said that, the requirements are not dramatic or significant between a class 1a and 1b. There are additional access requirements for class 1b buildings of certain sizes, depending on how many bedrooms are provided in the premises. It really depends upon the scale and nature of the occupancy and how many bedrooms are provided for this type of accommodation.

Mr GEOFF PROVEST: Your comments are very interesting, Andrew, because I have a similar view that Airbnb and Stayz are here to stay. I have seen the difficulties with councils trying to get rid of the illegal brothels. The last thing I want is to set too much regulation and put the cost burden back on to local government and things of that nature. At the same time, we have to balance it up with the rights of the neighbours. My area is close to the Gold Coast. You guys have 3,000 and I have 2,000. I think it is refreshing to hear council does not want to create a heap of paperwork because, at the end of the day, you will not be able to enforce it. So far as complaints, I think on one side we can make it easier for people to do it and have arbitrary figures and things like that, but have you done much work on dealing with your complaints because of the explosion of them?

Mr COTTAM: It is a good question. The high-risk illegal side is in an online form.

Mr GEOFF PROVEST: That is like boarding houses?

Mr COTTAM: Yes. They normally come straight through to my senior manager or investigation team. For the other complaints around Airbnb, they get triaged in the normal way through customer services in respect of health and building, and then we look at those—

Mr GEOFF PROVEST: How do you handle a complaint if I have an Airbnb at my premises and my neighbour rings you up about the noise or whatever?

Mr COTTAM: The complaint would come through in an online form or a telephone call to customer services who then push it through the system to health and building. Then probably a building surveyor and the manager will assess it and triage it and look at the area, the zoning, the use that it is allowed, previous complaints. Once that historical information is obtained then they will look at that particular premises. It will probably need an inspection and then there are access issues. Once they get an inspection and they look at the accommodation, the differences between the high-risk illegal premises and Airbnb, Airbnb is usually normal apartments or normal premises. They have not got subdivided walls or extra bedrooms inside. We are looking at a normal house.

Mr GEOFF PROVEST: It has come up in my area. How do you deal with it if I owned it, but I lived in London? How do you get in contact?

Mr COTTAM: Tracing the owner can be a problem at times if it is an investment. If it is an investment and they are using it as a full-time Airbnb, then we might say the use has changed. We would say it has changed from residential to a commercial-type use. In effect, that makes it a bit easier to deal with, but if you have got the average couple renting their apartment for three days a week, I know it is a challenge for us because you do not want to come down with a big hammer, but you have to speak to them and say, "This is a technical breach." Certainly I have spoken to planning specialists and I have spoken to Andrew's department. At the moment we have an agreed set of words to advise members of the public, but we are hoping that in the future things can change so we can regulate it and make it easier to deal with these complaints. It just takes time and resources.

Mr MARK COURE: My question is for Local Government NSW. Regulating activities comes with costs, record-keeping, providing advice, handling complaints, giving approval, et cetera. Who, in your mind, should pay those costs and how should they be collected? Should they be collected by councils, for example?

Ms RYGATE: I think the general principle is that whoever benefits from the activity should pay the reasonable costs of regulating it. In respect of who collects it, I suppose it depends on who undertakes the regulatory activity and incurs the expense. If councils are doing the regulatory activity, I guess it would make some sense for there to be some means of cost recovery. You would be aware that a constant theme, for very good reason, in local government is in relation to cost shifting and the burden of regulation that imposes all sorts of additional responsibilities without additional funding. The broader issue is consistent with what my colleagues from the councils have been saying this morning about getting the framework clear for the regulation of these things. In our view, it is absolutely critical that the definitions become very clear so that we do not tie ourselves up in red tape and we do not find ourselves regulating and investigating complaints that are not necessary and that we focus on things that really matter. To the extent that this Committee can help in achieving some clarity across that State, that would be very useful.

Mr JAMIE PARKER: I am focused on the City of Sydney because part of my electorate is in the City of Sydney, so forgive me for asking so many questions. What impact has the Bridgeport decision made on the work of the City of Sydney? I assume you are aware of the NSW Land and Environment Court matter. In your submission you have talked about a limit on the total number of guests. How does the council manage compliance on that? Sometimes I worry that if we create a change to the SEPP and we are really specific it would make it very challenging for councils: "I only have four people. No, I didn't have five. That fifth person just came in to have a cup of tea." I wonder whether that is making a rod for the back of the local council. So I am asking about the impact of Bridgeport and about how we manage compliance on these numerical standards that you are talking about.

Mr THOMAS: The Bridgeport action is an action under the current legislation framework, which essentially means that if you want to do a commercial type of activity then you need consent. My understanding of that particular action is that those operators have not sought consent and we are following up that action. It is a separate issue. It informs our position in our submission in that we are looking at defining a genuine participant in the share economy as opposed to a commercial activity that is much more frequent and which will challenge the objectives of the zone. That goes towards amenity, safety and character.

So, while they are related, they are quite separate. In terms of the issue of the numbers of people, you need to have a non-discretionary benchmark or criteria that allows the rules to be clear. While there might be some challenges in regulating that—you used some examples—it provides some certainty to someone who genuinely wishes to operate in a share economy type of environment as to what those rules are. One assumes that there will be insurance products that will also support them so that if they do stray beyond the regulations

there are risks. I suppose it comes to this self-regulation issue: Are you able to manage this yourselves within your own community? If you have an additional person, what are the impacts on amenity and safety? I know counting heads might become challenging but you have to understand what that impact might be, or might not be.

Mr JAMIE PARKER: At least it defines what is currently a very poorly defined area.

Mr THOMAS: That is right.

Ms RYGATE: Can I just add to that? This goes back to Mr Coure's question a little earlier. Yes, regulation imposes costs, but the lack of key regulation also imposes costs, both in investigations and complaints-handling and, in the worst case, in finding yourself in court defending all sorts of actions. There are costs either way you jump.

Mr GEOFF PROVEST: Could I ask a question, probably to the City of Sydney. You would be aware of what is occurring in other jurisdictions like in Queensland and the way they handle it in Victoria. Do you think any of those models work?

Mr THOMAS: I can give you a brief overview from the research I did for the submission. While it is important to understand their approaches, the framework in New South Wales is a little different. So our recommendation is really about carving out an opportunity within the New South Wales framework that would suit us. I think in Victorian there is a slightly different motivation. There is a different problem that they are trying to solve. It may come from the same advertising network but the motivators and drivers are a little bit different.

Mr ANOULACK CHANTHIVONG: Is the biggest issue with Airbnb one of neighbourhood amenity impact?

Mr THOMAS: I think it comes down to understanding exactly what activities are occurring. We may get a complaint, and it may be about amenity. As Roy Cottam was saying, it may be at the more high-risk end of the spectrum, where we have a two-bedroom unit carved up for 14 people. It may be a complaint about amenity—noise, extra people in the hall and those sorts of things, or a party—and it may be just an Airbnb weekender type of thing. An important part of our investigations of complaints is understanding exactly what activity is leading to those complaints. In researching this submission I tried to have those conversations with everyday people. They said, "Yes, we have these terrible tenants. They had a big party on the weekend." I asked, "Is that every weekend?" "Yes, they are at it every weekend." "How long has it been going on?" "Nine months, now." Obviously that is not a short-term let, but they immediately associate it with Airbnb or whatever. It is about understanding exactly what the source of the activity is.

Mr ANOULACK CHANTHIVONG: What is the quantity of complaints? When we were up in the Tweed we heard that some councils had 10 to 20 complaints per year. That did not seem a large quantity. I am just wondering how big the issue is. You do not want to regulate for an issue which, whilst it exists, is not that great in terms of quantity.

Mr COTTAM: I am not sure of the numbers. I would not say that it is overwhelming, but there certainly have been complaints of noise and that kind of thing occurring that we are investigating.

Mr ANOULACK CHANTHIVONG: That is a local government issue, anyhow, because you have neighbourhood disputes all the time.

Mr COTTAM: Yes. It is not as big, perhaps, in the high-risk stuff but we are finding that there are more complaints because it is ongoing and there are high numbers. Rubbish collection chutes are filling up and lifts are not working. We are not getting that—this is what I am picking up anecdotally—from Airbnb.

Mr MARK COURE: Could I just add to that question by Mr Chanthivong. How do you deal with the complaints made against short-term holiday let properties? What is the process?

Mr WERESCZYNSKI: From Randwick's perspective—just to go back to some of the other questions—we do not specifically categorise these types of complaints, but when I had a look at one of our recent reports I found that we are probably looking at about 20 or so a year. We certainly do not go actively

looking for these. They often arise because of a noise disturbance from the premises—whether it is a single residential dwelling or an apartment. In many cases the complaint may simply be a concern that the use may not be authorised and there may be no impact specified.

Unfortunately, once we have the complaint we are obliged to investigate it, even if there is zero impact on other parties. When we investigate we do the research to ascertain whether there is any planning approval for it. We look at previous approvals and attend the premises. Hopefully we would be provided with access. We may or may not be. We would seek to speak to the owner or the resident in control of the premises. We would try to speak to the actual occupants, if they are tourists or the like, to ask them questions. That can be interesting. We would also obviously speak to the resident who was lodging the complaint and try to come to some conclusion as to whether or not the use was authorised. We would do searches on Airbnb and various websites to see what was there to point us in any particular direction. We would then go from there. If we considered that the use was unauthorised then we would both send a letter or a notice of intent and see where we went from there.

Mr COTTAM: I was going to say exactly the same sort of processes that Mr Weresczynski has said; there are just a couple of things. It is important to separate Airbnb from high risks because they are not the same. Sometimes they get merged and you cannot look at them the same way because there are different types of people at Airbnb compared to the other sites. And also in the future we need to have support and buy-in from Airbnb and Stayz, those kinds of organisations, so that if we are asking for information et cetera—

Mr GEOFF PROVEST: Would you support a voluntary code of conduct by the bigger players in the industry?

Mr COTTAM: It would be nice to have that understanding where they actually provide the information—obviously there are privacy provisions.

Mr GEOFF PROVEST: They do it in Byron Bay.

Mr COTTAM: Rather than having to issue notices et cetera.

Mr MARK COURE: City of Sydney Council mentioned earlier today that it has got 3,000 short-term lettings in its local area, is that correct?

Mr THOMAS: Our submission states—we did some research in the Inside Airbnb website. We have since been told by Airbnb that the numbers on that Airbnb website are incorrect. I did make a note that they have told us that there are 4,500 properties in the City of Sydney local government area [LGA].

Mr MARK COURE: Is that in your submission? I did not see that.

Mr THOMAS: Two thousand, nine hundred. That was in our submission—

Mr MARK COURE: And it is now 4,000.

Mr THOMAS: —and in response to that submission we have had some correspondence from Airbnb saying that their records show that we have 4,500 in our LGA.

Mr MARK COURE: I am going to ask you the same question. How many are in Randwick City Council?

Mr WERESCZYNSKI: I don't know to be honest. We did do some searches and there are hundreds of properties, I am not too sure. Although we may not be receiving many complaints today, we have got the potential to receive many, many more in the future, which is going to bog us down quite significantly.

Mr JAMIE PARKER: My question relates to the issue of permissibility. Even if there was not one complaint—and a lot of neighbours get upset about this—it is not permissible in a residential zone. Why are you letting these people run a commercial business without paying commercial rates in a residential zone? Why should that be permitted? The Committee is trying to grapple with this: When does the definition change? Is the question of permissibility something that you have been concerned about? Leichhardt council has the same

problem—short-term stay accommodation is not permissible under the template LEP. For the councils, regardless of noise complaints, is that a problem that needs to be addressed?

Mr THOMAS: That is right. In many of the zones we specifically do not permit tourist and visitor accommodation where residential is the predominant use because of those conflicts. By making it exempt, you take it out of the definition of "tourist and visitor accommodation". So you are actually saying that it is different to that commercial use—that is, by managing its impacts by regulating the scale, frequency and things like that.

Mr JAMIE PARKER: So you have basically not been going there, because if you were to go to every single Airbnb advertised property in a residential zone you would have hundreds, if not thousands, of properties where that activity is not permissible in the zoning?

Mr THOMAS: Yes.

Mr JAMIE PARKER: That gives this Committee the challenge of trying to resolve that for you.

Mr THOMAS: As Mr Cottam was saying, if we get a complaint about operating in a residential zone then effectively they will get a letter saying, "Look, it is not a permitted use; you should be stopping." We have some standard letters that go out in that respect.

Ms DENNIS: We think that is the nub of the problem—across New South Wales having Airbnb or Stayz or whoever in a single dwelling is debatable at law. So irrespective of how councils interpret what is permissible, under their zones it actually varies across the State and will vary in terms of court actions. So the question under debate is: At what point does something change from one activity to another? Councils interpret it differently across the State slightly and put the lines in different places. But the problem with the exempt solution, which I think is a great solution, is that it has to be permissible in the first place to be exempt, by the way.

So you still could get a court action saying it is permissible in a single dwelling, which is what the *Dobrohotoff v Bennic* case at Gosford said. They said it was still permissible to have short-time accommodation in a single dwelling, and that was not debated because then you could not have holiday accommodation up and down the North Coast. It is a permissible activity; the issue is at what time does it become something else? Exempt does not necessarily solve that unless in the first place you assume that it was permissible in the zone. So you have to clarify your definition and then sort the State Environmental Planning Policy [SEPP] out after that.

Mr MARK COURE: Did you want to add anything to that?

Ms RYGATE: That sounds like a highly technical planning question to me.

Mr MARK COURE: If changes were to be introduced that increased the monitoring of short-term holiday letting by councils, would you and your member councils have the significant resourcing to accommodate that?

Ms RYGATE: I think our general principle whenever there is regulatory change that imposes additional burdens on councils is that it needs to be funded in some way. It is unreasonable to expect councils to continue to pick up the tab. The cost-shifting burden now is well over \$600 million a year, as evidenced by our recent cost-shifting survey. The problems in this area largely seem to be about a lack of clarity from the State Government, given that the State Government establishes the standard instrument template and essentially the planning rules. It would be terrific if we could achieve some clarity on those things, and if that meant that there were additional responsibilities imposed upon councils then we would strongly advocate that those things be properly funded.

CHAIR: Mr Provest referred earlier to the code of conduct. If a code of conduct were to be developed for short-term holiday letting who would own that code of conduct?

Ms RYGATE: A code of conduct was established a while ago between the Department of Planning—whatever it was called in those days—and the holiday letting industry. So it is a voluntary code and we understand that that has had some success in some parts of the State. I guess the question is whether there is potential to improve that to get greater uptake across the State. Since that time there has been a significant explosion in the sharing economy, the Airbnb and all of those things that were not really around when that was

established. I think that there could be some benefit in trying to capture that part of the market in that sort of scheme. But regardless of whatever voluntary codes and things you seek to encourage, the bottom line for us is that we actually need some clarity. We need some clarity about what the rules are, and then we can do our job.

Mr GEOFF PROVEST: We do not want to be heavy-handed either.

Ms RYGATE: Absolutely not.

Mr WERESCZYNSKI: Just following on from one of the questions regarding whether or not a residential dwelling should provide some sort of commercial activities in the form of Airbnb or tourist and visitor-type short-term accommodation. The current provisions for exempt and complying development already allow for home businesses, home occupations and various other uses without any consent and with very little criteria, which can have a much greater impact in my view than actually Airbnb or the like would have. Bed and breakfast accommodation is able to be provided as complying development. It does not have any notification or consultation with nearby residents. Up to four bedrooms is compliant development and may be approved by council or a private sector accredited certifier. The impacts may be less and no greater than what is already provided in the code.

Mr MARK COURE: Mr Thomas, did you want to add something?

Mr THOMAS: Just to address the issue of whether or not by making it exempt it conflicts with permissibility in a particular zone. If it was made exempt the city would change the local environmental plan and permit short-term letting if it thought it was appropriate and then exempt provisions in the State Environmental Planning Policy would then allow that to occur up to a limit without any consent.

Ms DENNIS: You have to marry them together.

Mr THOMAS: Just to clarify that technicality.

CHAIR: In conclusion, we may wish to send you some additional questions in writing your replies to which will form part of the evidence and be published. Will you be happy to answer any additional questions?

Mr THOMAS: Yes.

Mr COTTAM: Yes.

Ms MCMAHON: Yes.

Mr WERESCZYNSKI: Yes.

Ms RYGATE: Yes.

Ms DENNIS: Yes.

(The witnesses withdrew)

VICKI MULLEN, General Manager, Consumer Relations and Market Development, Insurance Council of Australia,

FIONA CAMERON, Senior Manager, Government and Industry Relations, Insurance Council of Australia,

GEORGE KARAGIANNAKIS, Head of Government Relations, Insurance Australia Group, and

RON ARNOLD, Group General Manager, Venturing Insurance Australia Group, affirmed and examined:

CHAIR: Thank you for appearing before this Committee today. Do you have any questions about the information you have been sent and the process today?

Ms MULLEN: No.

CHAIR: Would anyone like to make a brief opening statement?

Ms MULLEN: Committee chair and members, thank you for the opportunity to give evidence to the Committee. Ms Cameron and I appear today as representatives of the Insurance Council of Australia [ICA]. The ICA is the representative body of the general insurance industry. Our members provide insurance products that include home and contents insurance, strata insurance and public liability insurance. The ICA recognises that short-term holiday letting presents opportunities as well as challenges for the New South Wales Government and stakeholders. It is just one aspect of the broader collaborative economy that is delivering complex benefits in the form of increasing micro enterprise and self-employment.

Deloitte's access economic report, prepared as part of the New South Wales Government's review of the collaborative economy, noted that thousands of people in New South Wales are now able to support their income by collaborative economy platforms. We are extremely supportive of initiatives that encourage innovation in the New South Wales economy. The challenge is to provide a clear and cohesive regulatory framework whereby all stakeholders understand their legal rights and responsibilities. We consider a coordinated and consistent regulatory environment key to achieving this. In our submission to the Committee we noted the often ambiguous legal requirements that currently govern short-term holiday letting in New South Wales.

Clarification of the legality of short-term holiday letting will provide consumers with greater assurance and insurers with greater confidence to continue developing products that meet the insurance needs of those engaged in short-term holiday letting. The home is the biggest asset. Insurance is an important aspect of consumer protection. New micro enterprise owners may not be aware of their liability exposure and may not take steps to ensure they are appropriately protected. For this reason the ICA has been encouraging individuals who have been participating in the shared economy to check with their insurer that they have the most appropriate policy in place.

The ICA also supports the principle of competitive neutrality where like goods and services are subject to the same regulatory requirements. This allows traditional businesses to compete on a level playing field with new digital start-ups. The principle of competitive neutrality should be a key consideration as the Committee assesses the adequacy of short-term holiday letting in New South Wales. We would be very happy to answer your questions about our submission.

Mr ARNOLD: Insurance Australia Group [IAG] appreciates the opportunity to contribute to this hearing and inquiry. As an organisation we recognise that the sharing economy is changing the way people use their cars and other assets. Governments and established industries need to respond to those changes, which are driven largely by customers and home owners. As an organisation in observing these trends and changes in the market we recognise that we have customers, that there are Australians who are engaging in the sharing economy. We believe it is contingent on us to think about how we protect those people and provide insurance for those people as they go about their lives every day.

Our product ShareCover is an innovation we have made to cover home owners and guests when they are engaging in the sharing economy. We join with the Government and other players in recognising that the sharing economy provides great opportunity for New South Wales and Australia more generally. It is recognised that the value of this economy is significant. Some put the number into the billions. However, we join the

concerns and views of other players that the regulations need to reflect and keep pace with the changes in the way people are using their homes and the change in the way people are engaging in the sharing economy. At the heart of that we believe that customer safety is paramount and we support innovation and changes that allow these activities to occur and not stifle them, keeping in mind the safety of the home owner and customer is very important.

Mr MARK COURE: I read the submissions and did a bit of research last week. I understand that a number of insurance providers are offering coverage aimed at the hosts that rent properties through online portals. Can you provide further information on these policies, are they popular? They seem to be getting more popular. Do you expect more insurance providers to be offering these policies?

Mr ARNOLD: There are a number of new policies that have come into the market recently of which ours is one. It is probably fair to recognise and understand that there are policies out there that have been in existence for a long time to aid people who are doing things like short-term holiday letting. Those products in and of themselves are not new. They have been around for a while. Probably what is new are the products which focus specifically on what you might call short short holiday letting, tapping into new-ish markets that have come from the likes of Airbnb, Stayz and other platforms. Those types of covers which are very specifically targeted are relatively new.

CHAIR: Under the Building Code of Australia hotels and so on have to meet certain requirements with not only the actual structure of the building but the fitout inside where people are living, whereas with short-term holiday letting they are just normal houses and the building codes are completely different. With things that are in a commercial area—and that is what they are starting to come under as far as the code goes—like specifications with glass, non-slip floors and the upkeep of the short-term holiday letting, what is the view of insurance companies on where all that should go?

Ms MULLEN: I think it goes to some of the evidence that we have already heard from the various councils this morning. It is that clarification between, I guess, an activity that might sit in the commercial space and an activity that might sit more in the space where someone has a domestic asset that they are using on a part-time basis.

CHAIR: Sorry to interrupt you but there are two parts of it: one is the building itself; the second one is someone gets hurt within the building—where do they sit? Do they end up owning the house at the end of the day because the insurance company will not pay out because it was not a commercial structure?

Ms MULLEN: Sure. Hopefully I will be able to give you some information that might assist. Currently most people who own a home would have insurance to cover potential property damage. People also have home contents policies. I think it is a bit of an unknown fact that many if not most home contents policies also provide a level of cover for public liability insurance. What that means is that in my home that I own, if someone comes into my place and they fall down the stairs, if it is a friend or a family member then that public liability cover attaching to the contents policy will actually cover me for any damage that someone may sustain because they fall down my stairs.

The slight difficulty with some of these digital platforms like Airbnb is that because someone is now using their domestic asset, their home, for a commercial purpose to make money, it may well be the case that that public liability cover attaching to contents insurance may no longer apply, because the activity that caused the damage is actually arising from a commercial activity. I think that is where some of the innovation that is coming into the marketplace with the likes of the product that is offered by Insurance Australia Group [IAG] is really assisting. In the commercial space if you are a landlord you would typically have landlord insurance, but there is obviously still that gap where someone just has their home on a platform for a shorter period through the year and it is not a full-time leasing arrangement. I might pass over to IAG if they have a bit more to add to that.

Mr ARNOLD: I think submissions from the previous witnesses touched on the example of business insurance. I have a similar example of business insurance where people operate businesses from their homes. If you had a GM practice or a physiotherapy practice or any of those sorts of things and you were bringing people in and out of your home then you are confronted by these types of risks. The covers that offer small business insurance in your home cover these types of risks. It is untested. It is probably fair to say our home and contents policies will deal with sharing economy type claims. It is for that reason in the case of IAG we felt we needed to build a product that removed the uncertainty associated, whether your existing standard policy covered or did not cover, and that is what our extended cover seeks to do.

Mr ANOULACK CHANTHIVONG: Mr Arnold, how long have you had this share cover product on offer in the market? What number of claims are you receiving?

Mr ARNOLD: We launched the product in September last year. We have had one claim thus far.

Mr JAMIE PARKER: It is clear in the submission from the Insurance Council and from IAG that there needs to be some improved clarity around this. Matters have to be tested. There is a little bit of uncertainty. And you talk about the fact that there are definitely unequal obligations, which is really a challenge for us. With the share cover policy, is it a requirement that the use of the property be permissible in the zoning?

Mr ARNOLD: Yes. The contract makes it clear that the homeowner meets the relevant local and other regulatory requirements.

Mr JAMIE PARKER: So at the moment if they are a homeowner in a residential zone and they are using the standard instrument local environmental plan [LEP], which almost everyone is, it is not permissible.

Mr ARNOLD: Our understanding is some councils do allow or support the use of homes in the sharing economy spaces. Not all councils do not allow it. Provided the—

Mr MARK COURE: Can I interrupt there?

Mr ARNOLD: Yes, sure.

Mr MARK COURE: I do not have my list in front of me of which councils do and do not, but from memory one council in my electorate does not—it could be Hurstville or Kogarah; one of them. If I wanted to have a shared or short-term holiday letting in my own house and I took out an insurance policy from you guys, would you pick up the phone and say, "Mark, by the way, it is not approved because your council does not allow it?"

Mr ARNOLD: No, we would not pick up the phone.

Mr MARK COURE: You would not pick up the phone?

Mr ARNOLD: No.

Mr MARK COURE: So if I take out an insurance policy and someone takes out a short-term holiday letting at my house for a day or two and falls down the stairs and decides to sue, where am I covered? I am not—that is the answer.

Mr ARNOLD: We do have an expectation—the product disclosure statement [PDS] does require that people follow the rules, the same as we do if you are running a small business out of your home. If you take small business insurance with us we will not ring you to ask you the question or to test whether you meet the legal requirements.

Mr MARK COURE: How many people know the LEPs and development control plans [DCPs] of their local council?

Mr ARNOLD: I do not know the answer to that.

Mr JAMIE PARKER: It is challenging, because for most councils, if you are providing a couple of days a year, even a few weeks a year bed and breakfast you can mostly squeeze it into a definition that is not contrary to the permissibility in a residential zone. But if it is someone—which is what we have heard mostly—with accommodation available full-time, 365 days a year, that is a challenge. One of the jobs we have to do is make it easier for you to create products which actually reflect the risk and the safety issues that you are talking about. We do not want to be in the situation—which I think is currently the case—where it is incredibly complex. I think most of the time, I would hope, the insurance company would provide goodwill and pay out on cover. But it is pretty challenging for the normal person in the street to know whether or not their short-term stay accommodation is permissible, because the definition is so vague and so variable.

Mr GEOFF PROVEST: I agree with Mr Parker. In my area I have lots of these. I want to clear up the misconceptions out there and make it easier for people. It is here to stay and we have to protect it without trying to crack a walnut with a sledgehammer. In your share cover, is there a limit to how many nights? Does it vary? There has been talk—and you probably heard it—from the councils. Some councils are recommending anywhere from 60 to 90 days. Would that change my shared policy with you? Is it just a 12-month fee?

Mr ARNOLD: The policy works on the basis of night-by-night rental. You buy one night, two nights, three nights, four nights—

Mr GEOFF PROVEST: Oh, okay. So if I buy 60 nights—it is not like my car insurance.

Mr ARNOLD: It is not an aggregate cover. When it extends beyond a period—and I will probably get this wrong; I think we can confirm that for you and come back—of 90 days—

Mr GEOFF PROVEST: You would use the benchmarks.

Mr ARNOLD: So if it extends beyond that—if someone has rented a house out for four or five months—then we view that differently.

Mr JAMIE PARKER: And is there a product for that? I sound like one of the managers: "Where is the product?" I guess it would no longer be short-term stay accommodation. You say over 90 days or thereabouts fails the short-term stay test. Is there a product for longer term accommodation after that?

Mr ARNOLD: I am glad you challenge my product managers. Yes, we are looking at products that go beyond that. I believe there are products already in the market for extended stays of that type.

Mr ANOULACK CHANTHIVONG: You talk about the threshold in number of days. How do we determine that is the case? What if your product holder says, "I have only rented it out for 30 days," when in fact they may have rented it out for 90 days? How do you determine that?

Mr ARNOLD: We do not monitor how many days someone has used their B&B in Stayz or any other platform. We do not monitor that.

Mr ANOULACK CHANTHIVONG: Because that then would challenge the product or at least the validity of the claim, would it not? How do you determine legally what is the truth?

Ms MULLEN: I think it comes down to a matter of disclosure and there are disclosure obligations on consumers under the Federal Insurance Contracts Act. In a way it is a matter of good faith between the insurer and the consumer, but there are legal requirements under that Federal legislation.

Mr ARNOLD: I would add that although the product has not been out there that long, we have not seen people shifting to 90, 120, 150 days, so full-time rentals, if you like. We have not seen that yet. We have certainly had some customers request blocks of cover, so some might buy three months worth of cover or six months worth of cover because they want to put it on the market over the Christmas summer period, for instance. As I mentioned, we are looking at that. It is not currently a criteria of ours to look at how long someone is renting and when they come to the ninety-first day say, "Sorry, you have breached the requirements of the policy."

Mr ANOULACK CHANTHIVONG: I am sure there was an article recently in our print media regarding Uber, which is very similar, and an extension of the compulsory third party [CTP] cover in the event of a crash. Would the insurance industry consider rather than talking about thresholds, how many number of days, the other argument is if you had extended cover through your home and contents insurance or your building insurance?

Ms MULLEN: Very quickly on the CTP side of things, that is certainly something we have engaged and it really comes down to risk. In that area of point-to-point transport and how you risk rate those people who are using their own car to provide rideshare services, the issue becomes what is the risk that those UberX drivers pose in respect of the likelihood that they may injure someone else, a passenger, a pedestrian or a cyclist. The discussion is around whether you would have a separate category for CTP purposes for UberX drivers or whether you would make them a subset of the taxi relativity, which is relatively extremely high compared to the

premiums we would pay. If I have understood your question correctly, it really comes down to being able to understand the risk and pricing the risk correctly.

Mr ANOULACK CHANTHIVONG: We do not have that data for you to make an accurate assessment of that risk?

Ms MULLEN: That is a good question. Data is always a challenge where new products are developed, so I might divert to the insurer.

Mr KARAGIANNAKIS: Can I clarify, CTP applies to UberX drivers. There is no additional cover that is required. So if the car is registered, it must have CTP. Whether it is UberX or a private motor vehicle, they are covered. The issue is around the pricing. The Australian Capital Territory Government has moved to a differential pricing of UberX versus the motor vehicle without any data, and the whole rationale is let us apply a loading, assuming there is a greater frequency of use of UberX and then, over a period of time, as Vicki is alluding to, we gather the data and we are able to provide a better risk assessment and a better risk pricing.

Mr GEOFF PROVEST: If some residents in a strata building make their properties available for short-term letting, how does this affect the strata building insurance?

Mr ARNOLD: I cannot comment on how it impacts the strata building insurance. I am not sure what the strata rules and requirements are. However, under our share cover product, we provide a level of cover for the common areas, and one of the things that came up in our research, which was the concern to some people was damage caused in a strata building beyond the vicinity of the actual unit, so into the public area. We provide a level of cover for—

Mr GEOFF PROVEST: If I had a unit and I was doing that, then I would take the share one and that would technically cover me?

Mr ARNOLD: It provides a level of cover, correct. We could send you the details.

Mr JAMIE PARKER: I hate to be picking on Airbnb all the time, but there has been a lot of discussion about the host cover that Airbnb has. Thank you for sharing the research about the concern that potential hosts have about damage to their property. It is very interesting. What do you think are the deficiencies with the non-insurance host guarantee cover that Airbnb are providing that your policy sought to fill the gap with?

Mr ARNOLD: It is not for me to comment on their deficiencies or otherwise. The host guarantee is a guarantee. It is not an insurance product. What is evident and exists in our insurance product is quite a lot of definition of what you are covered for and not covered for. It provides clarity about what you are covered for. With an insurance product comes various other protections, whether that is complaints processes, whether it is Australian Prudential Regulation Authority, whether it is processes around renewals and sending out product disclosure statements and payment mechanisms, et cetera.

So once it becomes an insurance product, a whole lot of other wrappers come with that, many of which are about protecting the customer and giving them various rights of redress and giving them various commitments on the part of the insurer about what will happen and what will not happen. For instance, there are requirements about how quickly we move through a claim. If they have got a dispute, there are external dispute processes they can proceed with, et cetera. That comes with it being an insurance product, which is different from a guarantee without commenting on the Airbnb character.

Mr JAMIE PARKER: The host protection insurance program is an insurance product?

Mr ARNOLD: We believe so, yes. That is a liability cover, yes.

Mr MARK COURE: For the host?

Mr ARNOLD: The host, and I believe the guests in their home. An important part of our product and our thinking is it is not just the host, it is also the guest. If I fall down the stairs and break my neck, for whatever reason, we do not want our customers bankrupted as a consequence. Equally, we want to ensure that those

guests, who may also be our customers, have a right of redress and some chance of getting their life back in order.

Mr MARK COURE: Are there any limitations of that insurance cover, like the number of people? I think you have mentioned days already.

Mr ARNOLD: There are a variety of reasons in the cover. Like any insurance contract, there are lots of different bits and pieces. Generally speaking, if you have guests in your home you would be covered for the damage or other impacts on your home, including contents, including things like identity theft, and you receive a level of cover for those things. From the guest's perspective, there is redress in the event of injury.

Mr JAMIE PARKER: It is very interesting.

Mr ANOULACK CHANTHIVONG: In respect of the insurance for short stays, where is the biggest deficit or where is the biggest risk, and how do we get around it? Is the biggest risk for the hosts and for the guests? The current prices already cover some of that, do they not?

Mr ARNOLD: Yes, depending on how the insurance company in question defines—

Mr ANOULACK CHANTHIVONG: Defines the actual product. Would issues of legal permissibility actually give the insurance industry greater clarity in some of their product development and also for their consumers?

Mr ARNOLD: Certainly, yes. To give you an example, your normal home and contents product does not cover you for people invited into your home if they happen to steal things. If you invite your best mate over and he steals your television, you are not covered—surprise, surprise. In this instance, when are you hosting a guest, in the case of our product, you are covered. So if you have a guest and they happen to steal your television or your belongings, you are covered. If they do malicious damage, you are covered. That is not normally the case in your standard home and contents policy, so this is an important difference, as an example.

CHAIR: We may wish to send some additional questions in writing. Your reply would form part of the evidence and be published. Are you happy to answer additional questions?

Mr ARNOLD: Yes, Chair.

Ms MULLEN: Yes.

CHAIR: Thank you very much.

(The witnesses withdrew)

TREVOR CYRIL ATHERTON, Chair of the Regulatory and Government Relations Committee, Holiday Rental Industry Association,

ANTON JOHN STANISH, Regional Director, Australia and New Zealand HomeAway, and

JAMES DANIEL CASSIDY, Sales Director, Stayz, affirmed and examined:

CHAIR: Thank you for appearing before this committee today. Do you have any questions about the information you have been sent and our process today?

Mr STANISH: No.

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

Mr ATHERTON: Members of the committee, the Holiday Rental Industry Association [HRIA] was launched in 2012—it had been incorporated in 2007—as the peak national body for the industry in Australia. Members include owners, agents and major digital distribution platforms. Through current membership it represents over 50,000 of the leading holiday rental properties across more than 1,500 destinations in Australia. Personally, I have been involved in tourism all my working life, as a lawyer, policy advisor, investor and operator, including for the last 15 years in holiday and short-term rental, which, for simplicity, I will call STHR. HRIA's submission No. 202 provides a comprehensive review of the regulatory and policy issues from the industry's perspective and experience. It includes 20 recommendations which, if implemented, we believe would address the issues and allow short-term holiday rentals to continue to make the enormous positive economic and social contributions which it now does, at all levels.

I will briefly highlight two of the most important recommendations. The first is our primary submission: the code of conduct. The current codes is the National Holiday and Short Term Rental Code of Conduct, March 2015. HRIA is the custodian, and a copy is available on our web site. I will table today, as an additional submission, a letter explaining how the code has developed and evolved through three published versions, beginning in 2012, reviewed in 2013, to the current national version in 2015. I am doing this because there were questions about it at the Tweed hearing of this inquiry. We submit that the code is far and away the most effective and efficient way of setting standards and minimising adverse impacts on amenity, particularly for neighbours, from rogue operators or misbehaving guests. The code does this in three main ways building upon the unique features of short-term and holiday rental.

First, it requires owners to exercise their rights in contract law to set strict terms and conditions upon guests. Second, it requires owners to exercise their rights in property law to impose strict house rules on guests and visitors. Third, participating organisations to the code must require owners and managers to comply with the code or exercise their contractual or constitutional rights to delist them or cancel their membership. Current participating organisations include the major digital platforms Stayz, HomeAway and FlipKey/TripAdvisor as well as state and local holiday rental associations. Airbnb is currently only a supporting organisation but we recommend it upgrade its commitment and become a participating organisation.

Our primary submission is that the code, properly supported and implemented, is a necessary and sufficient self-regulatory solution to most of the issues which have been raised in the 210 submissions to this inquiry. Our second key recommendation is in relation to planning controls, licensing and registration. Some submissions and commentators have alleged that short-term and holiday rental is unregulated or that it is illegal. As our submission explains, this is incorrect. Like any activity, it is governed by all the laws of the land and regulated by them so far as they are applicable.

Today we are releasing from confidentiality and tabling our regulatory report, which was a confidential annex to our original submission. It analyses all the standard planning instruments, licensing and registration systems which have been tried and tested in the main states, and all the leading cases. From this analysis it produces a recommended regulatory solution if, contrary to our primary submission, further controls are found to be necessary. Any such planning controls—as we have heard in the Tweed and again here this morning—must have a light touch. The sad fact is that in New South Wales development applications [DAs] are notoriously slow, uncertain and costly. Requiring a DA for STHR or for excess days, rooms or occupants is tantamount to prohibition.

So, if planning controls are deemed to be necessary, we recommend that these operate uniformly throughout the State and do three things: firstly, clearly define short-term and holiday rental, and declare it to be a permissible use of a dwelling in any zone; secondly, make a certain number of bedrooms an exempt development subject to a set of objective standards, including and derived from the code; thirdly, make more than that threshold number of bedrooms a complying development so that independent certification of compliance is required, and more controls can be imposed if necessary.

If this were in place the industry would have certainty and councils could then use their simple penalty infringement notice powers and procedures to punish non-compliance and effectively and efficiently manage the problems by exception. The regulatory review shows that none of the registration or licensing schemes which have been tried so far in other states has been very effective. However, we would support any measure to identify how many properties are involved in short-term and holiday rental and to collect performance statistics so that all stakeholders can make informed policy, investment and other decisions.

Mr STANISH: Thank you for the opportunity to appear before you today as part of this very important consultation. As background, I have been the general manager of the market-leading Stayz business in Australia for the past five years, and our team is proud to play a key part in the increasingly professional Australian and New South Wales holiday rental industry. I would like to give you a little background on Stayz. A fact that is not well-known is that entrepreneur Rob Hunt started Stayz in 2001 on the outskirts of Sydney in a tin shed, initially just advertising his wife's holiday house on the Central Coast. Fourteen years later, that same on-line market place is now part of the global HomeAway and Expedia holiday rental businesses. It is, indeed, an amazing local technology start-up story, and one we are proud continues to be the market leader today.

However, we are even more proud to have helped the family owners of our 43,000-and-growing houses, to continue the great Australian tradition of owning a character-filled holiday home. As you have heard previously, short-term holiday rental has an enormous beneficial impact on both the local and State economies. The recent BIS Shrapnel report estimated that short-term holiday renting contributes \$31 billion to the national economy and supports 238,000 jobs in Australia—about one third of which we think can be attributed to New South Wales. As James and Trevor will outline, these amazing holidays have been happening for many years, with only a tiny fraction of reported complaints from neighbours or other impacted persons. There appears to be broad consensus that it would be useful to all stakeholders if the short-term letting regulatory landscape in New South Wales could be made clearer and more consistent.

However, this should be done without unnecessarily burdening holiday home owners or local councils with restrictive planning requirements for what is essentially no different to permanent residential activity. I want to paint a little bit of a picture about our typical customer. Our typical travelling customer is a 35- to 45-year-old mum looking for a relaxing family holiday. We are in favour of regulations that are easy to understand and therefore straightforward to comply with, and recognise the strong demand of travellers for traditional whole home short-term rentals. We believe that clear, consistent regulations are good for travellers, property owners, neighbours and councils and tend to result in high levels of transparency and compliance.

Mr Cassidy will share with the Committee some more detail regarding our proposal that uniform adoption of the Holiday Rental Industry Association [HRIA] code of conduct, as outlined by Mr Atherton, should form a compulsory element of complying and exempt short-term holiday letting. In our experience, clear communication of the code has been very successful, requiring guests to respect neighbourhood amenity by limiting noise, parking and garbage disturbances. On Stayz we insist every single property owner complies with the code, and we have delisted owners who do not.

To wrap-up, I just want to dispel a couple of potential misconceptions. We think it would be a grave mistake to grant preferred status to owners who only rent their home for less than a certain number of days per year. We have observed that more experienced owners and property managers who have dedicated holiday rentals, with well-established systems and processes, provide a much more enhanced traveller and neighbourhood experience. Someone who hands over their keys to their primary residence only a couple of times a year, as they head off on holiday themselves, is far more likely to run into problems. I make a final point on insurance. I want to bring to the attention of the Committee that Terri Scheer insurance, Australia's leading landlord insurance specialist, does offer, and has offered for many years, a short-stay policy. In New South Wales that policy costs only \$410 and covers up to \$20 million in public liability. I will now handover to Mr Cassidy to go into more detail regarding our typical owners and their experience in providing unique whole house holidays.

Mr CASSIDY: My name is James Cassidy. I started running online holiday rental websites in 2006. I am also a founding and current director and member of the regulations committee of the Holiday Rental Industry Association [HRIA]. In the past 10 years the size and professionalism of the industry has increased significantly. The code of conduct has been adopted by all owners and managers who list on Stayz and several New South Wales local councils. As the Committee heard last week in Tweed Heads, complaints to Byron and Tweed councils about holiday rentals is relatively low—and is even declining in Byron. This is echoed by many council submissions to this inquiry, with the vast majority of holiday rental stays occurring without any impact to neighbourhood amenity. At Stayz, like the HRIA, we are against party houses and we delist such properties. In the past year Stayz has delisted four properties due to code of conduct violations.

As the Committee well-knows, many Australian families dream of owning a holiday home—a dream that is helped to become a reality by the holiday rental industry. Looking closely at those who list properties on Stayz, the Committee will see that the average Stayz lister, based on our 2015 annual survey of customers, is a woman aged 45 to 64 who owns one holiday property, which she uses herself for seven weeks year, makes it available to rent for 45 weeks a year and receives bookings in 22 of those weeks in order to cover the cost of holiday rental ownership to try to provide some return on the asset. As an owner myself, I know that the main costs involved are furniture and linen, local cleaners and gardeners to ensure that the property is in the best condition for travellers, mortgage repayments, council rates, insurance, utilities and booking fees. Many owners would be forced to sell their holiday property if they were not able to earn the holiday rental income they need. This is why it does not make sense to either cap the number of nights booked or charge commercial rates on holiday rentals.

More importantly for the tourism industry, holiday rental owners and managers deliver excellent traveller experiences, with traveller reviews on Stayz averaging 4.7 from five in the past four years. This is an average level of review that many hotels and motels would only dream of attaining. Consistency in the permissibility of holiday rentals is definitely needed in New South Wales regulation, as well as in the adoption of the code of conduct by local councils in their handling of the amenity complaints about party houses and funnelling of those complaints to the HRIA for action by members such as Stayz.

In terms of bedroom maximums, Stayz has approximately 13,000 properties listed with four or more bedrooms and approximately 2,000 with six or more bedrooms. If such regulation is put in place, the process to gain approval from council for properties outside of the permissible and exempt conditions need to be simpler than a development application [DA]. I recently spoke with a Stayz customer who was required to complete a DA approval process for his holiday rental in New South Wales. He said it took 18 months and cost \$10,000 in fees, plus lost rental income. A very simple process of complying development rather than DA is much preferred. For these reasons and more, we warmly welcome this New South Wales parliamentary inquiry and thank the Committee for allowing us to appear today.

Mr JAMIE PARKER: Mr Atherton, can you explain to the Committee the various iterations of the code? I understand that code was originally put together and Minister Hazzard and the Department of Planning were involved. There have also been changes to the code over time. Can you explain what those changes were and why they took place?

Mr ATHERTON: I have actually tabled the code and I have sent a detailed letter to this inquiry showing the precise history and evolution of the code. Just briefly, the version reached by stakeholders and supported by Minister Hazzard was the March 2012 version. That code was then administered by a code administration committee, with representatives from government, the Real Estate Institute, Stayz and HLO Byron. The code itself has a clause saying that it is a living document to be reviewed and adapted from time to time because it is a dynamic industry. That code administration committee one year later got feedback saying, "It needs tweaking in these areas." The code was then reviewed to do that. The code trial period finished in 2004—

Mr JAMIE PARKER: It was 2014.

Mr ATHERTON: Sorry, 2014. The HRIA then tried to persuade the code administration committee to adapt and accept participating organisations from other States. There was some resistance so the HRIA then amended the code to make it a national document, so it would be available around the country. The last meeting of the code administration committee of the New South Wales code was in December 2014. That code administration committee unanimously resolved to transition to the national code, which was to be under the custodianship of the HRIA. The current code administration committee of that code comprises the board of the

HRIA, who are elected by members, plus Mr John Gudgeon of HLO Byron. We have kept the Department of Planning fully informed of all these developments all the way through.

Mr JAMIE PARKER: Are you happy with the current insurance arrangements for hosts and customers? I understand that Airbnb has a different kind of non-insurance and quality assurance product. Are you satisfied that you are providing the right kind of insurances available for your customers?

Mr STANISH: Thank you for that question. I have tried to read the Airbnb policy—I am not sure if the Committee has gone into the fine details of it—but given that it is a company that is headquartered in the United States it is a very long document. We do not have a similar kind of arrangement of self-insurance. We recommend and strongly encourage every single one of the owners to take out their own insurance. We have been partnering with Terri Scheer, as an example, they come to every one of our conferences each year, they advertise in our newsletters and online. They have developed a policy, and it has run for many years, which is tailored exactly for holiday rentals.

Mr GEOFF PROVEST: You were here earlier and heard the insurance council speak of Terri Scheer. If it is not a permitted activity technically they may not be covered, even though they have been paying?

Mr ATHERTON: True.

Mr STANISH: Just on that question. Obviously Terri Scheer and the owner are entering into a contract there. I would not like to comment on how Terri Scheer terms the local government regulations.

Mr GEOFF PROVEST: With Stayz often the places require security bonds, particularly if they have animals and things like that. What is the level of disputes arising from those bonds?

Mr STANISH: First of all, we refer to them as refundable damage deposits.

Mr GEOFF PROVEST: Right.

Mr STANISH: Not to be confused with bonds, which are different and regulated as part of the Residential Tenancy Act. The level of disputes over the return of the refundable damage deposit is relatively low. We have in excess of 30 customer service people.

Mr GEOFF PROVEST: You actually get involved in the process?

Mr STANISH: Occasionally. It is not between us, and the transaction is very much between the traveller and the owner of the property, but occasionally either side might come to us and we try to help mediate that, but it is pretty rare.

Mr GEOFF PROVEST: It is only 20 to 30.

Mr STANISH: I would say less than that.

Mr MARK COURE: How do you monitor to ensure that properties are complying with the relevant regulations? Even before that how do you verify that properties listed on the Stayz site meet the local government requirements?

Mr CASSIDY: The terms and conditions for letting on Stayz.

Mr MARK COURE: It is purely just tick a few boxes?

Mr CASSIDY: It states that the lister warrants that they have all the rights and meets all the regulations that apply to their property and they are able to rent it out for short term accommodation. It is really the lister says they have the rights to do that.

Mr MARK COURE: Do you have any statistics on how many people have multiple listings on your site by any chance?

Mr CASSIDY: We could get those statistics and will take that on notice.

Mr ANOULACK CHANTHIVONG: Mr Atherton, why the threshold of six?

Mr ATHERTON: I have seen lower numbers. The model that emerged from Gosford was based on four and I see Byron is opting in its proposal for three. We see that as far too restrictive. The demographic that is travelling is the same as the demographic that is letting. Whatever the housing stock across Australia is it represents the demand for residential style accommodation in Australia. It seems to me an arbitrary limit which is unfair to all those travelling groups who require more bedrooms. In our industry we experience extended families travelling together. That is one of the great advantages of holiday and short-term rental. They can have a self-catering economical holiday and spend quality time together. We have always argued that an arbitrary cut-off restriction might seem sensible on paper but in practice it is incredibly unfair to a large segment of the market. Mr Cassidy can talk more about it. I think he mentioned the number of 3,000 properties.

Mr CASSIDY: Approximately 2,000 with six or more bedrooms.

Mr ANOULACK CHANTHIVONG: How many properties would have more than six bedrooms?

Mr CASSIDY: There are 2,000 listed nationally.

Mr JAMIE PARKER: There would not be many of them in Balmain.

Mr ANOULACK CHANTHIVONG: That is across the State?

Mr CASSIDY: That is nationally.

Mr JAMIE PARKER: Can I ask a question about the code. You have emphasised in your submission the importance of the code. Two questions, first, what exactly does a supporting member mean? We are talking about Airbnb? Secondly, for the Stayz representatives, how do you find it has been beneficial to your travellers and your property owners? Could you explain to us what the merit is, if any, of this code for you? Mr Atherton, what is a supporting member?

Mr ATHERTON: "Supporting organisations" are those organisations that register support and promote the code and may enter into partnership or other cooperative arrangements with the national code administration committee to achieve common objectives. For example, you will see a lot of recent council proposals they are proposing to become supporting organisations of the code. We all enter a memorandum of understanding with them where they can pass on complaints and we can make sure complaints are being handled properly and we can invoke the powers of our participating organisations to deal with those properties. That is the kind of ways we will cooperate with supporting organisations.

Mr JAMIE PARKER: Have you seen any benefit with this code and if so what is the benefit?

Mr STANISH: Just on Mr Atherton's point, as a participating organisation it is beholden on us to take action on those complaints whereas a supporting organisation may not. It does not have the same stringent requirements. The effect of the code has been quite amazing. I have stayed at a number of holiday houses around the State and often you will see a copy of the code in a compendium in the living area of the property alongside instructions on how to use the television. It is very clear. Further, there is a short version which is the templet of house rules and you often see this under a magnet on the fridge saying here are the rules: no parties, no noise, keep in mind your neighbours, make sure the bins go out at the right time. It has been interesting, a lot of our travellers get a little bit narky about it: well, you know, I am on holiday, why should I have to put the bins out? That kind of thing. It is having effect and we are seeing a strong positive effect with that code of conduct.

Mr CASSIDY: The other positive impact is that the code encourages the owner to have a clear contract with the traveller that states the behaviour that is acceptable whilst in the property and it takes into account, non-disturbance of neighbours, no parties and the repercussions that those things could have and could lead to eviction. It sets clear expectations on the traveller and it is consistent across properties. Speaking with our customer experience manager last week about complaints related to the code of conduct and neighbour amenities, he said in most instances properties only get one complaint because our customer experience team contact the owner and manager and explain the complaint and often we do not receive a subsequent complaint. That behaviour management of the owner, we make it clear to the owner that if these continue they will be delisted, that is very important.

Mr GEOFF PROVEST: A neighbour can complain to you guys directly?

Mr CASSIDY: Yes.

CHAIR: You talk about delisting, if the people have the properties in Australia and they are overseas and they do not actually get to the owner of the property the penalty is having them delisted—who actually rents them out? I thought you rent them out. Don't the people go through your network to find a place in the area?

Mr STANISH: The penalty is that by taking them off our site they are not going to get anywhere near the number of bookings they would previously have got.

CHAIR: No, the person who owns the house?

Mr STANISH: Yes.

CHAIR: He puts it through your network to be rented out. I come along and I rent that and I wreck the joint, do whatever, the complaint is not about the person who owns it but the person who rented it, but I rented it through you, for arguments sake. I am off the listing but it does not have any effect to the house?

Mr STANISH: No, the owner of that property—

CHAIR: —the owner would be deregistered. How does the owner get deregistered if I have given my house to you to find people? Is that how it works?

Mr STANISH: To be clear, Stayz is an advertising platform. It is a market place. We are putting together the owners and the travellers.

CHAIR: If I did it through a real estate agent and working under a code, what is the difference? I lose my potential rental property but it was rented by somebody else. Do you know what I am trying to say?

Mr CASSIDY: It is important to understand that we do not delist properties on one complaint, it is three strikes you are out policy that we have implemented. We need three separate instances of neighbour amenity or code of conduct violations before a delisting. It is the owner's responsibility to let people into their property and govern the behaviour of those guests. It is the owner, at the end of the day, who listed the property that is penalised.

CHAIR: But in most cases that will be for a real estate agent or something like that. If it is up the North Coast you go through a real estate agency, even though it is listed on your web page—it goes through a real estate agency. Most real estate agencies, yes, you will complain, it is a short complaint and they are gone. And then the property is straight back out for rental again. There is not a lot that actually happens.

Mr CASSIDY: For Stayz, for many of our listings it is a significant source of bookings. We would encourage all stakeholders in the industry including real estate agents to sign up to the code of conduct. If there is a particular issue in relation to a property that is a party house, we would seek for that party house to be delisted not just from Stayz but also from FlipKey, HomeAway and other websites that are participating organisations.

Mr MARK COURE: So you guys talk to each other?

Mr CASSIDY: No, we do not talk to each other. If the complaint goes to the Holiday Rental Industry Association [HRIA] and they funnel it to the relevant—

CHAIR: For argument's sake, say I was a real estate agent and I had suffered half a dozen different complaints, when are they liable to come back to the code of conduct and then you people get involved to address this real estate agent in whatever fashion?

Mr ATHERTON: I might just jump in here. The code also binds managers. The code binds real estate agent managers to enforce the standards of the code. That includes complaints handling and minimising impact on neighbours. Managers under the code have a direct personal responsibility to ensure there are minimal

amenity impacts and, if there are impacts, to deal with them professionally. So a manager failing to do that is in breach of their obligations under the code. The relevant supporting organisation, the person who is taking the bookings higher up the chain, has to then deal with that manager. That is how the code works—the code pushes dispute resolution down to the coalface and it is only by exception that it rises up. When a manager cannot handle a dispute or there is a complaint about how the manager has handled a dispute, it gets up to the participating organisation. Failing that it then comes to the code administration committee.

Mr CASSIDY: We understand most complaints are dealt with by the neighbour and the owner of the property or the manager of the property. They do not get escalated. Most of the time it is handled at that local level.

Mr MARK COURE: And the nature of those complaints could be purely just garbage collecting or a bit of noise maybe.

Mr CASSIDY: Parking.

Mr MARK COURE: Parking, of course.

Mr CASSIDY: If somebody has a party and it happens once a year but the neighbour still complains, they deal with the owner.

Mr JAMIE PARKER: We are talking about compliance costs, obviously, and who pays these compliance costs. A lot of us here are former mayors or local government representatives so we are always reluctant to put more costs onto local government. There are ways of doing charges or licensing fees, getting other agencies in the State government to deal with it. In terms of this code—you do not have to reveal all the details about how you fund yourself and how it works—what kind of impost is the code financially on an organisation, a host or a property owner? Is it significant? Is it a couple of dollars a year or hundreds of dollars? How do we fund this code and what does it cost?

Mr ATHERTON: For the manager and the owner the code is really just best practice. All we are doing is encouraging the owner and manager to run their enterprise or whatever activity they are doing in accordance with best practice.

Mr MARK COURE: Use it as a guideline.

Mr ATHERTON: Yes. So there is no net cost. It improves their business.

Mr JAMIE PARKER: If someone complains, who is at the other end of the phone and how are they funded?

Mr ATHERTON: I have been in short-term rental myself for 15 years. Every property receives some complaints. It might be a broken spoon, dirty linen, a cockroach or a car is parked somewhere. In hospitality there are myriad complaints all the time. Most of them are dealt with very quickly and summarily. It is only when they become more serious—for example, a neighbour complaint, which are the ones we are particularly concerned about, because of amenity issues—that we have a more formal hierarchical approach, so neighbour complaints can be tracked and dealt with professionally.

Mr JAMIE PARKER: Who does that tracking and how is that funded?

Mr ATHERTON: We respond to a complaint.

Mr JAMIE PARKER: So HRIA basically pays for that through membership fees?

Mr ATHERTON: HRIA sits as the umbrella organisation, as the national code administration committee [NCAC]. So participating organisations have to administer their own complaints. Managers have to administer their own complaints. The level it is being dealt with has to carry its own cost.

Mr JAMIE PARKER: Okay.

Mr CASSIDY: And the complaint medium for the HRIA is an online web complaint form.

Mr JAMIE PARKER: So it is quite inexpensive.

Mr CASSIDY: Yes.

Mr MARK COURE: Like eBay or something.

Mr CASSIDY: Yes. It is just a web form that they fill in and the complaint then gets handled by somebody at the HRIA.

Mr MARK COURE: If there is anything that this Committee could do to address some of the issues that the councils may be having or that neighbours or the community could be having with short stay holiday letting, is there anything that we could do, maybe in one sentence—maybe more than one—

Mr ATHERTON: If you read the 23 council submissions you will see there are 23 ideas on how it should be regulated. We review planning proposals weekly. Every one has a new mousetrap—a new way of approaching it. It is all going through the gateway process but they are coming out with weird and wonderful definitions and ideas and they are making it up as they go along. That is unworkable. That is rail gauge mentality. If the Committee can do one thing, a clear, uniform system across the State—and I have heard many other submissions and people say this—is essential.

Mr MARK COURE: I would like Stayz to answer the same question. If there was anything this Committee can do from today, what would it be?

Mr STANISH: We would agree with the HRIA: clear, standardised and consistent across the State would help bring a lot of certainty to the entire industry, both on the travel side and—

Mr MARK COURE: Yes. So everyone at the end of the day knows exactly where short stay letting is in the industry.

Mr CASSIDY: And also that is based on the code of conduct being adopted by all participants and the communication of complaint escalation makes its way to the HRIA. My understanding is that at the moment councils are not escalating complaints to the HRIA and therefore Stayz as a participating organisation does not hear about them. We heard last week about the four party houses in Byron Bay. If we knew about those we could have done something about that.

CHAIR: How do you think you would actually get everyone to adopt it though? That could only be done through regulation.

Mr CASSIDY: Through regulation I think.

Mr ATHERTON: At council level, if we had a supporting organisation memorandum of understand [MOU] with each of the key councils there would be a formal process. But we do need assistance. We are just doing it as a voluntary organisation to make people aware of the code and to impose the code. The State, I believe, needs to get behind that and promote awareness of the code. I notice that one of the key outcomes coming out of the State of Victoria's inquiry into short-term rental apartments is the State is going to get behind the code, promote awareness of it and encourage people to understand it both from the public sector side and the private sector side. We need the same thing here.

Mr MARK COURE: I think that is what Queensland is also doing, isn't it?

Mr GEOFF PROVEST: Yes. Queensland is going down that route. I do not know if you were here earlier, but we heard earlier from the council that they were triaging their own complaints, which is a different way to put it. They seemed quite comfortable with that. You would prefer to have those complaints referred to you or to be in the loop somewhere, Mr Atherton?

Mr ATHERTON: Refer them through the code process. If the code process fails, give them a penalty infringement notice. Manage by exception. I hear the load on councils. The model we are proposing to you minimises the load on councils and makes the industry itself self-regulate and sort out its own problems.

Mr MARK COURE: Who looks after the administration of that code and its ongoing development?

Mr JAMIE PARKER: There is a committee or something, isn't there?

Mr ATHERTON: I am the chairman of the code administration committee—yes. So that is a big burden on the Holiday Rental Industry Association and those people.

CHAIR: A lot of those complaints would be going straight through to local government. For neighbour complaints the first port of call would be ringing the council or the rangers.

Mr ATHERTON: Quite likely—the local government, the police or the noise abatement agencies. They go to all parts of government. That is why we would like to have supporting organisation arrangements with police, noise abatement authorities, Fair Trading and each council.

CHAIR: Some of the statistics that show minimal complaints are only showing what you actually know of, not what council or the police have been told. It might be only what someone has given back to you.

Mr ATHERTON: True.

Mr GEOFF PROVEST: So local government is resilient to become a supporter.

Mr ATHERTON: The most recent planning proposals, they are all keen. Byron Bay is keen; Tweed is keen. We are keen.

CHAIR: In conclusion, we may wish to send you some additional questions in writing. Your reply can form part of the evidence and be published. Would you be happy to answer any additional questions?

Mr ATHERTON: Yes.

Mr CASSIDY: Of course.

CHAIR: Thanks very much.

(The witnesses withdrew)

MIKE ORGILL, Director of Public Policy, Asia Pacific, Airbnb, sworn and examined:

CHAIR: Thank you for appearing before this Committee today. Do you have any questions about the information you have been sent and our process today?

Mr ORGILL: No.

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

Mr ORGILL: Yes, please. First, thank you so much for inviting Airbnb to participate here today. Airbnb is a community-based online marketing place which connects hosts, which are individuals with spare space, with guests or individuals who are looking for short-term accommodation. Since 2008, when Airbnb was founded, more than 80 million guests have stayed with hosts in one of our more than two million properties around the world. Airbnb listings can be a host's spare room or their entire home when they are travelling, or some other form of accommodation, whether it be a traditional holiday home, granny flat or even a tree house. I wanted to share a few numbers, because our community grows quickly. Some information has been shared by other participants in this inquiry. I wanted to get some numbers out there so that we are all on the same page.

First, over the past 12 months, more than 780,000 guests from New South Wales have stayed with Airbnb. Over the same period, more than 580,000 people have stayed in New South Wales with an Airbnb host. Airbnb now has 27,000 listings across New South Wales. About two-thirds of the Airbnb listings are entire homes and one-third are private rooms. The average length of stay for a guest in New South Wales is four nights. The typical host in New South Wales earns about \$4,400 per year. The vast majority of Airbnb listings are not rented out full-time. In fact, 93 per cent of Airbnb listings are rented out for less than half the year. According to a recent survey of Airbnb hosts in New South Wales that we are about to publish, 84 per cent of Airbnb hosts are in fact renting out their primary residence.

We believe that Airbnb is a significant economic contributor to the New South Wales economy. Airbnb helps people earn important supplemental income. As mentioned previously, \$4,400 per year is certainly not negligible. Airbnb helps distribute tourism dollars beyond traditional tourism hotspots, so this is putting dollars into local communities that really need them. According to our surveys of guests who have come to New South Wales, about 50 per cent of spending occurs in the neighbourhood in which they stay. We find that Airbnb guests tend to stay longer and spend more than traditional guests, which means we are bringing incremental tourism spend to the local economies. Finally, as many of the other submissions have noted, Airbnb helped expand consumer choice and consumer preference.

One of the issues that has come up and a consistent concern we have seen from other witnesses in the submissions is around amenities. We understand that this is a substantial concern in New South Wales and obviously we look to address it as well. We are proud that we built a community that is built on trust and respect. We believe that we are a compassionate community and part of being a member of an Airbnb community is that you have to operate as a good neighbour. If issues arise pertaining to neighbours, we try to resolve those as quickly as possible. This is why, in the next month, we are planning to release an online tool, which will enable neighbours to directly submit complaints and queries to us so that we can take action upon them. We will have more details once we formally announce this in the coming weeks.

This is also why, in 2014, we supported the party house legislation that was passed in Queensland. We believe that party houses have no place in our community. One thing that we have noticed is that Airbnb and other platforms in New South Wales need to have a better mechanism to receive complaints and feedback from our communities. I think that one of the challenges is that we hear a lot about neighbour complaints but we do not know what those complaints are so it is hard for us to take action upon. 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 principle 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. In respect of regulation, we see that there is broad consensus, whether from the local councils, from Airbnb and even from the Australian Hotels Association that people who are renting out their principle place of residence should be able to do so without

requiring development consent from local council. This recommendation is consistent with what we have seen elsewhere around the world, places like Nashville, Philadelphia, Amsterdam, Paris, London, Portugal, et cetera, which have all said that people should be able to rent out their principal place of residence.

New South Wales has a unique challenge. Sydney is a dense metropolitan area. As well, there are coastal areas in traditional holiday areas. New South Wales is not the first jurisdiction to look at this. We looked at France as a good model. France passed a national housing law which gave cities in France the right to introduce a permission system for secondary and other non-primary properties but makes it clear that primary residences, which are lived in at least eight months a year, can be shared with visitors either in full or in part without any authorisation or permission. Our recommendation is simply that people statewide should be allowed to rent out their principal place of residence without having to go through complicated council approval procedures. In conclusion, we are really excited that this is happening. We are grateful that we were invited to be here. We are excited that New South Wales is leading the way in Australia.

Mr JAMIE PARKER: Thank you for coming along. I have let the Committee know that we met last year, was it not?

Mr ORGILL: That is right.

Mr JAMIE PARKER: In my electorate of Balmain the issue of Airbnb compliance with council controls has been a big issue. It is not a permissible use according to the council in the Leichhardt municipality, which is a problem because there are probably 1,000 Airbnb properties there. The council has put their processes on hold until this Committee comes to a determination. I want to ask about some of the issues that we heard about in Tweed, but also about this code. Some players in the industry are saying that the code is really important and it is a critical element of them managing compliance and ensuring they have good neighbours. You talked about the neighbourhood feedback process you will be introducing for Airbnb. Tell us why you are a supporting member of the existing code and how you can effectively deal with any issues that are raised by neighbours about hosts?

Mr ORGILL: We are definitely a supporting organisation of the code. We are because we believe that everybody across the industry should meet high standards when it comes to how they behave in their local communities. We believe that all of our Airbnb hosts are expected to meet or exceed the conditions which are laid out in the code of conduct. In terms of how our new tool features in this whole process, the key thing is that we need to receive feedback in some way, shape or form. If the code of conduct is able to give us that feedback that is great, but we also find that a number of members of the community globally will come directly to us, so we want to make sure that there is an outlet for them to give feedback about neighbour issues directly to Airbnb.

Finally, we have a few other features that differentiate us from other platforms. One of the main ones is our two-way review system. If a host or a guest behaves irresponsibly then we get reviews that are put into the system. So you can imagine a situation where a guest comes to a home and behaves irresponsibly. The host finds out about it and reviews the guest. That guest will basically be weeded out of the community because they will have a negative review on their profile. This basically creates a self-regulating mechanism to moderate behaviour in the community.

Mr JAMIE PARKER: Have you found that successful? Intellectually and, I guess, notionally it will work but do you think it works in practice? Are there hosts or guests that have been excluded from renting on the platform because of their behaviour?

Mr ORGILL: Absolutely, yes. It is a very serious thing. Not only does it weed out bad players; it also incentivises good behaviour. If I am a guest coming to stay in Balmain, I am not going to walk, with my shoes on, on the linen or couch, or anything like that. I will be a responsible guest because I know that there is going to be a review written about me at the end of the day. So we see it working on both those fronts.

Mr ANOULACK CHANTHIVONG: Has Airbnb considered sharing some of its data with appropriate government authorities in Australia or in any other jurisdictions?

Mr ORGILL: Absolutely. This is an issue that has come up a number of times. We have been accused of not doing a good enough job of sharing our data. So late last year we released something called the Airbnb community compact. Basically it is a commitment to share data with local and relevant government officials. We would be happy to supply the committee with relevant data to help you inform your decision-making.

Mr ANOULACK CHANTHIVONG: Thank you.

Mr MARK COURE: What advice do you provide hosts concerning insurance?

Mr ORGILL: This was brought up earlier. We have the host guarantee and the host protection insurance. When Airbnb was getting started insurers were not really looking at this kind of issue. We found that we were able to negotiate bigger and better deals with global insurers to make sure that they had the kind of coverage and protection that they need. We now see that having these things applied to all of our hosts and all of our guests, platform wide, differentiates us from other platforms and is a competitive advantage for us. So we see that many people come to us knowing that that kind of insurance or guarantee is put in place for them.

Mr MARK COURE: Do you have any guidelines on letting properties in strata corporation-managed buildings?

Mr ORGILL: Yes. We put together a series of recommendations we call our Responsible Hosting site. Recommendations that are included are things like: inform your neighbours that you are going to be hosting; maintain relations with your community; give clear instructions, house rules and those kinds of things.

CHAIR: How does a neighbour living next door to the property make a complaint to Airbnb if he does not know that they are the ones that are renting the property out?

Mr ORGILL: If he does not know the neighbour?

CHAIR: Yes.

Mr ORGILL: I guess the way it typically works it that he will firstly try to notify the neighbour. If he is not able to notify the neighbour then they will often come to us. That is why we are putting in place a tool which will allow them to more easily submit the information to us.

CHAIR: On our coastline you have a lot of elderly people who are living next door to these houses. If there is a complaint, apart from going to the police or council or to the local real estate, if it is done through Airbnb, how would they know that it is done through you?

Mr ORGILL: This is one of the challenges—whether it be through the code of conduct or through something else—of having a way for citizens in the community to know that they can make a complaint. That needs to get routed to us—either directly to us or through another mechanism.

CHAIR: There was talk, at Tweed, about having signage notifying who the host is. So if it was through Airbnb there would be a small sign out the front letting people know that that was the host property. It would not hurt the suppliers in the sense that that would give other people the ability to rent and it would allow the complaint to come through.

Mr ORGILL: I think that makes sense for a commercial operator who is doing this on a full-time basis. I guess our inventory and our hosts tend to be from a slightly different segment of the market. They tend to be people who are actually living there; these are their homes. I am not saying that I would disagree with that but we have a slightly different segment of the market.

Mr ANOULACK CHANTHIVONG: In terms of the vetting process, for the safety of your hosts and your guests, how do you verify someone who is undesirable host or guest? How do you vet that? They may come under a different alias or a different name. How do you stop that? How do you assist in that vetting process?

Mr ORGILL: We put people through a lot of online verification tools. That might sound a little bit like a gimmick but we have a sophisticated machine learning tool, which will go through and start to identify triggers and queues of somebody who may have a more risky profile or a less risky profile. That has had a great impact. So the measure of success would be how many incidents arise from this. In the last year we had about 35 million guests around the world stay with Airbnb. We had about 455 incidents that were valued at more than \$1,000 per incident in terms of the claim on the host guarantee or the host protection insurance. That is an incident rate of 0.001 per cent.

Mr JAMIE PARKER: You went through some statistics at the beginning of your presentation very quickly.

Mr ORGILL: Sorry.

Mr JAMIE PARKER: That is okay; we will be able to check the details with the *Hansard*. How many listings did you say were in New South Wales?

Mr ORGILL: Yes, 27,000.

Mr JAMIE PARKER: In the submission that you gave, which is a year or two old, it says that there were 20,000. So, is it right that there have been 8,000 more hosts in the past four months? Is that right?

Mr ORGILL: I think the submission was in November so, yes, we have had an increase of 6,000 or 7,000 hosts since that time.

Mr JAMIE PARKER: Since November.

Mr ORGILL: Yes.

Mr JAMIE PARKER: That is pretty rapid growth. Is the growth in the Sydney market similar to other jurisdictions—other markets? Is there that kind of exponential increase?

Mr ORGILL: The growth in Sydney or New South Wales is consistent with what we are seeing elsewhere in the world. Yes, it is very fast.

Mr JAMIE PARKER: I ask that because we are already behind the curve, because our current regulatory environment does not recognise short-stay accommodation. We have talked about the levels of complaints, but if it continues to grow and grow it will obviously become an increasing issue. The number of 4,400 seems pretty low. You said that the renting period is a relatively short renting period. Is that why, or do you think there is increased competition and a lot of hosts very rarely lease their property? What is behind those statistics? I know that the statistic across Australia was 7,100. Maybe the New South Wales hosts are not doing as well as the rest of the country.

Mr ORGILL: I am not totally sure about the difference there, but I think you have hit on it: Many people are using Airbnb on a very occasional basis. About 55 per cent of our hosts are renting out their space for fewer than 30 nights of the year. A lot of people are saying, "I am going away for a holiday for two weeks and I will rent it out." This is not happening on a full-time basis. That is why I think those numbers are low.

Mr JAMIE PARKER: I know that you favour the 90-day threshold. We have heard about different thresholds. Different councils and different jurisdictions have different thresholds. I know that politicians hate hypotheticals but let us just go there for a moment. If it was 90 days rented before you needed to lodge a development application, that would mean that the vast majority would be either exempt or complying in the Airbnb environment.

Mr ORGILL: About 82 per cent or so would fall under that 90-day threshold.

Mr GEOFF PROVEST: I applaud you for online complaining. As a politician we are reactive to our wider communities but I would like to hear your views. There seems to be a bit of disconnect between local government and a platform such as yours about a complaining mechanism. A number of local government representatives have said that they have got their own triage form of dealing with it—they deal directly with the owner or things like that. Could there be improvement with platforms such as yours? I appreciate that privacy conditions apply but you are the one rating them.

Mr ORGILL: I think it would certainly be helpful if we were able to ingest some of that data. If we know that there is someone who is particularly problematic then that would certainly be useful for us to understand as well so that we can make sure that we are educating that person or taking appropriate action.

Mr GEOFF PROVEST: You are rolling out new products and people are obviously signing up. Do you predict that trend will continue?

Mr ORGILL: We certainly hope so. We do see strong growth in hosts signing up, in people coming to New South Wales and in people from New South Wales using Airbnb to travel. We expect to continue to see strong growth there.

Mr ANOULACK CHANTHIVONG: I have two questions. Some local government representatives appeared before the Committee this morning. For them it is a matter of compliance and innately a cost shift to local government to manage complaints and issues between residents. How do you think Airbnb can assist local government in that process, given that you are the predominant platform provider in this sphere?

Mr ORGILL: I think it really depends on what the rules are, but certainly what we have found is that—this again is part of our commitment that we started making last year—different communities have different needs and they need to be treated personally. I think we have started to recognise that. We do not believe that every city or jurisdiction should be treated with a one-size-fits-all approach. We are trying to figure out new and innovative ways that we can—whether it be notifying hosts, "Here is your obligation" or pass through mechanisms, these are all things that we could potentially do to assist local government to help inform people of their responsibilities, to send reminders or whatever it may be.

Mr ANOULACK CHANTHIVONG: In your submission you outline different jurisdictions—for example, primary place of residence would be totally exempt and your thresholds—but from Airbnb's perspective what sort of regulatory framework would work well for New South Wales?

Mr ORGILL: I think one way to do this is to basically say that primary residents are completely exempt and then you can have councils elect whether or not they want to make them commercial or have holiday homes exempt or require consent from council.

CHAIR: Airbnb and Stayz, which is another large organisation, do not share a complaint list as such because you run individually?

Mr ORGILL: Correct.

CHAIR: For example, let us say that I rented a property and played up. I got barred and was not allowed to go through you, so I went to another provider. How is that cross referenced? These groups are getting bigger and there are more providers but how do we get the message out?

Mr GEOFF PROVEST: The HRIA.

Mr ORGILL: As Mr Provest is alluding to, I think this is a role for something like a code of conduct to make sure that if a complaint comes in that as platforms we are able to ingest that data and take appropriate action.

CHAIR: Through that code of conduct you would be able to identify problem people out there?

Mr ORGILL: Either through that or if a council says, "This is a problem property" and sends it to all the different platforms or whatever the mechanism is. I think the key thing is making sure that all the various platforms are able to ingest that data.

Mr GEOFF PROVEST: I am sure there is an informal list floating around somewhere.

CHAIR: I think it would be hard for councils to administer that. The complaint would come through council first. The council would have to contact the organisations and say, "We have a problem with this tenant", who was only there for two days and the problem was gone. It is not that the property is rented for 90 or 120 days, but that for two days the residents who live beside that property had to put up with this behaviour. In a lot of these areas, particularly on the North Coast, there are a lot of elderly people who want a nice quiet existence. Often no-one lives beside them because the houses are vacant for the majority of the year. Then suddenly they have to share their space with a renter, and they are not keen to do that. Perhaps they do not like going from relative quietness to a family with four young kids running around. In one sense their complaints might be valid but they can also be misconstrued.

What if it is noted as a complaint with no real reason given—for example, an elderly couple complained about four or five kids playing in the yard next door? I do not know how you monitor that or get that information from local government. For example, I have places up the coast myself but I do not rent them out. When I go there the elderly couple beside me do not like it. I have told my neighbour to pull his head in. I am only there for one month of the year and they have the house to themselves for the rest of the year. I am trying to reverse the role. When people go on a holiday the kids will always be kids and want to enjoy themselves. I do not know how the balance will work through local government or whether or not the complaint is valid. The Committee has received submissions about party houses and bucks parties, which I would not like happening beside my house either. Some complaints will definitely be valid; others will be that kids are running around making a noise. How does one police a code of conduct? How important will that be to running your business and where do you stop?

Mr ORGILL: There are different types of amenity issues that could arise. It could be as something as simple as—

CHAIR: We are here today because of complaints from neighbours that people are running illegal businesses. This Committee has been given the task of making sure that there is some sort of code of conduct and that everyone has a right to their own property. In fact, a lot of neighbours will not complain. Australians are great at it—if it is not happening in their backyard they do not care. But this is happening in people's backyards and that is why we are here.

Mr ORGILL: When we release this tool it will help a lot. It will allow us to take a graduated response based on what types of things people are doing. The Chair has hit on the important topic of how people could submit a complaint should they want to. I think there is a role for industry to make sure in the way that complaints are received that they are able to get to all the different players in the space. I guess my thought on this is that councils can play an important role in directing and socialising the idea that there is a way for people to complain if they do have a specific issue. There is a role for council to play beyond just receiving the complaints, but actually informing people, "If you have a complaint about specific behaviour the best way is to go through a code of conduct or another mechanism."

Mr MARK COURE: How many properties does Airbnb have listed in New South Wales?

Mr ORGILL: Twenty-seven thousand.

Mr MARK COURE: And nationally?

Mr ORGILL: Nationally we are at 70,000.

Mr MARK COURE: Do you have any statistics on how many people have multiple listings?

Mr ORGILL: From New South Wales I sure do. Our stats are 85 per cent of our hosts will only have one listing and it goes up from there: 10 per cent will have two listings and then it starts to become fractions of a percentage for more.

Mr MARK COURE: How do you verify the properties listed on Airbnb?

Mr ORGILL: Verify in terms of making sure they are legit?

Mr MARK COURE: Yes, building codes, fire standards?

Mr ORGILL: Those people are expected, per the terms of service, to meet those conditions. I think what happens is we have things like the photography and the two way review system in which we are able to start to rate these things. In terms of a base level, ensuring that the property exists, what we do is when a guest pays to stay in a place Airbnb will actually hold the funds until 24 hours after the check in. If the guest shows up and says this place is dilapidated and does not meet the expectations that were set out in the pictures we are still holding the money. We can rebook them and they have not lost their money to anybody. If somebody really is trying to pass off a place as something it is not those protections are built in.

Mr JAMIE PARKER: I want to ask a question about the codes issue. The reason I am harping on about it is because other players say that it is critical to their business. You are a supporter, which was defined earlier. Why are you not a full member, a participating member of the code? What do you think are the drawbacks in the code that means Airbnb does not want to participate directly as a major protagonist?

Mr ORGILL: We already meet or exceed the standards that are set out. The other bit is that the code is really designed for professional operators and we are focusing on people who are renting out spare bedrooms, people who are doing this on an occasional basis. There is a difference in the type of accommodation that is being provided by our community and by the professional operators. I think as a supporting organisation we are still able to support it and in theory receive complaints via that mechanism without having to be a full participating member.

Mr ANOULACK CHANTHIVONG: Has Airbnb been a part of any court cases in Australia or overseas? I think of your counterparts in Uber where the regulatory labour standards in particular are very different because of the definition whether Uber is an employer or subcontracting. Have you been part of any legal court cases anywhere that you are aware of?

Mr ORGILL: We are a pretty big company so I am pretty sure there are plenty of court cases.

Mr ANOULACK CHANTHIVONG: Any major ones that have come at the core part of the contractual arrangements between a host and a provider? In Uber for example it is much more problematic because you are talking about labour standards.

Mr ORGILL: Right.

Mr ANOULACK CHANTHIVONG: Are you aware of any principle based issues?

Mr ORGILL: Not in the same sense as that. These are people who are doing this on an occasional basis. This is not somebody doing this on a full-time basis. As you can see from the stats most of the people are doing this for less than 30 nights, most people are working on their jobs, this is supplemental income and \$4,400 a year is not a substitute for a real job.

Mr MARK COURE: Mr Orgill, just going back to my question about verifying properties and people that have properties. Have you strengthened your verification process since there was an issue in Burleigh Heads at the beginning of the year, an Airbnb drug house was how the *Daily Telegraph* portrayed it? What changes have you made to make it tighter and safer for people who are renting out rooms or houses through Airbnb?

Mr ORGILL: The first thing is that we continue to expand our global trust and safety team. We have a team of about 250 people that operate across every time zone. We have 24/7 coverage of people looking proactively for things that could go wrong. They will take material that is supplied to them by machine learning and see that there is a risk, so the proactive team will look into it. We have a reactive team that is able to respond to these things as quickly as possible.

Mr MARK COURE: Can council play a part in that verification process to ensure that, as a husband and father, I am then renting a property that is being verified to some extent.

Mr ORGILL: I do not catch your meaning, I am sorry.

Mr MARK COURE: Is there a part that council can play to assist you?

Mr JAMIE PARKER: Like a registration process councils run.

Mr ORGILL: I think a registration process starts to get complicated. As soon as you start to add additional layers of complexity to these things they start to get out of control. For example, San Francisco, which was mentioned in some of the other submissions, the process is so complex that basically it is impossible for anybody to participate in.

Mr MARK COURE: It is the Democrats.

Mr ORGILL: Your words not mine. I would say that what is useful is making sure that all the hosts have the requisite information for their local community. For example, if a property is located in an area that is exposed to bushfires it would be useful for us to partner with local government to help those hosts know how to best inform their guests. In Victoria we have signed a memorandum of understanding with Emergency Management Victoria. Those are the types of things that are relevant for local councils and local government to help us with: what are the unique features and facets of the local environment.

Mr MARK COURE: In a nutshell you do see council playing some sort of role in assisting Airbnb or Stayz or any of those others to ensure the safety of consumer or the landlord?

Mr ORGILL: At a State level it makes it much easier for us. We have properties in 34,000 jurisdictions around the world and to have to deal with each and every one of them individually is quite challenging. To the extent that there is consistency or we can do things at a State level it certainly makes things simpler for us. For example, partnership with emergency management in New South Wales at a State level is much easier and has broader reach than trying to go council to council.

Mr GEOFF PROVEST: Mr Orgill, you would like to softly regulate the industry. My opinion is that the more complex you make it the more difficult it makes it. It is a blossoming market, anyone on the table would agree it is being accepted by consumers and I am staying out of the way and letting the market run. The only thing I probably agree with is a mechanism for complaints and if that is adequately dealt with then let the private market get on and help the overall economy.

Mr ORGILL: We would certainly support that approach, yes.

Mr GEOFF PROVEST: Can you get rid of a myth for me with Airbnb. The smallest thing I can get through Airbnb is one room, a bedroom. There were myths flying around that I could rent out my garage and driveway and things of that nature.

Mr ORGILL: You can rent out all sorts of things, yes.

Mr GEOFF PROVEST: I can rent out a driveway or a back yard?

Mr ORGILL: It is to the point—Mr Sam McDonagh has informed me—you can rent the Sydney Cricket Ground.

Mr GEOFF PROVEST: I can rent out a backyard somewhere?

Mr MARK COURE: Your electorate office.

Mr ORGILL: When we say tree houses we are not kidding. It is a thing.

Mr JAMIE PARKER: I think it is very interesting. Can I ask about insurance. Obviously Airbnb has its own non-insurance product and insurance product, are you satisfied that those products provide the necessary safety and amenity for the host and the traveller?

Mr ORGILL: I do not think they are a substitute for home owners insurance. You still need to have those kind of things but in terms of what a host or guest needs for their hosting or travel I think they are satisfactory.

CHAIR: We may wish to send you some additional questions in writing, your reply will form of your evidence and will be published.

Mr ORGILL: Yes.

CHAIR: Are you happy to answer any additional questions?

Mr ORGILL: Yes, thank you.

(The witness withdrew)

MARGARET HANNAH OSMOND, Chief Executive Officer, Tourism and Transport Forum, and

BIANCA VERONICA TOMANOVIC, Manager Tourism Policy, Tourism and Transport Forum, sworn and examined:

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

Ms OSMOND: No.

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

Ms OSMOND: Yes. To give you the heads up on who we are and where we fit into this mechanism, the Tourism and Transport Forum of Australia is a peak lobby group nationally for the tourism industry in the widest possible sense, so everybody from accommodation to cruise ship companies, airlines, airports, restaurants, retailers, major event organisers, property developers, investors, land managers, amusement, professional services in the industry, et cetera. In addition, we have a large number of members in infrastructure and transport. If you like, we cover the full spectrum of the visitor economy. In respect of tourism as a whole, as I am sure you would be aware, not just on the basis of these hearings, tourism is an enormous growth industry for Australia. It is one of the five super industries and it employs a radically larger number of employees than, for example, mining and others, so it has a significant contribution to make in a present and future sense. It would be fair to say it is coming more and more to the forefront and to the attention of governments in consideration of their policy development.

What are our issues in respect of today's discussion? Effectively, we see there is a real need for greater transparency in this space. There has to be a capacity for us to understand the market more clearly and what its implications are, and a registration mechanism that allows us to track the industry. We believe there also needs to be a greater sense of a need for deregulation of the traditional accommodation space. Clearly we are not talking about those issues that relate to fire and safety, but a range of other impediments to the industry and regulations at, perhaps, planning and zoning levels that could help with competitiveness of the industry if they were addressed. We think there is very much a need to implement a stronger industry regulation model. We do not believe that the current self-regulation scheme works at all. This area needs serious consideration. You would have seen in our submission that we suggested a mandatory code with policing capacity through the Department of Fair Trading which, of course, manages a range of other issues in the rental marketplace already and, therefore, has structure and capacity. We think there is also a necessity for a review of existing land use definitions in this space.

I would stress that the industry is by no means anti-change under any circumstances. In the accommodation space we are probably one of the most adaptive industry sectors. Change is the bottom line. Who would have thought a decade ago, for example, serviced apartments across the board would be such a major player in the marketplace? I am sure if you tracked it back a few hundred years there would have been changes and innovations in the market which the industry has embraced, adapted to and moved on. Having said that, this is about a level playing field in the same way it is across the board with any entries into the sharing economy discussion. Effectively, from our point of view we are keen to work with the Committee and the Government to come up with a solution that provides that level playing field. I should declare I am the chairman of the owners corporation of a building in Elizabeth Bay, which is on the harbour and obviously has had some issues with Airbnb. I just state that for the record.

CHAIR: So far as the hotel industry goes, I understand from some of your comments why it is so important that we have to decide whether or not to build more hotels.

Ms OSMOND: Yes.

CHAIR: At the moment, they are running at about 95 per cent capacity. Would that be close?

Ms OSMOND: And at particular times of the year probably closer to 100 per cent.

CHAIR: Correct. Talking about Sydney, I remember the capacity of those hotels were running at only 60 per cent and the hotel industry had to look at the way it was doing business and how it is conducted. The

same amount of staff are needed in a hotel whether it is at 60 per cent capacity or 100 per cent capacity. The short-term holiday letting would be impacting a lot on the hotel industry, but there is no transparency regarding short-term holiday letting. If the transparency is not there as it is in the hotel industry, we would not know where we need to be tomorrow in terms of capacity. This not about today but what is going to happen tomorrow. We are talking about 27,000 homes in New South Wales. If those houses were not available across New South Wales, we would have to build more hotels to accommodate more people, so I can understand that transparency is very important for the entire industry, not only in the short-term and not only for hotels.

Ms OSMOND: The transparency issue has another bearing also. If you are going to invest in this industry, if you are going to upgrade your facilities or potentially invest in building a new hotel you need certainty around the rules of the market. At this point in time traditional accommodation has a plethora of rules. I am sure you have seen in our submission and a number of others that when you compare the entry point for new hotels and traditional players as opposed to what is required for Airbnb or others in the short-term letting process, there is literally nothing on this list, but there is a long list over here because governments, quite rightly, make rules around safety and fire and insurance and a range of other issues.

CHAIR: The building code stipulates compliance issues such as thickness of glass, how far windows open. For example, a two- or three-storey home can have windows that open wide enough that anyone could jump out of or fall through, but hotels do not. The thickness of glass around a shower is 10mm in a hotel but it is 4mm in a house. Again, people can slip. Tiles in a hotel have to be non-slip but in a house they do not.

Ms OSMOND: Exactly.

CHAIR: There are a whole range of things that must be addressed.

Mr GEOFF PROVEST: Margaret, you are the first witness who is advocating for greater regulation and greater control.

Ms OSMOND: I am advocating a level playing field. I am suggesting that at this point in time there is little or no regulation of the short-term letting market place, and the traditional accommodation has a very substantial burden. This is the moment when industry and government should review the unnecessary legislation that applies to the traditional sector and look carefully at what should be required for the short-term letting process. I am not suggesting an increase across the board; I am suggesting a level playing field, with some removal from the traditional accommodation space.

Mr ANOULACK CHANTHIVONG: I suppose the difference there is that the purpose in the definition is different. Traditional accommodation operations are fully commercial, whereas short-term stays are mums and dads letting out their houses or rooms for two or three weeks a year. That is why we have different regulatory standards, don't we?

Ms OSMOND: If that is the case. This comes back to my issue around transparency. I am not certain that we know enough about who is leasing out what. Is it just mums and dads leasing out the spare room, or are there ever-growing numbers of people leasing their whole apartments or their whole houses? We are not suggesting that we should all bury our heads in the sand and look backwards. We are saying that Government regulatory capacity and its approach to regulation in this space has to reflect the reality of the changed market. That is why we are saying that we need to understand that it is not just about mums and dads. If you look at the mapping for any suburb on the edge of Sydney Harbour, and you compare the green dots with the red dots—green dots indicate letting out the spare room; red dots indicate the letting of the whole house—you see that there is a pretty compelling argument that there are an awful lot of—

Mr MARK COURE: Can you get that mapping?

Ms OSMOND: Yes, you can.

Mr JAMIE PARKER: It is clear that there is a real structural imbalance, which you are seeing, between the traditional providers and the new providers. I can understand why that is causing consternation. I think that everyone on the Committee recognises that the existing arrangements—which basically makes short-term stay accommodation not permissible in most residential zonings using the standard instrument—cannot continue. There has to be some clarity. Everyone has asked for clarity.

Ms OSMOND: Yes.

Mr JAMIE PARKER: So I think we are all on the same page about trying to be clear. We can do that by making certain elements exempt, making certain elements comply, requiring a development application after a certain threshold and so on. I am interested in this issue that you are raising about the mandatory complaints mechanism. We have heard that there are some complaints. Some of them are really significant. A lot of complaints are about legal issues with people saying, "You are permissible." "No, I am not permissible." "You should not be able to proceed for that use in this zone." But a lot of complaints are about amenity issues. Why do you think that it is important to have a mandatory code? What is wrong with the existing codes, or with enhancing the existing codes in a self-regulatory environment? Why do we need this mandatory approach?

Ms TOMANOVIC: The code that exists does not include one of the large players. Airbnb is only a supporting organisation of the code as it currently stands. The code provides a good base to start off with but it needs to be amended. The Holiday Rental Industry Association, in its submission, also found that some amendments need to occur to the code. I think there is merit in Government involvement in developing a code. Anything that has a Government element automatically has a higher standard and a higher acceptance from industry players. We need to make sure that all of the players are involved in a code. The tracking of it is also a little bit easier if you have a mandatory code that is linked through a Government entity like NSW Fair Trading. It would remove the burden on local governments of having to monitor compliance with the code and then tracking any issues that occur.

Mr JAMIE PARKER: What is your response to Airbnb's evidence, that says the complaints rate is at 0.004 per cent—or something like that—and that it already exceeds the code? Being devil's advocate, why should we put additional regulation on them when their argument is that there are such a tiny amount of complaints? They say that the real issue is about permissibility, which can be dealt with through a SEPP or something like that. Why do we need to have a mandatory code when it is such a small issue?

Ms TOMANOVIC: I think the issues are broader than how many complaints are raised. If you are looking at a property that is let out on a regular basis throughout the year—more than a mum and dad renting out the spare bedroom once in a while—then questions of customer safety come up. As the chair rightly pointed out, there are differences between commercial properties and non-commercial properties. For example, is there a minimum standard of fire safety that needs to be implemented across all short-term holiday letting properties? Do we need to have smoke alarms in every single room if you reach a certain threshold of letting? Those are the types of questions. Even though the number of complaints that have occurred would not justify that there is a minimum standard of customer safety that a code would facilitate.

Mr MARK COURE: I have a couple of quick questions. What roles do you think councils should play in short-term holiday letting or short-term accommodation?

Ms OSMOND: The issue, for many councils, is quite vexed because part of the problem is policing. If you are going to make certain things mandatory how on earth do you police the mechanism? That is why we have suggested that it needs to be vested at the State level.

Mr MARK COURE: In your submission which was sent to us recently there are three case studies at the back about three of the governments across Australia—the Australian Capital Territory, Victoria and Tasmania. Can you talk us through what they have done recently, and how they differ?

Ms TOMANOVIC: Victoria undertook a review, at the start of 2015, into the issue of short-term holiday letting and what they termed as short-stay parties and how the Government could deal with those. As part of the review process a panel was set up with a variety of members, including industry and Government representatives that came up with a number of recommendations of how to deal with short-term holiday letting. Additional powers were given to strata schemes to deal with the conduct of short-term holiday letting. Of the 13 recommendations, four recommendations were put forward to Government about how to deal with it—one of which was the strata by-laws and one was the self-regulation through the code that currently exists, and working with Tourism Victoria and the City of Melbourne to look at the code and implement a code that would be accepted.

As far as we are aware, the Government is still looking at all the recommendations that were put forward and trying to work with industry. One thing that stood out for me from the Victoria case study was that none of the recommendations that were put forward had a unanimous vote. They were majority

recommendations that were put forward to Government. That points to how vexed finding a solution and a common ground on this is. I will go to the other two examples. At the end of last year Tasmania indicated that they would embrace the sharing economy and look at putting through legislation—regulations and bills—that look at Uber, Airbnb and the likes. Nothing has occurred in that space yet but there was an indication that something would be put out. The Australian Capital Territory example was about the legalisation of Uber and the way they went around creating a level playing field by decreasing the regulation of the taxi industry and slightly lifting regulations for the new entrants.

Mr MARK COURE: In Victoria what involvement did the local council have?

Ms TOMANOVIC: I believe they were consulted as part of that. The City of Melbourne was involved in terms of the self-regulatory code.

Mr ANOULACK CHANTHIVONG: You have spoken about fair and free competition amongst the current and new players. Can you walk us through that; what would that look like in terms of a change in the regulatory industry between the traditional and the short-term people? What would that look like?

Ms OSMOND: Probably the most telling example of that in our submission would be in the table.

Mr ANOULACK CHANTHIVONG: I saw that.

Ms OSMOND: That gives you the start-up regulation and what is required of the different players. When you look at that you have to consider the costs associated with that and how much it costs for one player to enter the market and compare that with the cost for the other to do the same. We have made some suggestions, from the traditional industry's perspective, about legislation that should be viewed, perhaps, as changeable and removable. In terms of the short-stay accommodation people, the safety issues are the prime space where we think there needs to be additional regulation.

Ms TOMANOVIC: I think the industry would largely benefit from facilitation and looking at things like a one-stop shop for environmental approvals, trying to speed up the process for development approvals, and facilitating how many agencies that operators have to deal with as part of the investment process. A lot of that impediment occurs at the early stages, or even with refurbishments, so it is more the facilitation role and reducing the regulatory barriers and the red tape associated with that. That would be quite beneficial for the industry and we are happy to provide more details.

Mr JAMIE PARKER: I am interested in the permissibility issue. There have been some court matters—for example, in Sydney there was Bridgeport. Obviously your background is more traditional accommodation providers, do you have a sense of what impact short-term stay accommodation has had on the traditional industry? We have heard a lot from the different platforms about how beneficial it has been for our State and how it has been such a positive boom for local communities; the truth is that it is not permissible in so many different areas but it is there anyway. Can you tell the Committee a little bit about what you think the impact has been on the people you represent?

Ms OSMOND: I think probably one of the critical issues here is that I am not certain one size fits all; it depends where you are talking about. I think there will be a different set of circumstances, for example, in regional communities to what there may be in major urban centres. One issue that concerns us greatly is that at the moment we take something less than 1 per cent of the Chinese market. For the first time last year Australia saw one million Chinese visitors.

Mr JAMIE PARKER: When you say "we", do you mean New South Wales?

Ms OSMOND: No, Australia wide. New South Wales is doing very well but that is a national figure. Effectively we could find ourselves in the space where we perhaps get 2 per cent of the market, which would be fabulous, over the next few years; it is about the infrastructure to support that visitation and the breadth of infrastructure to support that. One of the things of concern to us is the impact a lack of transparency, visibility and accountability in the short-term letting market has on people's willingness to invest. They cannot clearly observe the market and have certainty about how they will play in the market as a more traditional operator. That is a real issue for us in terms of people's willingness to invest. I think that is one of the key issues from our perspective.

Mr JAMIE PARKER: The Committee has seen some economic studies that indicate that the short-term stay accommodation market is very different to the traditional market. For example, those who use Airbnb would not be using other forms of accommodation for shorter stays et cetera—I do not want to misquote them but that is my recollection of the Airbnb submission. Have you undertaken any analysis on the impact of short-term stay accommodation on the traditional accommodation market?

Ms TOMANOVIC: We did. As part of our submission we undertook some preliminary analysis of the international and national visitor surveys that Tourism Research Australia collects on a quarterly basis. Firstly, I would disclaimer that by saying one of the issues in our submission is that the data that is collected is vexed just because of the clarity of the definitions surrounding accommodation. It is quite confusing, especially for international visitors who may have a language barrier—so just keeping that in mind.

Mr JAMIE PARKER: Yes.

Ms TOMANOVIC: But the analysis did show that when there was a decline in traditional accommodation it was associated with a corresponding uplift in holiday letting accommodation, apart from two-quarters of the analysis that we looked at. So it is impacting the traditional market. Interestingly though, overnight visitor expenditure, which is what we tracked it against, was not affected. So that continued; it did not decline. In terms of the tourism 2020 target for New South Wales, we are tracking that against overnight visitor expenditure as our key performance indicator [KPI] for the tourism industry. That is why we had a look at whether there was a reciprocal decline in tourism expenditure, and there was not.

As well as that it depends on customer preference—for example, some customers will like the experience of a hotel stay and will continue to stay in hotels; some customers like the experience of the home-sharing element of Airbnb and will choose to stay at an Airbnb property; and some customers or visitors to New South Wales like the backpacker experience, so they will go down that path. I think the impact that we have seen or anecdotally that has been communicated through us is mainly in the hotel industry around the three to four star mark and then the backpacker industry and the camping and caravanning industry, which our research actually shows has seen declines over the time period that we had a look at. It may not be impacting the five star traditional hotels but it is having a broader impact further down.

Ms OSMOND: The other aspect of this too is that we are grappling with a changed tourism market place or visitor economy marketplace, which means that we are seeing growth in a whole range of Asian market places that have not necessarily been part of the make-up in the past. We are not in a position right now to be able to judge what that change in source market will do to the impact here on the ground. I think that is another critical issue for us to have in the back of mind.

Ms TOMANOVIC: I would just like to make the Committee aware that Austrade is conducting research into short-term holiday letting—they have commissioned L.E.K Consulting to assist. They are trying to do similar analysis to what Tourism and Transport Forum [TTF] did in looking at the impact and the growth of the market over a period of time and we are happy to pass through details of who is monitoring that Austrade. That will be quite an interesting research piece once it does come out.

CHAIR: When was the last hotel built in Sydney?

Ms TOMANOVIC: There is one coming on line very soon.

Ms OSMOND: There are several that are underway at the moment. Probably the biggest one is the Sofitel down at the Convention Centre.

CHAIR: Apart from that, how long has it been—five or 10 years?

Ms TOMANOVIC: There was an Accor—the Olympic Park property would be the most recent.

CHAIR: The point I am making is that the hotel industry has not kept up with the expansion of people coming to New South Wales and Australia.

Ms OSMOND: If I may just suggest, when we are talking about traditional accommodation we are including things like the serviced apartment market, which has seen some very significant growth over the past few years.

Mr MARK COURE: Mantra.

Ms OSMOND: Exactly—Mantra, Vibe, TFE. A lot of those kinds of organisations are supplying, as I say, an innovation in the marketplace which the industry has adapted to. So you will have seen growth in those areas.

Mr JAMIE PARKER: I appreciate there is a lack of data, but your submission seems to focus on people renting out their homes as a commercial activity for a significant period of time. I think you were present when Airbnb said that 84 per cent of the properties that they host are hosted for less than 90 days. That does not mean that they are not available for more than 90 days but they are only hosting for 90 days. Would it make you feel more comfortable if you knew that the vast majority were not homes that were being rented for a long period of time or if that statistic is correct is it still concerning to you?

Ms OSMOND: I suppose the issue in this space is that we do not feel there is sufficient transparency in the marketplace for us to have verifiable figures in that area. If what we are saying is that 85 per cent of people are not leasing their properties for more than 90 days, in some ways that is of even greater concern for the industry. I would have thought for many of those apartment buildings seeing endless numbers of people coming in that are only leasing for a night or two is a big issue.

Mr JAMIE PARKER: I think you have included this in your submission but could you talk us through the transparency issue—namely, what data do you think should be available and how that process would actually work?

Ms OSMOND: The baseline for us is a registration process but I am going to let Ms Tomanovic talk about specifics.

Ms TOMANOVIC: In terms of the data, and what we have included in our submission, it needs to be collected by a reputable government source like ABS or through Tourism Research Australia. That is what we are advocating for. There is a certain standard of information that is collected through those two entities. The point I would make regarding the Airbnb data is that it has not been made available—it may have been made available today but overall we do not have data about what the Airbnb market looks like. If that data is shared with the industry then that would be quite good. There was an economic study done in 2013 by Airbnb on the Sydney market. That was the most recent study, and I do not even know whether it was publically released other than a media release.

Mr JAMIE PARKER: They have put it in their submission so it is now.

Ms TOMANOVIC: It is now, yes. If there was a willingness from the operators of the digital platforms to share more information—how many people have how many properties, how many nights are visitors staying in those properties, how many of them are international visitors and the data I think Airbnb is not able to capture, which is very important to the industry, is how much money are visitors who stay in Airbnb properties spending in our economy? How much are they spending in going to attractions in the local area? Are they then travelling to other destinations in Australia or New South Wales?

Mr JAMIE PARKER: Apparently they spend more than hotel visitors, according to this data.

Ms TOMANOVIC: According to the data. There needs to be a government source of that data.

Ms OSMOND: There has in the past been a precedent for government collecting short-term letting data but it has fallen off.

Mr JAMIE PARKER: Who collected the data before?

Ms TOMANOVIC: The small-scale accommodation survey that was commissioned through Tourism Research Australia. That used to be collected. It covered 15 or fewer rooms. I am not sure whether it captured residential properties but it did capture bed and breakfast properties, especially in regional locations. That stopped a few years back.

Mr MARK COURE: In your submission you make reference to increasing demand for accommodation in New South Wales, both in Sydney and regional New South Wales. What role can short-term accommodation have in meeting this demand?

Ms OSMOND: As I said, it is a changing marketplace. The short-term accommodation market is here, so it is going to play a role. Our argument would be we need to be conscious of a need to regulate it appropriately so that we do not curtail an appropriate growth in additional accommodation as well, because the secret to the right accommodation offerings has to be an appropriate mix.

Mr MARK COURE: You have talked about regulation a couple of times. What type of regulation are you referring to?

Ms OSMOND: Ms Tomanovic has touched on that, so she might like to expand on it.

Ms TOMANOVIC: In terms of regulations we want removed?

Mr MARK COURE: Added or removed.

Ms OSMOND: In terms of the short-term leasing market, obviously there are a range of issues to do with safety, fire requirements and other matters, as the Chair alluded to at the beginning of this conversation. We need a greater understanding of how those issues apply. We need an understanding of owners corporations' and councils' views about where they are placed within the hierarchy of regulation in this space and where it is most appropriately placed.

Mr MARK COURE: Insurance.

Ms OSMOND: Insurance and a whole range of issues, which is not to overregulate a market but to appropriately regulate it, so we have some hope of a level playing field that gives us the mix of accommodation that makes for a great tourism offering.

Mr MARK COURE: Guidelines.

Ms OSMOND: Yes.

Mr ANOULACK CHANTHIVONG: I might have missed your response. Has the introduction of short-term accommodation taken away any of your members' market share?

Ms OSMOND: It is incredibly difficult to measure because of the lack of real transparency around the statistics and data. I am not certain how many economic reports have been done in this space—probably quite a few—but we need a reliable government source of data that allows us to answer a question like that crisply. It is difficult at the moment.

Mr ANOULACK CHANTHIVONG: The short-term accommodation industry allows for an increase in the supply of short-term accommodation for tourism. Would having short-term capacity not be good for the industry as a whole?

Ms OSMOND: The other issue is: How do you define "short term"? There is a number of different definitions and I and my fellow industry associations are focused on arriving at a common definition. We are conscious that to assist this debate in this space we need to have commonality on these definitions. There needs to be a much clearer definition of what constitutes "short term" but you have to have a mix of options within the marketplace. If you are not consciously regulating all of the operators within the marketplace on a level playing field, your capacity to attract investors and support in the longer term for traditional accommodation is going to become quite vexed.

Mr MARK COURE: Would you look at prohibiting short-term letting in certain areas? Do you believe some areas are more or less suitable?

Ms OSMOND: Once again that is an extremely vexed question in the sense that in cities where there are a lot of Airbnb properties—or short-term letting properties, as opposed to a single company—there have

been instances where particular areas of the city have become almost not local areas anymore because much of the area is leased out to people who are transitory. In terms of the structure—

Mr MARK COURE: We heard examples of some of those areas in Tweed Heads.

Ms OSMOND: And in international cities. There is a fair body of research on them, which I am sure you have seen in a number of submissions. From a tourism perspective it is also about the culture, tapestry, style, buzz and feel of a city, so being able to maintain mixed-use communities, as opposed to ones that become wholly and solely visitor occupied, is quite important and needs to be part of any planning understanding.

Mr GEOFF PROVEST: Initially you said one of the Tourism & Transport Forum's chief concerns is safety of the general public. But I understand you want the traditional market to be more deregulated.

Ms OSMOND: I made the point that I am not talking about lessening safety provisions.

Mr GEOFF PROVEST: I acknowledge that, but in other DA processes, I think you spoke about a one-stop shop.

Ms OSMOND: I think you would agree that in many instances, taking it out of the remit of this Committee, lots of industry sectors would say that there are ways we could streamline government legislation across the board.

Mr GEOFF PROVEST: I concur, but at the same time, to make that playing field level, you want more regulation of the short-term accommodation market.

Ms OSMOND: We want appropriate regulation in the short-term letting marketplace, as we would expect for the whole of the accommodation sector offered in New South Wales.

Mr GEOFF PROVEST: I believe in deregulating markets and getting government out of the pockets of private enterprise as much as possible. A classic example is what we have gone through with the taxi industry and Uber. Would you be advocating a similar model in the tourism accommodation market?

Ms OSMOND: Essentially, yes. We say there needs to be a level playing field as far as possible. I think everybody would agree that issues relating to safety, fire, insurance and those kinds of things that are about the consumer and their experience and safety have to be paramount. But there are ways that this could be levelled and we think the inclusion of appropriate legislation for new players is a reflection of the growth and change in the industry and an acceptance of new players into the mainstream.

Mr GEOFF PROVEST: Do you think the industry was caught napping, as was the taxi industry?

Ms OSMOND: I would have to say that the industry has been aware of this for some time. We have been having this conversation with governments at all levels for some time. We are particularly pleased to see that the New South Wales Parliament is biting the bullet and having a conversation about this.

Mr JAMIE PARKER: I am interested in the data issue. We have read information from some providers saying that outside hotel districts they provide different types of accommodation that do not have an effect on the traditional offering. Other providers, including yours, say there is some evidence that this is having an impact and that needs to be better regulated. Would your proposal to have a register mean that each provider—or host—would have to submit details? How would it work? Is there a cost associated with registration?

Ms TOMANOVIC: I think it would be similar to what currently occurs for long-term residential tenancies—some version of that. Obviously, we need to work through the exact mechanisms for how it would pan out, but essentially there would be a mandatory code of conduct as part of the sign-up process of registering through NSW Fair Trading to become a registered offeror. That would somehow be displayed on the online platform so that customers are aware that the offeror has been certified and are applying the mandatory code of conduct with minimum fire safety standards. Yes, potentially there would be a registration fee that would go into monitoring compliance against the code and dealing with any issues raised by councils or visitors with NSW Fair Trading.

Mr JAMIE PARKER: Are you saying there would be a threshold for who would be required to register. If you have the granny flat in the back garden and you are renting it out for a couple of weeks—are you saying any short-term stay accommodation or a particular threshold?

Ms OSMOND: This comes back to the definition effectively.

Mr JAMIE PARKER: This is what we are grappling with.

Ms OSMOND: There have been a range of different definitions suggested and pinch points. I do think that the next challenge, if you like, is nailing that definition of what constitutes a short-term lease letting arrangement and where the line is drawn in terms of that registration.

Mr JAMIE PARKER: We have had a lot of discussion about that.

Mr ANOULACK CHANTHIVONG: Do you have an idea from the Tourism and Transport Forum's [TTF] perspective of what that broad definition would be or the factors within that definition? Have you given thought to the purpose, the number of days?

Ms TOMANOVIC: From international and domestic examples 90 days seems to be the agreed cut off. The Australian Taxation Office decision that got put forward in terms of the goods and services tax had 28 days for short-term. That may potentially be a little too short. I think 90 days is the commonly agreed industry definition.

Mr JAMIE PARKER: That is the London standard as well.

Mr ANOULACK CHANTHIVONG: Would that include the primary place of residence as well? In other jurisdictions the primary place of residence is exempt. In the TTF's definition would that 90 day threshold apply upon the place of residence or only other properties?

Ms TOMANOVIC: I think it should apply to both, both primary and secondary residences. As Ms Osmond alluded to, there needs to be a difference between metropolitan destinations and regional destinations. Secondary residences and holiday homes tend to be in regional jurisdictions predominantly, there would need to be consideration of that.

Ms OSMOND: There also needs to be a greater understanding of the mix between hosted arrangements where it may be your primary residence, you live in it and you are hosting it as opposed to the leasing of the whole property.

Mr JAMIE PARKER: The absent landlord situation?

Ms OSMOND: Yes.

CHAIR: In conclusion, we may wish to send you some additional questions in writing, your reply will form part of the evidence and be published. Will you be happy to answer any additional questions?

Ms OSMOND: Absolutely.

(The witnesses withdrew)

RICHARD MUNRO, Chief Executive Officer, Accommodation Association of Australia, and

MICHAEL GEORGESON, General Manager, Accommodation Association of Australia, sworn and examined:

CHAIR: Thank you for appearing before this Committee today. Do you have any questions about the information you have been sent and our process today?

Mr MUNRO: No.

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

Mr MUNRO: Yes, I will keep it brief. We appreciate the opportunity to appear before you today. Our organisation is the Accommodation Association of Australia and we represent the accommodation industry in Australia through a largely regional network of members and also city members. We have very large organisations, international organisations, down to single entity mum and dad businesses, is the best way to characterise them. We have hotels, motels, serviced apartments, bed and breakfast operators, caravan parks and our membership is stable. The majority of our members are in New South Wales, about 40 per cent. That is where most of our businesses are operated. We are here today to talk about getting the settings right and working with Government in terms of looking at this particular topic.

The three main points—which are in our submission—are having a definition of what short-term accommodation is, trying to nail that down not just in New South Wales but from a national perspective. There are a number of definitions around. We would like to have transparency of supply. The people providing accommodation, like our members, having their names, addresses and phone numbers so we can identify who we are dealing with and how many. It seems like a moving feast. We want proportionate legislation, similar to what Ms Osmond was talking about. I would not mind answering some of those questions if you want to hit me. I would be happy to take them up in terms of class one, class two, class three buildings and the differentiations there and the specific issues and the code and what we do with regard to safety. We think there should be a registration of operators, a database, particularly for councils in this case.

Australia is in a unique position with Federal and State governments and 564 councils. We would like to have some transparency around who we are as an industry. I include everyone providing accommodation on a commercial basis and those who are supplying it not on a commercial basis but on a part-time or private basis. There are some issues around the topic of regulation. We are concerned about accessibility for the disabled. We are hearing big numbers about the proliferation of noncompliant accommodation operators. We have to have a minimum of one disabled room for every motel or hotel that we open up. If you have a 41 room motel in Dubbo you have to have three. There is a duty of care and a very important responsibility in regard to looking after our disabled Australians and international visitors.

We are concerned about the impact on residential housing affordability. The amenity is big. I know the Committee has been looking at the complaint mechanism. Investment, I would like to take that up as well. With the data we have collected we are concerned about what I describe as a foggy dashboard as to what is going on. A large chunk of investment in our industry is offshore and they want to understand what competition they have and what is on the market for commercial operations before they invest. Insurance is a big point for us, zoning and planning and lastly taxation, which is probably outside the purview of this Committee. I know New South Wales is a beneficiary of goods and services tax, it is a big component. Our industry is a large payer of goods and services tax, income tax and other major taxes. We pay a lot and we want to make sure there is a level playing field. We are looking for definitions and a level playing field. I would be happy to now answer questions.

Mr MARK COURE: How many of your members list their properties on Airbnb space?

Mr MUNRO: We have not done that correlation. We know there are some that do it and that is due to a low level entry fee compared to an online travel agent—which can get up to 15, 20 per cent. I know with Airbnb, for instance, it is 3 per cent and the consumer pays between 6 and 12 per cent commission directly to that company. From a listing perspective it is cheaper. We would not discourage compliant operators to go on to that platform.

Mr MARK COURE: Other than that what are the other benefits of joining up with the accommodation association?

Mr MUNRO: We are a union of employers. There is a multitude of benefits that come with that and a collegiate atmosphere, whether from a buying or services platform or Industrial relations.

Mr MARK COURE: Insurance?

Mr MUNRO: We have insurance schemes from a collective, so mostly it is about the collective employers getting together and getting the best deals for their businesses. Employment is a big thing for us. The characteristic of the tourism industry is muggy. The previous witness said that we are a large employer of people. So, consequently, we are a very labour-intensive industry and the characteristics of our industry, too, is that we are bricks and mortar. There are not many industries that take a bigger risk than us in respect of putting down a building—bricks and mortar—for 50 or 100-odd years and hoping that that market will hold up. In New South Wales we are having a good time at the moment, but that is not always going to be the case. There are always ups and downs, but we will always be here.

Mr MARK COURE: Do you have a complaint process?

Mr MUNRO: We do. We have an online process. If a member of the public has a concern, we do not resolve it; we transact it through the appropriate authority.

Mr MARK COURE: Like police, council?

Mr MUNRO: Primarily Fair Trading.

Mr MARK COURE: You act on behalf of the accommodation owner?

Mr MUNRO: We pass it on and we pass the complaint back to the property owner so that they answer. We believe it is in their best interests to resolve the issue.

Mr MARK COURE: How many accommodation venues do you have on your database?

Mr MUNRO: We have around 1,000.

Mr MARK COURE: Across Australia?

Mr MUNRO: Yes, and we have about 400-odd in New South Wales. There are about 5,000 plus non-members.

Mr MARK COURE: So you have one-fifth?

Mr MUNRO: Yes, something like that.

Mr JAMIE PARKER: You are critical of the platform providers, such as Airbnbs, and call them free riders. You are quite critical, which is fair enough. It is legitimate that you to raise that. Can you tell us why you think that is the case and do you think they bring anything to the marketplace? Do you see any benefit with this platform?

Mr MUNRO: If you are talking specifically about Airbnb, they are a platform, they are a channel. Essentially, legitimate and compliant operators have gone through the whole development application [DA] process of putting down bricks and mortar and complying with the legislation. We have a bona fide interest to ensure we provide a safe environment. Our view about what is on the market now is that a whole lot of people are putting a class 1 building, which is a full-time residential building, on to the market. We do not have an issue with someone renting a room within that home, but we have an issue when they start putting houses or apartments up for rent but do not go through the same compliance regime or development application that we have.

It is an expensive proposition to build a property. It is usually one to four years from concept to completion, and then there is a whole rigour around the safety component, whether it is fire systems, exits, stair

compression. We have to comply with all those things. We see someone putting up a building—which is basically a class 1 building—for long-term residential and all of a sudden they are trying to work in a commercial place as we are but they do not have the same rigour around safety and duty of care that our operators have.

Mr ANOULACK CHANTHIVONG: There is a difference in the definition of your membership base and Mr and Mrs X who builds a house. One is a family home and the other is a fully commercialised operation. Surely you cannot have an equal compliance regime. I note in your submission you also talk about the 90-day threshold.

Mr MUNRO: We looked at it from a different perspective. If we look at it from a safety perspective, it goes back to what Mr Provest was talking about before. We have hotels that are 30 years old that have four-hour fire-rated doors that are still inspected every six months. That is an example of where the regulation is very heavy on us in respect of inspection. It has been the same door for the last 40 years, it has not changed, but we have the tag on it, whereas a house has a 10-minute fire-rated door, which is not fire-rated, in fact. There is a difference in the design of the building as opposed to a commercial building. From a safety perspective there is a huge difference. The level of investment in a typical strata building fire system is around \$3,000 to \$5,000 per unit, just to monitor the fire system. From a safety perspective that is probably the biggest one, I would say.

Mr GEOFF PROVEST: But you are not contemplating changing the fire standards, are you?

Mr MUNRO: We would like to have a look at them, like the example I gave you about the fire-rated door. We think we need a fire-rated door but do we need it inspected every six months? That regime is probably a bit heavy.

Mr GEOFF PROVEST: But in a larger building a four-hour fire-rated door is not a class 1 residential home?

Mr MUNRO: The class 1 residential building is designed for long-term residents, so they know where the exits are, they know where the keys are. They know all that. However, someone in a short-stay environment who wakes up in the middle of the night in a fire, it is dark, they do not know where the exits are, there are no lights, there is no onsite management to direct them to the exits. There is nothing like that, so that is the differentiation that the Building Code of Australia board has come up with. When have you a long-term resident in a class 1 building, they know how to get out. Everyone should have fire extinguishers, anyway, but if you are renting premises to someone who has never set foot in that premises before, there is some duty of care to at least lift the safety standard to have things like fire extinguishers, fire blankets. Unfortunately, in New South Wales we have already had a death in one of these, and the coroner is making an inquiry into that now. We do not want this to keep happening.

Mr ANOULACK CHANTHIVONG: Looking at points 19 and 20 about the 90-day threshold, hypothetically, if that were to be an industry standard, what sort of regulatory changes are you looking at for your membership base and the medium accommodation industry?

Mr MUNRO: It is probably around zoning and planning and ensuring that councils have a clear view. So from an investment perspective—let us take it from that angle—in Byron Bay, for instance, if we are going to build a new hotel we want to understand what is available to us from a zoning perspective for an investment there and what is already out there in the market. I have heard comments from the Byron Bay mayor something along the lines he will not have a kid in school in five years' time because it is such a transient market. It has to be a good balance for the amenity of the locals, a mix of locals and a mix of transient accommodation. That is from a planning perspective. We have to make sure they balance. From an investment perspective, that is very important because we want to understand how many there are. That will come down to the simple equation of supply and demand. If there is excessive supply, we will not go into that market.

In respect of a typical hotel—the Chair was talking about Sydney before—we did some quick analysis of what impact this sort of activity is having. There is something like 16,500 sites in Sydney at the moment. There is a site called Inside Airbnb, so they scrape their website and pump out a set of data, which we have looked at. There are 16,500 sites and they operate at around 13 per cent occupancy on average, which does not sound like a lot but when you put it in the context of our industry, that is equivalent to about eight 200-room hotels being built. That is about a \$700 million or \$800 million investment in New South Wales for those eight

properties. There are probably around 75 to 80 ongoing jobs in each one of those, let alone the construction jobs to get those up off the ground. The definition for us is very important because it determines who can play in that space and, from a planning and zoning and investment perspective, it makes things very clear. All we want is clarity. We are not against competition. Our industry is very competitive. You look at the brands—Hilton, Accor—there are a heap of different brands. We want to make sure there is a level playing field and some transparency around this issue.

Mr ANOULACK CHANTHIVONG: If an individual rents their primary residential property for more than 90 days, what sort of regulatory obligations would you like to see on those property owners?

Mr MUNRO: We are not regulators.

Mr ANOULACK CHANTHIVONG: I know, but what sort of regulations do you think would make the competition fairer?

Mr MUNRO: We would say follow the Building Code of Australia. For instance, class 1b is a bed and breakfast facility.

Mr ANOULACK CHANTHIVONG: Okay.

Mr MUNRO: You have to apply through the council for a DA, you have to essentially have an inspection from a health perspective, from a building safety perspective, and if you do not meet the initial standard of the code, which comes down to a Local Environmental Plan, I guess, you have to get yourself up to code and then make sure that you have a viable, healthy and safe environment for transient guests. That is one example. As I said, we are not regulators, but that could be a solution. That would include things like smoke detectors and disability requirements—the things that a typical bed and breakfast operator has to comply with. That is something that the Government could look at. There is already existing legislation, by the way.

Mr GEOFF PROVEST: Would you advocate that spilling over into home businesses? Currently home businesses that are around do not need a development application [DA].

Mr MUNRO: For home businesses, residents stay there. So there is a differentiation between someone permanently in the home versus a transient. That is the difference you can look at. Someone operating a business from their home lives there. They know the surroundings whereas—

Mr GEOFF PROVEST: But they often have clients coming in.

Mr MUNRO: Yes, but the owner is there. The clients are not going to arrive by themselves and stay overnight and hope they have a meeting the next day. There is a big difference between a transient person and somebody who is resident there.

Mr JAMIE PARKER: I would like to ask a question about the complexity of this issue. A lot of people have spoken about exempt or compliant sub-90 days—or sub a period. If it is either exempt or complying there will be a box to tick or a private certifier will say, "Yes, you satisfy those controls." I am not saying we will do this but I am just playing the tape through to the end. If, after 90 days you are no-longer a short-term stay operator, exempt or complying, but a commercial operator, that would go to the question of rates. If a person is running what the Government defines as a commercial operation should that person be paying commercial rates rather than residential rates? I am thinking what the knock-on effect would be if we were to go down that track. You are talking about a 90-day threshold. Would you say that if somebody—an absentee landlord, for example—rents their investment property for more than 90 days, that the property should be considered to be commercial and should attract commercial rates rather than residential rates?

Mr MUNRO: I guess we can only give an opinion. What do you think, Michael?

Mr GEORGESON: That is not something we have prosecuted for consideration.

CHAIR: Everyone who rented a house, then, would be up for commercial rates.

Mr JAMIE PARKER: You do not have to answer that. I just thought you may have thought of it. It is something that we need to consider. If we were to go down that path would we create complexity down the track

for councils? Would councils thinking they could get their hands on a pot of money say, "Maybe we can charge these people commercial rates." I understand that you have not really thought about it. I just wanted to raise it for the record. Thank you.

Mr MARK COURE: Has the increasing popularity of online short-term letting portals like Airbnb and Stayz affected your members' businesses?

Mr MUNRO: We did a survey recently where we had nearly 300 respondents. They rate this issue in their top three issues.

Mr MARK COURE: What were the other two?

Mr MUNRO: On-line travel agents [OTAs]—a similar medium in terms of costs, rate parity, last-room availability, terms and conditions of agreements—and on-line reviews. All their concerns, by the way, were online. Their number three concern was about the impact of non-compliant accommodation on their businesses.

Mr MARK COURE: That brings me to my next question. Do you think your members who are members of the Accommodation Association of Australia have adapted to the online world?

Mr MUNRO: The good ones have. Some are still faxing us.

Mr MARK COURE: What is that?

Mr MUNRO: Yes.

Mr MARK COURE: I only just got rid of my fax.

Mr MUNRO: I think 10 per cent or 15 per cent of them still fax their membership forms to us. We have 20 members in Dubbo. As I said, we represent a lot of regional operators.

Mr MARK COURE: They have the internet.

Mr MUNRO: Absolutely. But, as I said, a lot of them still use a fax. A lot of them have adapted. The problem for a lot of them is that it is a dynamic industry and every day they are trying to figure it out, essentially. They do see that there is leakage from their businesses and that their businesses were better.

Mr MARK COURE: How would they determine that? How would they know the effect that Airbnb or Stayz would have on their business as compared, say, with the weather or the economy or that fact that they have not painted?

Mr MUNRO: It is not definitive. It is anecdotal. There could be a number of reasons, but they see that this is a new form of accommodation. Maybe they have had a conversation with someone that now stays in one of those places, but it is anecdotal, not based on data. Our members have not gone around and surveyed the local council and said, "What is happening here?" Something we should probably do, though, is approach councils and say, "Why is this activity going on when I spent all this money on my DA and on my property? You are allowing this activity to go on." At the end of the day, councils need to enforce the regulations on this matter. The anecdotal opinion of the business owners—we collected 300 surveys who were all saying the same thing—is pretty important.

Mr MARK COURE: I understand that, but I think it is really hard to determine something like this. I was in a cab the other day and I said, "How's business?" He said, "Uber is affecting my business." I said to him, "I think it has probably got to do with the fact that you have a kebab in here and it stinks like garlic more than it would in Uber."

Mr MUNRO: But you still rode with him.

Mr MARK COURE: I did actually. He went in the wrong direction, mind you, when I said to him that I was a State member of Parliament, but that is another issue for another day. It is very hard to determine the effect.

Mr MUNRO: Yes, it is hard to determine the market impact. That is what we have tried to determine in our study of Sydney and that is why we came up with those numbers. There are 16,500 of them and 61 per cent were entire home apartments. These were unoccupied dwellings being put onto the market. That is how we did our calculation. We did not look at private rooms or shared rooms, which make up 38 per cent and 1 per cent respectively. The myth is that this is a cottage industry. It is not; this is a big industry. It is being operated from off-shore jurisdictions like Ireland. Essentially we tried to look at Sydney, because that is the only data available to us—through the backdoor of someone who has created a site to scrape it. We would like to see these multinational operators who are in our jurisdiction give full and frank data to our regulators so that they can look at who is doing what and where.

Mr MARK COURE: We talked briefly about maybe limiting or prohibiting short-term holiday letting in certain areas. Do you think there is a benefit in that?

Mr MUNRO: I guess I would answer that by saying that we are probably never going to build a major international hotel in Ulladulla. So there is probably some sense in allowing—zoning appropriately—holiday homes in that area. My last holiday was down at Milton. It is a beautiful area on the South Coast of New South Wales. I do not think a new Hilton will be built there in the next 100 years. We want transparency about how many there are and the supply-and-demand model so that if we do want to do that we can understand it and it is zoned appropriately. If someone wants to do it, that is fine, but we should make sure that there is a minimum safety level so that when someone goes into that home we do not have to worry that there is a front-page story in the UK *Daily Mail* saying that people are dying in New South Wales because of a lack of regulation.

Mr MARK COURE: I have probably asked my next question to every person today. What can councils do in this space? Is there something that local Government can do better?

Mr MUNRO: The common thing you hear from councils is, "We do not have the resources. We do not have the information." They rely on a complaints-based system. They said to us, "We want to enforce the law. If you want to go after these guys you have to go and stay there, get a witness statement and then come back to us." It suits these guys from other jurisdictions to come in here and proliferate with this product because no-one knows what is going on. So we would like to see transparent data and standard definitions. That would enable us to give the information to council. It would be a desk-top exercise. We could go in and say, "At 21 Baker Street they are operating on this premises and we need to fix it up." If there is a new bit of legislation where they have to have minimum safety standards and health inspections to operate, let them do that.

Mr MARK COURE: Attempt to comply and tick a few boxes.

Mr MUNRO: Yes. At the moment councils have got their foggy goggles on and do not know what is going on at their own councils.

Mr MARK COURE: This is only the second day of this inquiry and this has been brought to the Committee's attention a couple of times now. Some are taking it seriously, particularly, Tweed, Ballina, the City of Sydney and Randwick councils and a few others, but some do not really see it as an issue.

Mr MUNRO: No. That is an education piece I guess as well from us and from the proponents who are looking to undertake this activity.

Mr MARK COURE: But it is a fine balancing act, is it not?

Mr MUNRO: It is, but there is also some pretty good legislation there already from the Australian Building Code that should be followed. We believe that if councils were given the data and they were given the legislation, if they put the two together and put someone in a room for a week or two they would probably be able to figure out who is doing the right thing and who is not doing the right thing. I do not think it is that hard; it is the absence of the data and the standard definition that is causing this problem. That is something for the Government, the standard definition—

Mr MARK COURE: Sorry, I have one final question. Have you ever stayed at an Airbnb place?

Mr MUNRO: On the record, no.

Mr MARK COURE: I just wanted to catch you out.

Mr MUNRO: But I have done an Uber ride.

Mr MARK COURE: So you are halfway there.

Mr MUNRO: I did not pay for it, someone else did. I just wanted the experience. People keep putting Uber and Airbnb together. At least with an Uber car it has got seatbelts, airbags and all the compliant things that they need to register that car; for Airbnb accommodation you can put a Kombi van on the beach and start selling it, as we talked about before. Mr Provest asked, "Can I put anything on there?" You can, and that is the issue. I would not put my daughter in one of these things because I do not know who is staying there and what the set-up is. I think we need to really start getting this a bit tighter.

Mr JAMIE PARKER: My Uber driver was complaining that the taxis were competing against him—so that is the experience I had. You might have heard the Tourism and Transport Forum talk about registration earlier?

Mr MUNRO: Yes.

Mr JAMIE PARKER: Would you support the proposal they are putting forward?

Mr MUNRO: Yes. I do not know if it should be national, state or local but there needs to be some sort of database registration and our members would be happy to comply with that because they have already gone through the DA process. So we have already got the data predominantly with councils but it probably needs to escalate up to the state and federal levels so they can understand it.

Mr MARK COURE: We can only recommend federally; as much as we would love to, we do not have the power to legislate.

Mr ANOULACK CHANTHIVONG: That registration process would only be for those who would be over and above the industry threshold, is that correct?

Mr MUNRO: If you are talking a dollar then by definition you are operating a business and by the Australian Tax Office's [ATO] definition you are there to make a profit so you should be registered in our view. If you start selling accommodation commercially, that means taking a dollar for it and not sharing—not I am going to swap a house and you are going to give me yours—if you are talking a dollar that very first dollar should be registered and we understand who that is because that is operating commercially.

Mr ANOULACK CHANTHIVONG: So the industry threshold really does not apply?

Mr MUNRO: No, as soon as you start returning a dollar commercially it is only the ATO definition we would say.

Mr MARK COURE: You would be happy with a minimum requirement of registering a property through local government—

Mr MUNRO: No, is the quick answer to that. That is just part one of it, and it is an important piece, but then the second part is bringing them up to a standard that has—

Mr MARK COURE: That was the point I was about to make.

Mr MUNRO: If they were up to the standard that commercial operators were operating under and, like I said, those 20 members in Dubbo who have invested all their life and gone through the process and the rigour they have had to go through, we have no problem with that. You can bring on as many companies, as many brands, as many operators as you want as long as they go through the same process that our guys went through to put down all their investment in that one bricks and mortar property, then we have got no problem.

CHAIR: Have you noticed a decrease in long-term rentals in coastal towns in particular?

Mr MUNRO: We do not really monitor that, do we?

Mr GEORGESON: Anecdotally we do get reports and individual cases where long-term accommodation has been pulled off and placed in short-term.

CHAIR: Last week I did a check at Ballina and there are only 20 houses with long-term stays. There are hundreds of short-term rentals but for the long term—let us say for argument sake that someone has been transferred to work for a period of time on the roadworks that are taking place on the Pacific Highway there—road work in those coastal areas is driving house prices up but the number of houses available for long-term stays are getting harder to find.

Mr MUNRO: That was the point we made about housing affordability and driving people out of the market because generally speaking there is a higher yield on short-term letting. I know that some of these companies are going out there and marketing.

CHAIR: They are actually promoting the short-term stays.

Mr MUNRO: They are saying, "I do 6 per cent return but you can do 13.5 per cent by doing it on a short-term market." Unfortunately, it pushes people out of residential housing.

CHAIR: In conclusion, the Committee may wish to send you some additional questions in writing. Your reply to those questions will form part of your evidence and be published. Would you be happy to answer any additional questions?

Mr MUNRO: We would and we would like to thank the Legislative Assembly for listening to us today on this very important topic. Thank you.

(The witnesses withdrew)

(Luncheon adjournment)

FREDERICK GRANT WRAIGHT, Director, Tea Gardens Real Estate, and

TIMOTHY PATRICK McKIBBIN, Chief Executive Officer, Real Estate Institute of New South Wales, sworn and examined:

CHAIR: I welcome witnesses from the Real Estate Institute of New South Wales.

Mr WRAIGHT: I am a licensed real estate agent holding five real estate licences and a past chair of the Real Estate Institute of New South Wales' holiday short-term rental chapter. I am also a director of the Holiday Rental Industry Association.

CHAIR: Do you have any questions about the information you have been sent and our process today?

Mr McKIBBIN: No.

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

Mr McKIBBIN: Only to say that I think this inquiry is long overdue. When I look at the amount of money that is attributable to this area of our economy, I think the recommendations of this Committee will be very important to everybody within the State.

CHAIR: That is what we are here for.

Mr McKIBBIN: We are on the same page.

CHAIR: Mr Wraight, would you like to make an opening statement?

Mr WRAIGHT: I thought I might give the Committee a brief rundown of my experience in holiday rental to provide you with an opportunity to convey questions to me that may have some considerable depth, given my experience. I have been involved in holiday rental management since 1982. Back in time we developed a digital application to provide backend management for holiday rental agents. That application went on to be recognised as the country's leading application for holiday rental agents, providing service for over 200 holiday rental real estate agents. In my previous time I have been chair of the Real Estate Institute of New South Wales' holiday short-term rental chapter. Our agency group of two real estate agents currently manages 400 holiday rental properties, which interestingly represents 2 per cent of the whole holiday homes currently rented in New South Wales.

We have developed over the years an understanding that as holiday rental agents we are in the hospitality industry and nothing to do with the real estate industry—I will not say that has nothing to do with property rental but we are in the holiday rental hospitality industry. We have had a most satisfactory relationship with Great Lakes Council, which is the local government area [LGA] stretching from Hawks Nest Tea Gardens on the north shore of Port Stephens to just north of Forster. The Great Lakes LGA currently has just on 2,000 holiday rental properties. I approached the council four years ago to formalise holiday rental. There was some risk in that, because like with many local government areas holiday rental did not have a place. I stood a chance, representing 12 other agencies, that the council could pull the pin on holiday management, which would have been devastating for our economy and our own practice.

However, Great Lakes Council congratulated me on the approach and over the ensuing four years we have worked up a more than valuable relationship with 14 practising holiday rental real estate agents—so much so that the council has now adopted an amendment to the local environmental plan [LEP] that is going to allow holiday rentals in the Great Lakes LGA, obviously with some conditions attached. You could almost say that a model has been set up in the relationship we struck up with Great Lakes Council. One of the issues the Committee has brought up is about compliance and how complaints are handled. Great Lakes Council has a position on its website for holiday rental complaints.

I spoke with the council in preparation for appearing before the Committee today about complaints received during the summer holidays and the council has recorded four complaints from neighbours and others, of which none was from properties managed by real estate agents. The four complaints were complaints the council had to act on, not complaints that somebody did not put out the garbage bin or parked in the street—so serious complaints. The Great Lakes council is very supportive of agent practice. At various meetings we also

engaged with private owners and the Great Lakes council spelt out in no uncertain terms that they must also adopt good practice in how they managed holiday rentals. Testimony to all of that is that out of the 2,000 properties in the last three month period there have been only four valid complaints that needed acting on. As a real estate agent with many years of experience with holiday management we, as do many other agents, take compliance as a major issue. There is no regulation about compliance currently. We totally endorse the code of conduct, as do many agents. The code of conduct provides us with a platform of behaviour and it is almost a third party platform.

We did not create it. It is a bit like a blood test, you cannot blame the doctor for a bad blood test, it is what it is. We certainly advise that all the agents in the Great Lakes LGA comply with the code of conduct and it certainly has been very well received. Just on the compliance process, I heard earlier on today Mr Jamie Parker asking Airbnb if they have a register of bad guests. The application we have created that is now managing over 17,000 properties has a bad books register inside it. Whether it breaches privacy I have absolutely no idea. However, it has over a thousand names in it and it certainly assists lettings when they are presented with a party that has previously caused bad experience in properties around Australia. That is all I have to say in my introduction. I am more than happy and willing to answer as many questions as I can.

Mr JAMIE PARKER: We have not had a submission from the Great Lakes council. We have this issue of permissibility and zoning and other related issues and we have the amenity issue. You have spoken about the complaints process. Could you tell us about Great Lakes council and how they have dealt with the local environmental plan [LEP]? Are they trying to vary the LEP definition of residential and then including that in their zoning? What approach are they taking?

Mr WRAIGHT: That is a very interesting question. I do not have a copy of the draft LEP. The draft LEP has been adopted and passed unanimously by council. It is yet to be put in place. It quite simply focuses on behaviour, on allowing residential properties in RU2 zonings to be used as holiday rental properties. Up to four bedrooms and eight people are allowed, anything above that number development applications [DA] have to be submitted. Other than a bunch of other stuff I will not go into that is essentially it.

Mr JAMIE PARKER: Forgive me, we do have the submission. That council says that where five bedrooms or more are to be used for holiday rental development consent will be required, any holiday rental of less than five and no consent is required?

Mr WRAIGHT: Yes.

Mr JAMIE PARKER: That has not been implemented yet, has it? You cannot speak to the effectiveness or otherwise of that process?

Mr WRAIGHT: No, I cannot. It has been adopted by council at a full council meeting. It is yet to go through the planning process to go as an amendment to the LEP.

Mr McKIBBIN: It is a very good question because of the disparity in approaches councils have across the State. We have something in the vicinity of 150 councils. I believe their approach is dependent upon how dependent that particular area is economically on this industry. That really is not a satisfactory way of addressing planning. What would be of enormous assistance to those who practice in this area would be to harmonise the process right across the State and come up with a planning system that responds to this industry rather than having local councils say it is very important to us therefore we will do something about it and make it legal or in the alternative turn a blind eye to the activity.

CHAIR: That is one of the reasons we are all here. Every council has a different approach to it in their interpretation and we are all here now trying to work it so we shall come up with, not so much one suits all, but so there is an equal playing field for everyone and we know guidelines are put in place.

Mr ANOULACK CHANTHIVONG: Mr McKibbin, in your submission some of the regulatory points you are making are in terms of the licensing regime. Is it the Real Estate Institute's view that this should be applied universally regardless of how many days or size of the property?

Mr McKIBBIN: Are you talking about licensing agents?

Mr ANOULACK CHANTHIVONG: The licence to operate?

Mr McKIBBIN: I will answer your question this way: I struggle to understand how we can regulate the means by which somebody occupies a property as opposed to their conduct. I think it is the latter that should be our focus. By way of example, if one of you gentlemen were wealthy enough to have a holiday home in a beach area and I was not wealthy enough to have the same but was able to rent a property right next door to you, you could go to that property, enjoy your family and the beach and the facilities and that would be a legal activity. I could come and rent the property next door in a holiday environment and conduct myself in exactly the same way and yet in some councils that becomes an illegal activity. I struggle with that as a matter of principle because I think the reality of it is the conduct of the people on those sites should be the focus of our regulation and not the means by which they occupy it.

Mr ANOULACK CHANTHIVONG: Following on from that you made some points about property owners being accountable for the occupier's behaviour and that should be enforced. How does that work?

Mr McKIBBIN: Again Mr Munro mentioned the code of conduct there. We are supportive of the concept of the code. I have some issues about the maintenance of the code. I would like to think that the code was a bit like the Australian building standards. If that code was to be owned and controlled and maintained in a completely independent environment my personal view is that would give it a lot more rigor and credibility. Back to your question, I think it gives a great deal of guidance and accountability. I favour low regulation. I think that industry in many instances—I am in another campaign on another front making that same argument, which I think is sustainable here as well—that industry does better to regulate itself through that particular code. That makes my point with having the independent ownership of the code where disciplinary matters and maintenance of it can be held by somebody that does not have a commercial interest.

Mr ANOULACK CHANTHIVONG: That is this code of conduct for the institutes, is that an industry regulated environment or a Government regulated environment?

Mr McKIBBIN: I would have thought industry related but I would have thought it would come through an industry body that is removed from a commercial interest. Again the only example I can bring to mind in those circumstances are the Australian building standards. That particular organisation says this will be the standard. If manufacturers and various users of those products find that by doing that it costs them additional money that is a little unlucky for them because these people say these will be the standards and you either meet the standard or you go.

Mr MARK COURE: What involvement do you see for council—local government—in this space?

Mr McKIBBIN: I think there is certainly a partnership with local government, but I was dismayed to read—and I have it in our submission—that the Independent Pricing and Regulatory Tribunal of New South Wales found 71 per cent of metropolitan councils and 56 per cent of regional councils were not fit to continue operating in their existing capacity. They would certainly have a lot of difficulties currently in fulfilling their side of the partnership, if you will. Again, I hark back to my original point when I said to you it is more about focusing on the conduct of people that are there.

I do not believe there is any report, and there may be—I will stand corrected—that says that people who occupy the premises as a tenant are going to necessarily, as a consequence of that, be more disruptive in the neighbourhood than somebody who occupies it as an owner. Again, back to my example of somebody who was wealthy enough to have a property, I do not think you can say because you are wealthy, because you have that property, it necessarily means you will be better behaved than somebody who is a tenant of the property next door.

Mr MARK COURE: Mr Wraight, what is your view on that? What involvement do you think local councils can provide in this situation?

Mr WRAIGHT: Who is going to be the regulatory authority? If we have regulation, who is going to administer the regulation? For a State agency that does not have branches everywhere, it is very difficult. Bringing it down to the local authorities, police do not really want to get involved in this type of advocacy. It seems to me that councils across the State have the perfect platform to administer regulation. However, they all have limited resources and they are going to need funds to pay for it.

Mr MARK COURE: Do you think there are areas in or outside Sydney that you could honestly say are more or less suitable for short-term holiday letting?

Mr WRAIGHT: Absolutely.

Mr MARK COURE: Which ones?

Mr WRAIGHT: Across the State we have very different environments. We could start off in the Snowy Mountains, we could end up at the Tweed, we could end up in Byron Bay, we could end up in central Sydney, we could end up at Bondi. I have named four that all have their own special application. It does make it very difficult if you allow council to set the rules because it will be up to the council laws and their own agenda to set the rules that may not be to the betterment of the local environment, the local economy, local visitors. If there was to be a statewide policy underpinned by a code of conduct, then it is up to the local councils to introduce that policy and to administer that policy. It has to be broad right across the State.

Mr MARK COURE: What has been the impact to your members over the past 10 years with online platforms? Can you elaborate on the changes that have occurred?

Mr WRAIGHT: Absolutely. We all now know it as the digital disruption. The disruption is not necessarily burdening us, it is benefitting us, but all our lives have been affected by the digital disruption. As we move through it, we are now seeing the results. When digital technology was first embraced, the effects were not felt. We are now feeling the effects, whether it is in the retail industry, whether it is in this area.

Mr MARK COURE: And your members are adapting to that change, no doubt, or trying to?

Mr WRAIGHT: Certainly. I was listening to some of the commentary earlier today. To some extent, what technology has done to this facet of the industry is it has removed the ability to have a one-on-one relationship. In the old-fashioned days—I think it was Mr Munro talking of the hotel/motel operators in Dubbo that are still—I refer to it as the parchment and plume method, but you had a relationship with a potential guest.

Mr MARK COURE: They are still using fax machines.

Mr WRAIGHT: Here we are today, just a couple of clicks, credit card, bingo, we have spent \$10,000 on a property. From that perspective, the operator does not have the opportunity to meet and greet, and feel and touch, if I may say that. If we book an airline ticket, we simply jump on the Qantas website, pay our \$1,000 and next minute we are in London. However, when we board an airline, the conditions for which we have boarded that aircraft are onerous and probably 100 pages long, if we ever read them, and they have clear and direct regard for our responsibility and vice versa. In a nutshell, what has it done to our industry? It has forced us to be far more vigilant, far more perceptive of potential behavioural activity, and, therefore, from the operators' perspective it is abundantly clear that we need regulation—abundantly clear.

Little has been mentioned today of regulation from the consumers' perspective, but they clearly need to know that there is regulation in place, that there are property standards. Portals will accept properties, irrespective of standards. There is one particular portal, and I have seen it with my own eyes, and I think the gentleman reiterated today that we can hire a teepee with no running water, no risk management perspective, no sanitary arrangements, just a teepee in the front garden. Where is the regulation for that?

Mr MARK COURE: Are any of your members of the Real Estate Institute of New South Wales [REINSW] advertising their properties on Airbnb on behalf of clients?

Mr WRAIGHT: That is an interesting question. Airbnb has a specific market type. There are a limited number of REINSW agent properties on Airbnb, a limited number. It would not represent a high figure. Other portals such as Stayz and HomeAway would have a typically higher proportion. We heard the Stayz gentleman this morning describe a typical Stayz consumer as being the 45-year-old happily married mother—whether she is happily married, I have no idea.

Mr JAMIE PARKER: Maybe she needs a holiday.

Mr WRAIGHT: A 45-year-old mother or somebody, whereas I suspect the Airbnb traveller—and I say I suspect because I am not privy to their client base—will be perhaps younger. He will be an inbound traveller, he will be looking—

Mr MARK COURE: He or she.

Mr WRAIGHT: He or she, I beg your pardon. Thank you. He will be looking for a shorter-term occupancy. To answer your question, I would say that I do not have the number to report to you, but it would be a relatively small number.

Mr McKIBBIN: Through you, Mr Chair, I would like to address one question that Mark asked about, which is dealing with compliance while you are on the property or dealing with disputes or complaints. If there was some unruly conduct which brought the neighbourhood's attention to a particular property, and that was a tenanted property, a holiday rental, and next door they conducted themselves in a completely same way—it is how it is conceptualised—I wonder what the response would be? Would we ring the police or the owner, or do we ring the council ranger for the tenant? I think that is unlikely. I think the response would be identical. Again, it highlights to me that it matters little about how somebody is there.

Our focus on all occasions should be the conduct of the individuals that are on that property. In this whole discussion over the past couple of years, that has been lost. There have been people who have drawn the conclusion that because this property is rented, as a consequence of that, it becomes a necessity that most of those people who occupy it conduct themselves in an unruly manner, and we hear of buck's weekends and other things where people have gone away, and certainly that happens. Equally, that is capable of happening in somebody's own property. They can go away to dad's or mum's holiday house, beach house, whatever the case may be, and conduct themselves in an unsavoury manner. Again, I think it is important to stay focused on the fact that we should be focusing on conduct, not the means by which we occupy.

Mr ANOULACK CHANTHIVONG: Mr McKibbin, is it your view that there should be a structured licensing regime? If somebody rents out their primary place of residence or an investment property for half of the year, should they be on the same licence as an individual who rents out their place for three weekends a year? What is your view of having a differential licensing regime?

Mr McKIBBIN: I tend to think that the consumer has equal entitlements on all occasions. So if you are there for one night or 365 nights your expectation of the regulatory environment—be it self-regulatory or prescribed by Government—would be identical. I have not considered arguments to the contrary but that would be my initial thought.

Mr JAMIE PARKER: We heard arguments similar to yours when we were in the Tweed. There were two schools of thought. One school of thought is that it is all about behaviour. It does not matter whether it is short-term or long term, whether they own the property or rent the property, if they are staying there it is all about behaviour. There is another school of thought which is that it does matter what type of accommodation is provided in the dwelling. You will hear some people, particularly in stratas, say that the issue is about accountability. If someone lives there full time there can be pressure brought to bear against them as full-time residents. But if people are changing every single weekend, by its very nature, that leads to more of a challenge for neighbours and strata committees to ensure compliance and good neighbourly behaviour. Do you think there is merit in that argument or do you think that, as you have said, it does not really matter? Is the behaviour of the tenant what matters and there is no real reason why a short-term stay accommodation place would promote more challenges for neighbours?

Mr McKIBBIN: It is a complex question, because each strata potentially has different obligations. Going into a complex strata arrangement you may encounter some of those problems. I think that most strata obligations are based on common sense. There are some exceptions to that, where there are issues with pets, smoking and things along those lines, where there are specific directions. I think that for somebody who was going into that environment the property manager would be able to draw that to their attention.

I am aware of instances where that activity is said to be illegal, yet within the same building there are multi-national companies who have need of a rotating work force so they own a property in that building. Those companies bring some of their executives in for two or three months and put them up there. Those executives rotate out and the company brings somebody else in. To me, that is no different to somebody who owns the

property allowing exactly the same activity to happen in the same building. One would be illegal and one would be legal. To me that seems quite odd.

Mr JAMIE PARKER: My last question is about this issue of the threshold. A lot of people have spoken about thresholds and what should and should not be considered as a definition of short-term accommodation. It is obviously a challenge and the definition is contested. We heard Airbnb say, for example, that over 80 per cent of their properties—correct me if I am wrong—are leased for under 90 days in a calendar year. So if there was to be some kind of 90-day rule like there is in the London or other places, what would that mean for your industry? Obviously you are not in the Sydney CBD or in the metropolitan region. What would be the average amount of time that your properties would be leased out in a year?

Mr McKIBBIN: That question would be better for Mr Wraight. In answer to the first part of your question—I would have to check this—I think the Residential Tenancies Act talks about the commencement of a residential tenancy. So if there are a certain number of days that you stay at a property then it automatically becomes a residential tenancy.

Mr JAMIE PARKER: That is right, but Airbnb is one day here and three days there.

Mr McKIBBIN: You were mentioning something about 90 days. Maybe I did not fully understand your question.

Mr JAMIE PARKER: Yes. Just to be clear, when we asked what the definition was of short-term stay accommodation, Airbnb said to us that over 80 per cent of their hosts share their space for less than 90 days in a year. So, if this committee was to say, "If you rent it out for more than 90 days you need a DA," 80 per cent of Airbnb's hosts would not be included. But for your kind of business I would assume the vast majority would be rented pretty much full time. Is that right?

Mr WRAIGHT: I can answer that. Under the Residential Tenancies Act you are required to have a signed lease if you are occupying a property for 90 days or more. So 99 per cent of holiday and short-term rentals are for less than 90 days. I remind the committee that an agent does not have an agreement with a holiday guest. He is simply arranging a licence to occupy that property. He is arranging the licence with the owner for the guest. That is all it is. There is no residential tenancy agreement. The licence to occupy will then include that particular owner-manager's or the agent's terms and conditions. To answer your question about occupation, my recent survey of many agents suggests that properties are enjoying an average of 42 per cent occupancy across the board. So if you are suggesting 90 days—

Mr JAMIE PARKER: That would include a whole lot of your properties.

Mr WRAIGHT: Yes, there is 42 per cent occupancy. So in a year we are talking about just under 180 days, which is double your 90 days.

Mr McKIBBIN: Sorry, I might have misunderstood the question.

Mr JAMIE PARKER: That is all right.

Mr WRAIGHT: It would be a hindrance if it was reduced to 90 days. Then if we are saying that a DA has to occur the local government areas [LGAs] across the State would not be able to handle the thousands of DAs they would have to process.

Mr JAMIE PARKER: That is similar to the evidence we heard in the Tweed.

Mr ANOULACK CHANTHIVONG: Can I just confirm something. You said that if you have a stay of 90 days then the Residential Tenancies Act kicks in. Is that 90 days continuous?

Mr WRAIGHT: Yes.

Mr ANOULACK CHANTHIVONG: Mr McKibbin, you said that the property owners must be held accountable for their properties' short-term rental and for occupier behaviour? Can you elaborate on how that works?

Mr McKIBBIN: I do not think that is a huge departure from the obligations that somebody has for their tenant. If one of your tenants creates a problem in a residential environment in a strata then their activities can be reported, and are reported, through the strata or to the property manager. The property manager will respond. Ultimately, in a strata the owner of that property is required to respond to complaints and is responsible for damage, and the like, that is caused by their tenants. They may be able to recover that from the tenant; nevertheless, they are primarily responsible. So, again, I do not see a huge departure from this, as I would in the residential environment.

Mr JAMIE PARKER: I would like to talk about the Great Lakes LEP proposal. They are proposing that if a property had more than five bedrooms it would require development consent.

Mr WRAIGHT: Correct.

Mr JAMIE PARKER: How many properties do you imagine would fall under that category of more than five bedrooms?

Mr WRAIGHT: Of the 2,000 properties currently holiday rented in the Great Lakes LGA there are 26 properties that have five-plus bedrooms.

Mr GEOFF PROVEST: The difficulty here is in the definition, is it not? I know that in the Tweed it is an illegal operation. Currently you cannot do it, but there are 2,000 there. A quick fix would be to change the definition or move it out, similar to what they have done in Queensland. But that does not get you over the issue of the rights of the surrounding residents. That is where you get codes of conduct kicking in, and mechanisms with which to deal with complaints. Am I looking at it too simplistically?

Mr McKIBBIN: I do not think so. I think it has been classified, in New South Wales at least, as a commercial activity. I can see the arguments for classifying it that way. Somebody has bought an investment property; they expect a return. That looks commercial to me. What I cannot reconcile is that if that is commercial then in the residential market—when somebody buys an investment property, rents it out and gets a return—that too must be commercial. In one instance it is classified as residential and in the other one it is classified commercial. I think we have to say that they are both commercial or that they are both residential. You decide where you are going to let them land. I cannot see the difference between the two activities.

Mr GEOFF PROVEST: Ultimately taxation becomes an issue with these properties.

Mr McKIBBIN: I would have thought that any income you would earn would still be assessable—sorry, whether or not somebody is declaring all the income, if that is where you were headed, is something that I could not comment on. This is open to people in the residential environment as well—for example, if you have a granny flat in your back garden and you are leasing it out. I am sure there are instances of that across this country. Again, I do not think there is a monopoly on holiday and short-term rentals for tax evasion.

Mr GEOFF PROVEST: I get the feeling from the way the Great Lakes Council is dealing with it that your members are pretty happy with the direction in which this is going?

Mr WRAIGHT: We are more than happy, but if I could just add one thing? Mr Parker raised the issue of data. It would appear that we all suffer from not knowing the exact numbers. Many years ago we received from the Australian Bureau of Statistics [ABS] a questionnaire about how many bed nights we had and how much income was earned et cetera. Where that data ended up I have no idea, but it would seem to me a wonderful opportunity for the Committee to understand if it had data. How do you collect the data? It is not difficult. You have portals with online activity so they would only have to press a number of buttons, and I believe the Real Estate Institute [REI] has about 120 practising agents involved in holiday management in New South Wales. So it would not be difficult to collect data. Maybe the ABS could be encouraged in its next census to collect data. Without data we do not have a positive direction in knowing who is doing what to whom and how often they are doing it, to put it bluntly.

CHAIR: In conclusion, the Committee may wish to send you some additional questions in writing. Your reply to those questions will form part of your evidence and be published. Would you be happy to answer any additional questions?

Mr McKIBBIN: Yes.

Mr WRAIGHT: Yes. Thank you for the opportunity to appear.

(The witnesses withdrew)

AUSTIN DAY, Solicitor, and

MICHAEL FRANCIS HEANEY, Chairperson, Owners Corporation Network, sworn and examined:

STEPHEN MURRAY GODDARD, Chairperson, Owners Corporation Network, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. Do you have any questions about the information you have been sent or the procedure to be followed today?

Mr DAY: No.

Dr HEANEY: No.

Mr GODDARD: No.

CHAIR: Would any of you like to make a brief opening statement?

Mr GODDARD: I remind the Committee that the strata title legislation which brings us here was original legislation from this place in 1961 and it has spread to every jurisdiction not only in the Commonwealth but also to North America and Europe. This invention from the New South Wales Parliament to subdivide land vertically has brought us here today because strata subdivision has had to endure short-term letting not as a recent phenomenon but since 1961. Letting pools have been a phenomenon with which strata schemes have had to deal without having any capacity or authority so to do. Initially letting pools started to appear as a commercial phenomenon on the Gold Coast and spread along our coastal foreshore wherever tourism was available. The traditional letting pool was made up of a residential manager gathering individual lots from willing owners to create what would become a defacto hotel or short-term letting venue in our tourist areas.

That letting pool phenomenon even arrived in the City of Sydney where we started to see letting pools as a new commercial phenomenon where you could gather residential leases within a building and the next thing you know you have a defacto hotel in Kent Street. The difficulty owners corporations have in dealing with letting pools is found within the strata legislation. Section 49 (1) of the Strata Schemes Management Act provides no by-law is capable of operating to prohibit a lease relating to a lot. Section 49 (1) in our current legislation was found in our original strata legislation in 1961 and that section continues in the Strata Schemes Management Act 2015, yet to commence. It is a simple proposition from the Owners Corporation Network—that is, it is incumbent upon you to empower owners within strata schemes to have the right to choose how their common property will be used.

It is not good enough to labour under the naive property philosophy that a person who purchases a strata lot has property rights that do not require any regard to be given to any of the other owners within the scheme. I remind the Committee members that when you buy a strata lot you are not buying land, you are purchasing cubic air space, all six external boundaries of which are co-owned with your fellow owners. That co-ownership, that cooperative position, casts upon you as an owner in a strata scheme a duty of care as to how you will use common property and how you will co-exist within that cooperative situation with your co-owners. The Owners Corporation Network comes to the Committee today to alert its members to the fact that section 49 (1) of the current Strata Schemes Management Act, no by-law is capable of operating to prohibit a lease relating to a lot, is a section of an Act in this Parliament that disenfranchises the owners in strata schemes from the right to choose.

The benefit of your inquiry is to underline in red this breach of what I would choose, on behalf of the Owners Corporation Network [OCN], to call a fundamental breach of our democratic right. It is our submission that we need to amend section 49 (1), in simple terms, by simply adding the words "provided that this section shall not apply to any bylaw adopted to regulate the impact of short-term letting of a lot on common property or the amenity of the scheme". It is a simple amendment and I am sure it can be polished to meet the broader need. The purpose of the OCN submission to you today is to alert you to the need to put the horse before the cart. Before the Parliament can look at the regulation of short-term letting, perhaps it is incumbent upon the Parliament to give owners within strata schemes the right to choose whether or not short-term letting or letting pools—whatever phenomenon you choose to call it—will or will not be placed in the building.

OCN has no doubt the reason this inquiry is expressing concern about short-term letting, which was not a concern from 1961 until recently, is that letting pools have now found a digital platform. Letting pools used to be based upon a resident owner or, in the worst examples, a de facto hotel environment where a commercial interest had the letting pool in the building. We now have a digital platform that aggregates owners from everywhere, in buildings everywhere, and brings about an outcome that is impacting more buildings than previously possible because of the digital platform. I again underline in red the need for owners to be given back that democratic right to decide whether their building will form part of a letting pool, to decide how common property will be used. My fellow witnesses can now turn at length to the issues that owners corporations have had to deal with in the absence of choosing, with the imposition of the letting pool, digital or analog.

Dr HEANEY: Thank you for allowing me to speak today. We have documented our evidence extensively. I have an education research degree, a PhD. I did some of the first major research in the world on the determinants of quality education. I have been told I have to present data to you, so I have tabled a document. If you turn to the introduction, on page 1, you will see we collected financial forensic reports, quantity surveyor reports referring to how much electricity was used, how much gas was used, the effect on the air conditioning system, lifts, hydraulics, electrical. We have lift specialist reports and specialist property values, so the data we have is from expert witnesses. I was fairly shocked to hear Airbnb telling you about its own data, which is not peer reviewed.

If it is not peer reviewed you cannot put it forward in the public realm as accurate data. If you turn to our document 1, we are actively involved because the Land and Environment Court said categorically that there is a fundamental incompatibility between having short-term and residential properties in the same building. There are three women at the back of this room—Trish Burt, from Bridgeport; Christine Byrne, from Potts Point; and my wife, Professor Joo-Gim Heaney. I got involved in this issue because these women were brutalised by the short-term let industry. I speak for them today.

CHAIR: Do we need to hear your evidence in camera?

Dr HEANEY: No, because I have mentioned no other names. If you look at our document, it has no relationship to names, places or events.

CHAIR: That is fine. I was just making sure you were alright with it.

Dr HEANEY: Yes, I am. The Land and Environment Court was very clear about the fundamental incompatibility of putting two lots together. We had 185 serviced apartments and short-term lets in Maestri Towers. Now we have a civilised building run very economically with no short-term lets. In the time since we took over, in the last four years, we have saved \$1.3 million and reduced the levies by 5 per cent each year. We were subsidising the short-term let industry in Maestri Towners. Our budget went from \$2.4 million a year down to \$2.034 million, huge deductions because we have now controlled our building. If you turn to document 2, it gives the pain of owners and what we went through. We give a succinct general synopsis of what Maestri Towers went through. On page 6 we detail the pain of long-term residents in 16 bullet points, which I will talk about later.

This Committee has an extraordinarily difficult job ahead because the Pandora's box will be opened if short-term letting is not regulated, as Mr Goddard said, in high-rise buildings. We implemented by-laws to put our building back under our control. I do not want these by-laws to be thrown out because the residents voted at the annual general meeting [AGM] 108 to one against short-term letting. The only person who voted for short-term letting was the company that was operating it. I am a school teacher, which you can tell by my manner—please forgive me if I am forward in my approach. On page 8 we give a list of questions and homework the Committee might be happy to do by looking through that list that details the issues that were brought up.

The most interesting document is section 3 which gives a summary of crime in high-rise buildings. This is a 186-page document that I went through over the weekend. There are three simple results from that document. If you turn to pages 6, 7, 8 and 9 you will see that it is peer-reviewed data, not Airbnb in the air. It starts by saying buildings with long-term residents record the lowest level of crime. Buildings with short-term tenancies—hotels and the like, class 3 buildings—had the next highest level of crime because they are purpose built. Our building is not purpose built for short-term letting. The thing that staggered me was that buildings with mixed tenure recorded the highest level of crime.

If short-term letting comes into the central business district [CBD]—at present there are approximately 72,429 cases before the NSW Civil and Administrative Tribunal [NCAT]—that case load will increase by approximately 10 per cent. I do not know whether NCAT could cope with an additional 7,000 cases. Recently in the *Sydney Morning Herald* there was a report on Madam Wu's \$2 million extravaganza in Maestri Towers that you may have seen. She had a brothel in our building. After one year the council could not cope, so we locked them out. That was the way to resolve this problem. The council is overloaded with problems, NCAT is overloaded with problems and if we do not get this right then all of the jurisdictions of legal authorities will be overburdened.

Document four states the civil war between—I am not talking just Airbnb. Airbnb is one company. We have a list in this document. We have a list of 150 like-minded Airbnbs. We cannot police it in our building. We have a great building at the moment but this is going to go global in New South Wales and the problem is happening worldwide. New York wants to take back its buildings. Barcelona is throwing eggs at tourists. I was overseas catching up with a concert violinist. They were in one of the red buses going around the city and they were pelted with eggs—true story. All the accommodation for affordable housing has shifted out of the city.

The next part that we have not spoken about is section five. The most important thing is that you do not realise the corruption in buildings is astronomical. We save \$400,000 a year because I go over every bill worth \$50. We do not spend money. I will give you an example. The building manager said a new balancing valve—I am a violinist by the way—for the water pipe will cost \$4,500 in the building across the road. I said, that is not right, balancing valves are \$2,500 plus \$275 to put in. That is one invoice from the building across the road. I am helping because they called me up and said, "Michael, how do we stop it?" I said, "Simple, spend 12 hours a day and go through the invoices." That is why my wonderful friend from Maestri Towers and I submitted 6,634 pages to you. We have evidence. It does not work. I agree with Mr Goddard, we need to have the owner's vote. I do not want our bylaws thrown out.

Mr GEOFF PROVEST: You forgot section six?

Dr HEANEY: Section six is for your own amusement because section six is happening now in New York.

CHAIR: Could you table your bylaws for us?

Dr HEANEY: Yes, I am happy to do that.

Mr GODDARD: I can also table a copy of the submissions I have made for the assistance of the Committee.

Mr GEOFF PROVEST: You are a hard act to follow.

Mr JAMIE PARKER: We have only got 18 minutes.

Mr DAY: I will table my notes.

Dr HEANEY: We are indebted to Mr Day, he saved our lives in Maestri Towers?

Mr DAY: Thank you for letting me appear before the Committee. In the limited time I will focus on things that might add some fresh ideas. A representative from Great Lakes council did point out the information issue. We already face this with the digital economy with Facebook. Airbnb is a foreign company, it does not have to abide by our subpoenas or laws. You have Facebook collaborating with law enforcement, but we have no way of forcing them because they are overseas. If they decide not to cooperate there is little that the Government can do. It is a rapidly changing landscape. You have Airbnb, you have misterbnb now, and all these other players. It is difficult for the Government to collect information.

I put to the Government that the one thing that does not change is the hosts. I will cover that a little later. This touches upon potentially a licensing regime. We have the romance of this business model of Airbnb. Here is a quote from the *New York Daily* that says, "The vast majority of Airbnb hosts in New York city are regular people, teachers, nurses, retirees." They want to make ends meet. There is a lot of rhetorical impact from that. I do not object to that at all. Our concern with building and strata schemes is that may not be happening in reality. I put to the Committee that the true threat is not that Airbnb is an aggregator or letting portal, Airbnb has

a hands-off approach. In their terms and conditions it is up to you, the host, to say you are compliant with development consents.

CHAIR: You have it tied up under strata, so you do not allow any short-term holiday letting into your buildings, is that correct?

Dr HEANEY: That is correct.

Mr DAY: In compliance with the council's consent. Section 88B instrument registered on the title says for "permanent resident accommodation only". Council has clarified it means minimum 90 days and residential tenancy agreements. The concern I have here is that in any approach the Government takes to allow Airbnb, there necessarily will be some carve out or change in this fundamental development consent regime.

CHAIR: If you have strata laws within that building that will take precedence over anyone having short-term holiday letting, would it not?

Mr DAY: We have attempted that. That is correct. That is not what happens in reality and the council struggles to do anything about it.

Mr GODDARD: I can attempt to assist. Maestri Towers has adopted outstanding bylaws to regulate short-term rental in the building. The problem is those bylaws are illegal. They are in breach of section 49 (1) of the strata schemes management. If challenged the bylaws that owners in general meeting elected to adopt could be set aside for that simple reason.

CHAIR: The bylaws you are working under now?

Mr GODDARD: Are the aspiration of the constituency in the building. They have been registered as bylaws but could easily be challenged by the simple existence of section 49 (1) and that is why we need the Parliament to intervene.

Mr DAY: Mr Goddard is correct with regard to section 49 (1) respecting the primacy of the property rights of the individual. You can not interfere with the private owner's enjoyment of their lot. I am very familiar with the Maestri Towers bylaws and there is no bylaw that prohibits short-term letting. We rely on the section 88B instrument which makes it clear. We do not need a bylaw, it is there from the beginning. In answer to your question, that does take primacy. Our concern is that the Government, in moving towards and embracing the collaborative economy, may provide a carve-out for this. My next point is that Airbnb are categorical in that they do not have a hands-on approach. In their terms and conditions they say the host must be the one who concedes that you are in compliance with the DA consents. That is well and good. I am saying to the Committee that Airbnb really is not that great a threat. They are not the letting pool.

Our concern is the next step. It is a competitive environment, so what do the hosts or investors do to compete? Someone has a brilliant idea to bring in cleaning. At the owners corporation network [OCN] meeting there was a strata scheme that said there was a gentleman who was aggregating, he was managing multiple Airbnbs. This is not a far-fetched and fanciful next progression, we are seeing it now. There is a company called Guesty and they provide a concierge service, they provide booking services, they answer the calls, they provide cleaning services and they manage it for the hosts.

If you have high demand buildings like Maestri Towers and others in the city, many of those people are investors who have no difficulty in finding long-term residential tenants, but in the *New York Times* there was an example where an owner was making twice the revenue from Airbnb in a high demand area. As an investor in a building of high investment mix what do you think the investors will do? They will want to have the Airbnb but they do not want to manage it themselves because they are off site investors. They will find those agents. The agency is the risk. I am not talking about Airbnb itself. You have other competitors but also the Chinese market.

There is actually a Chinese Airbnb equivalent called Tujia. They are already worth \$1 billion. They are expanding to Japan, Korea, Taiwan and Thailand. They differentiate themselves through micro networking, which is how Alibaba beat eBay in China, and they have agents on the ground checking the properties and doing the cleaning. So the further you take this chain of thinking along, what you really have in every meaningful way is a hotel. It is a quasi-hotel without any of the regulations. Then you have the building across

the road from Bridgeport, which is where Patricia Burt lives, which is a hotel and I have informed that they are investing \$300 million into that building.

Now, the council struggles to manage heritage buildings. There is the heritage floor space regime, et cetera, but if an hotelier is going to make a big investment into Sydney and across the road in a high-demand building you have Airbnbs undercutting them, then that would not bode well for future investment. I put to the Committee that it is not a debate of polar opposites. If you do not agree with Airbnb, it does not mean that you are Luddites. What I am saying is that the Committee should consider that the romance can be kept. Let hosts be hosts, and if they want to be an hotelier then they need to comply with the high standards set, such as disability access, fire safety, service lifts, et cetera. If hosts are allowed to be hosts—what I am trying to put to the Committee is if the host has to do the hosting themselves, that is a compromise, because if the Government is going to be pushing a carve-out to the development consents, to say you are an individual home owner, it is your principal place of residence you can host it yourself, then it should stop there. If the floodgates are opened, the natural progression will be that people will jump on to this and choose these aggregation services, and that opens Pandora's box.

The unique aspect I bring to this Committee, I would hope, is that I have seen the other side, the ugly side, the enforcement side. The reality is that owners corporations have section 80D of the Strata Schemes Management Act to deal with. They cannot spend more than \$12,500. If there is one big player in the building, yes, they can focus their energies on that. We have 50 per cent of a building, and that is not unrealistic at Maestri Towers where you have a changing target. The owners corporation is going to be bogging up the NSW Civil and Administrative Tribunal [NCAT], it is going to cost at least \$3,000 a pop, and they will just do it again. The owners corporation would just give up because the money cannot be recovered. It is a no-cost jurisdiction. If the Government does not bring in protection, the owners corporation is, in effect, at the mercy of this because, in reality, there is no way to get them. If we do get them, we get them on damages; we cannot get them on profits. You need to make Australian law to go after those profits because you didn't lose that money. I think you get my point, it is in my notes.

My final point is what is the solution? I propose a solution for the Committee to consider and it should be a basic licensing regime. We have talked about the licensing regime today. People who sign up for Airbnb-like services, they are already familiar with that. They upload their ID, they fill in a few details. My proposal would be, as an example, NSW Fair Trading has a jurisdiction. It will cost money, yes, but an application fee—\$100 and your application fee, fill in your name, upload your ID, put in your strata plan, you get a licence number. Make it the law to put the licence number on your photo when you upload it. That is where I come back to the beginning where I said you might want to focus on the host, because if you focus on the Airbnb side, you will never get control of the data. If you focus on the host and you have a registration system, it is cheap, it is self-sustaining, and you can have transparency for the community.

It can be an online search, \$15 a pop. That would keep the system running and so the buildings will know who are operating within in their building. The Government would have information for planning and also have information for enforcement. The enforcement issue is a very important issue because if it is a fine of, say, \$200—you have the Queensland Uber situation where Uber will start paying the fines. It is just a tax, a cost of doing business. Break the law, go crazy. So what should be done with the fine is perhaps make it proportional, so \$550, or three times the profit made, whichever is the higher, and that means that the penalty can be felt. It also means that the deterrence is there, so if people want to be hosts, by all means. I quite like the philosophy or the idea behind this collaborative economy.

Mr GEOFF PROVEST: In number 34, you say a host has to be a host, you do not go through a third party.

Mr DAY: Yes.

Mr GEOFF PROVEST: Does not that fly in the face of the Real Estate Institute of NSW and a lot of other people who have properties and have a third party who manages them?

Mr DAY: Yes, that is a very important point. I have an answer for that.

Mr GEOFF PROVEST: It is very restrictive.

Mr DAY: It is not that restrictive. Let me explain. There is a difference. When we are talking about the real estate agents and normal people who are renting out, they are renting out in compliance with the development application [DA] consents. What I am saying is that we are talking about the collaborative economy. We are talking about people who are letting out contrary to the existing DA consents, like in Maestri Towers. If the Government is to allow this carve-out, there is a much greater social harm than you would have with an ordinary rental. Ordinary rentals are legal. Agents who rent out, that is fine. We are talking about a compromise here. The Government is potentially opening a floodgate.

Mr GEOFF PROVEST: Enforcement is one thing. We can triple the fines. It is the physical manpower and resources needed to enforce it. We know that, according to the City of Sydney Council, there are 4,500 short-term rentals. Sydney undoubtedly, has two types, the high risk ones, which is like the boarding house, and then the low-risk ones, and they triage it. For years in Sydney they have been trying to get rid of illegal brothels.

Mr DAY: Yes, we have been through that.

Mr GEOFF PROVEST: To their best attempt; they are still there, but you guys have locked them out.

Dr HEANEY: You can have a brothel Airbnb. Did you know that? You can have swinger Airbnbs.

Mr GEOFF PROVEST: I am saying, it is great to put on paper that will enforce it.

Dr HEANEY: But it does not happen.

Mr GEOFF PROVEST: You need resources—

Mr DAY: There is a solution for that.

CHAIR: You keep hitting on Airbnb. I am going to ask you to stop that for now. It is not just about Airbnb. We are looking at the whole scenario.

Mr DAY: I agree with that.

CHAIR: We will leave them alone for a little bit.

Mr DAY: I will not use the—

Mr GEOFF PROVEST: Booking platform.

Mr DAY: This collaborative economy and short-term letting is here for a bit longer, but I will make it clear I am not picking on Airbnb. I am simply stating that there is Tujia and there is a list of companies like Airbnb. I will not use their name.

CHAIR: Can we ask questions now?

Mr JAMIE PARKER: We have four minutes to ask questions.

Mr DAY: Yes, please, but Geoff put one point that I have to reply to because it is important to answer. With your question, yes, enforcement is very difficult but that is where empowering the owners—the owners know their community best. If the Government opens the floodgates and allows an escape through section 49 (1)—so the owners meet a high standard—if by special resolution they say, "Not in our community. We know it impacts on us", that is one way of dealing with it. Secondly, if the owners corporation have the power under the new Strata Schemes Management Act to take it to NCAT and have it fast-tracked, then fines can be issued, so you empower the community and you do not have to worry about the council or the likes incurring additional costs.

Mr JAMIE PARKER: Thank you for coming along. We have to be aware that stratas are very different like Tea Gardens. I will make a general point and then ask a question. Section 49 (1) is useful. The problem is you have some stratas that have a majority of investors, and they would be delighted to turn their strata building into a massive hotel. If you let the stratas decide, you will get a bunch of investors turning tower

blocks into four or five hotels. I do not know if that resolves the issue. What is your view about the proposal of the City of Sydney Council that says it will be allowed in residential areas as long as it only goes for a certain amount of days and when it meets that threshold a full DA will need to be lodged and the full DA will then decide whether or not it is appropriate in that building?

Dr HEANEY: That comes down to funding. I am dealing with funding morning, noon and night. My levies are \$18,500. The same building that has short-term, same property, residential, he is paying \$27,000. Who pays? I see it as the subsidising economy if council's idea—

Mr JAMIE PARKER: In your view it should be completely prohibited.

Dr HEANEY: I think it has to be. Who pays?

Mr JAMIE PARKER: You can have that view; I just wanted to know.

Dr HEANEY: We paid before and our levies went up 80 per cent in four years. Then all the investors said, "We cannot afford this."

Mr JAMIE PARKER: So you are saying that if you are living in a strata building in the city and you have a spare bedroom you cannot let that spare bedroom out. You do not think that should be permissible for 20 days a year? It is okay for you to say that. You say that there should be no leasing at all. You do not believe in a threshold; the threshold is zero.

Mr DAY: My answer to that is that hosting puts a natural limit on it. So if the hosts themselves have to host—

Mr JAMIE PARKER: Are you saying that the threshold should be that it should be owner occupied and there should be no absentee landlords?

Mr DAY: That is right.

Dr HEANEY: To a certain degree. Once again, how many would there be?

Mr JAMIE PARKER: That is what we are thinking about.

Mr DAY: Absentee landlords can rent it out in the normal rental markets.

Mr GODDARD: Can I remind you that within the strata space any attempt to use a strata lot for a commercial purpose or to make additions or alterations to a lot requires two separate forms of consents in two different parallel universes. The first universe is the approval of the owners' corporation for additions and alterations to common property. Once you have approval you can go and get approval in relation to development controls. It is inappropriate to focus solely on planning issues and not have any regard to the owners corporation position with respect to the use or the abuse of common property. The reason for the review of section 49 is to have owners resolve at a general meeting whether or not they are prepared to allow common property to be used for this non-residential, not originally intended, purpose. To forget the need for those two separate consents is to overlook a fundamental core of the strata paradigm, which you must not do, having regard to the fact that the majority of short-term letting with which you are dealing is within strata schemes. It is not in the back barn; it is in a strata scheme.

CHAIR: We may wish to send you some additional questions in writing. Your replies will form part of the evidence and will be published. Would you be happy to answer any additional questions?

Mr DAY: Yes.

Dr HEANEY: Yes.

Mr GODDARD: Yes.

(The witnesses withdrew)

(Short adjournment)

CAROL GIUSEPPI, National/NSW CEO, Tourism Accommodation Australia NSW, sworn and examined:

OLIVIA GRAHAM, Policy and Research Officer, Tourism Accommodation Australia NSW, affirmed and examined:

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

Ms GIUSEPPI: No, we do not.

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

Ms GIUSEPPI: I would. Thank you for the opportunity to address the inquiry. Tourism Accommodation Australia [TAA] represents the needs and interests of the major hotels, motels and serviced apartments in Australia. We would like to say from the outset that as an industry we are not opposed to competition or new market entrants. Accommodation is in fact one of the most competitive sectors of the economy, with providers continuing to evolve their product and offering a wide range of choices and options for consumers. We are very consumer focused. In addition, all accommodation has been working with digital channels for over 15 years. However, it is vital for government to recognise that the rapid commercialisation of unregulated short-term rental accommodation facilitated by digital platforms is creating an un-level playing field.

The legal grey area in which these services currently exist is both confusing to participants and frustrating for regulated commercial accommodation operators that abide by regulations and investors that take the considerable risk in investing in properties. We would also like to say from the outset that a more descriptive and appropriate term for the new economy is an intermediated economy. In any effort to regulate this economy it is important to recognise that the digital platform has been active in creating the economy and therefore has a role to play in regulating that market. An example of this is the channel's entry into the business travel market. On 20 July 2015 in *Fast Company* it was stated:

Airbnb announced an overhauled corporate division as part of a concerted effort to poach business travelers' dollars from the hotel industry. Airbnb's Business Travel program centers on a dashboard for corporate travel planners, as well as accounting that offers centralized billing, financial reporting data, and information on employee itineraries booked through the service. Since an earlier version of Airbnb's business product launched last year, the company has had more than 250 clients sign up, including Google, Vox Media, and SoundCloud. The new Airbnb dashboard targets corporate management, billing teams, and travel agents.

So this is to say this is not a phenomena that just exists in the holiday letting space, as is the subject of this inquiry. It exists across the corporate space as well and I think it is important to recognise that. As an industry we have adapted continuously to respond to customer requests and new entrants, but we have a significant concern about digital channels that purport to be in the sharing business. Airbnb's submission to this inquiry states:

Our hosts generally rent their own homes occasionally—when on vacation or traveling for work or simply as a way to meet travellers from around the world. They are not running commercial enterprises.

It seems to indicate that the channel is either failing to accept the reality of how its model has evolved or is being deliberately disingenuous in not recognising it. In fact in New York, where four years of data was accessed, the Attorney General found that "commercial users dominate the platform, accounting for a disproportionate share of rentals by revenue and volume". One host made more than US\$6.8 million on 272 listings. The Los Angeles Alliance for a New Economy [LAANE] report of March 2015 found the same trend as found in Boston, San Francisco and Paris. We have records, we have data—we have all of that if the inquiry requires it. Sydney follows these trends with close to 30 per cent of hosts responsible for multiple listings. The top Sydney host had 152 listings. And that goes to the quasi hotel comment that was made earlier. Approximately 70 per cent of listings are high availability—that means they are available to rent more than 90 days per year.

Regarding the regulatory environment, TAA reiterates that it does not object to the existence of private accommodation operators but rather to the misclassification of these activities as non-commercial, which is used as justification for regulatory non-compliance. It is important to note that hotels operate in a complex regulatory environment. In our submission we put some of the regulations. Unlike the taxi industry, we operate with

Federal, State and local regulatory requirements. Also, the commercial accommodation industry is not a monopoly industry nor does it have any protections. There are a wide range of sectors and operators in the industry. We have bed and breakfasts [B and Bs], homestays, hostels, caravans and cabins, motels, serviced apartments, hotels and resorts. It is not a one-size-fits-all industry, but currently the majority of that industry is regulated and abides by those regulations.

One of our key concerns with the unregulated economy is employment. The accommodation industry is the largest contributor to tourism employment. In New South Wales the sector employs over 21,000 people—and that is old data from 2013-14; as you know, there have been new hotels built since that time—and indirectly a further 42,000 people. Without transparency of supply there is no knowledge of what workplace protections are in place, not to mention what jobs are going to be lost. Another key concern is neighbourhood character, safety and amenity. I understand from today that a lot of evidence has focused on this area, so you have heard about waste, lack of available parking, reduced security, noise disturbance, decreased amenity et cetera.

In serviced apartments this issue is magnified, and people are increasingly moving into serviced apartments and planning is increasingly looking for more serviced apartments to be built. You just saw it with the Owners Corporation Network and their submission. You also saw it in the multitude of submissions to this inquiry. A lot came from those people in serviced apartments that are trying to live with quasi hotels. In addition—and I know you heard from insurance this morning—many of them have home and contents policies that do not cover public liability insurance. And so the body corporate is jointly and separately liable in those sorts of cases. Another of our key concerns is investment, and that points to the issue of transparency. The more transparency there is in this, the more we are looking at workplace conditions and things like employment, insurance et cetera.

At present statistics fail to accurately categorise and capture the unregulated sector. Therefore it is difficult to determine amount of inventory. Hotels are required by law to build the infrastructure that supports tourism. A lack of investor confidence has far-reaching implications. I know the issue of supply has been talked about today. I am happy to talk to supply because we have commissioned two major reports—one on supply in regional New South Wales and the performance of commercial accommodation in regional New South Wales, and one on supply in the City of Sydney and the performance of supply there. I turn to taxation. There are issues about the goods and services tax [GST] payable. We have a meeting with the Tax Commissioner and in that I will be tabling a number of invoices from quasi hotels that purport to be hotels but do not charge GST on their transactions. On council rates, obviously there is a big difference between council rates for residential versus council rates for businesses.

On income tax, yes, the tax laws changed so that you had to report all income earned—whether they do or do not, everyone has examples. They also may be liable for capital gains tax. Where you use your property for commercial purposes, you need to pay capital gains tax. There is hardly an incentive for anyone using their residential accommodation to 'fess up and say they are operating commercially. On the issue of GST payable, there has just been a change to the legislation which makes it very unclear, as the \$75,000 does not apply to residential but does apply to commercial. That makes it a grey area that allows a lot of quasi hotels to operate.

We are seeking for governments to embrace true sharing but address unregulated accommodation; achieve transparency of supply and accountability through registration; and proportionate regulations to apply separating true sharing from business operations. Digital channels need to be part of the solution. Everyone is talking about a solution to this problem. If you go back to the idea that it is an intermediated economy, overseas there are all types of regulations. Our submission gives a table showing all types of regulations that have been enforced by governments. The reason for the lack of success of these regulations is the channel has not been a partner in regulating the industry. If it is true sharing, there should be no problem.

However, there needs to be some transparency and the channel needs to play a role in ensuring that transparency. If there is to be a regime of registering these properties to ensure they are compliant and employ under the Fair Work Act, follow the planning regulations and all other compliance issues then you need to ensure the channel is only registering complaint properties. That would mean that only licensed properties would be on that channel. The sector looks forward to working with the Committee on developing a framework that ensures the continuing success and growth of the accommodation sector in New South Wales.

Mr JAMIE PARKER: Tourism Accommodation Australia [TAA] and the Tourism & Transport Forum [TTF] could teach us about the gender make-up of our committees. There are not enough women in the

Parliament and we should try to address that imbalance. What is the difference between TAA, TTF and Accommodation Association of Australia? Is it just that you represent the major chains?

Ms GIUSEPPI: No, it is fair to say TTF represents tourism and transport, so it is a broader church. The Accommodation Association of Australia and TAA both represent major chains. We represent more the larger hotels and serviced apartments.

Mr JAMIE PARKER: One thing we have identified is a serious structural regulatory imbalance between traditional providers and short-term accommodation providers. We are trying to work out if we can do anything about that regulatory imbalance. You mentioned the supply report you did for the City of Sydney and the one you did for regional New South Wales. Are those reports commercial in confidence?

Ms GIUSEPPI: No.

Mr JAMIE PARKER: What was the outcome of those reports and could the Committee get a copy of the reports? We would be interested to see the reports because we are struggling to find out the impact of short-term accommodation on the rest of the marketplace.

Ms GIUSEPPI: I will give you some background. If you are talking about supply in Sydney, in 2011 there were concerns that supply was stagnant. There was broken supply and refurbishment of properties and concerns that there needed to be incentives in the market. A lot of owners told us they did not want that as it would create an unlevel playing field. They wanted sustainable demand-led supply with no government intervention in that process. They wanted to ensure that the supply that came on was in line with the demand drivers in the market. We did a modelling exercise and found that what had happened was that in 1996 a major incentive came into the market pre-Olympics to stimulate growth in supply in Sydney.

It ended up stimulating, because it was a floor space ratio [FSR] incentive, a lot of serviced apartment. Post Olympics there was a huge supply of accommodation stock—serviced apartments—and then there was the financial crisis, the Asian flu and other events so demand fell sharply. Nobody was performing well in the market so a lot of the new stock was converted back into residential. Then we had more than a decade of no growth—in fact Sydney market occupancies went back by 10 per cent.

Mr JAMIE PARKER: This is for hotels?

Ms GIUSEPPI: This was hotels. BIS Shrapnel showed that Sydney hotel occupancies through that period went back by 10 per cent in real terms. Investors were not stimulated to invest in the market. Now we have huge infrastructure growth, stable funding of Destination NSW and the building of projects like the International Convention Centre [ICC] so there is a lot of investor confidence in the market. That means we have 5,500 new rooms in the pipeline. Some of those new rooms are a bit slow coming on but of the new rooms 563 were built last year and 653 will be built this year with the bulk of supply post-2017. That is when we will start to get big growth in supply but we are starting to get good supply growth because investors think Sydney is worth investing in.

It is a good, solid market with occupancies going very well. It is demand-led supply, which is sustainable and will do well for the city in the long term. Regional was operating at occupancies—I am talking about commercial accommodation—between 48 and 50 per cent, when we did the report about three years ago. Our cry was about the lack of performance of regional commercial accommodation. It demonstrated that best flexible rate [BFR] and own property is growing but we were not getting international dispersal or any growth in the corporate market and various other markets that would sustain major hotel development in regional Australia. Once again it is demand-led supply. We are working with the Destination NSW board on looking into the whole issue.

Mr GEOFF PROVEST: Is that not a marketing problem?

Ms GIUSEPPI: It is more than a marketing problem. It is also an infrastructure problem. It is about transport, what sorts of attractions there are—the reasons to visit those areas. Even if you market the hell out of these regions, people will look for reasons to visit. In the case of Hunter Valley, at the moment it is creeping up to about 52 per cent occupancy. There is major investment in infrastructure in that area. How can we generate more tourism? Yes, marketing is one of the solutions but you also have to create events, ensure the transport networks are there, ensure that infrastructure drives demand—all of those things.

Mr GEOFF PROVEST: Destination NSW has been at times Sydney focused?

Ms GIUSEPPI: Yes.

Mr GEOFF PROVEST: Metro focused. That has been a common complaint?

Ms GIUSEPPI: The Destination NSW board is working on a major project there and it will be very good. That is happening at the moment.

Mr GEOFF PROVEST: In your submission you talk about the traditional hotel stay and you cite safety as one of the major issues. Then I look at the other providers and looking at the prices they charge they are similar to a lot of the hotels. I for one get a little bit concerned as a legislature and maker of laws when we delve into the private market. With the explosion of the online providers and the shared accommodation, as we call it, people are actually voting. They are using the product and that is why we see significant jumps. I like level playing fields for sure and I believe that you guys are over regulated and the other mob is not and there are difficulties with local councils. I get really cautious about going too far into that area with governmental controls and red tape. One of the claims to fame in this Government is reducing red tape and allowing business to operate as they do business?

Ms GIUSEPPI: Yes, we absolutely believe in the right of the consumer to choose. As I said in my introduction sharing is not a problem. If the consumer chooses it, that is great. It is not really about consumer choice. If you look at the market now how did Homestays grow up? Homestays are there, they are regulated and we know about them. They are reported. With bed and breakfasts they are five rooms and less and they are regulated and reported. You have legislation existing around each of the accommodation properties. The only one that does not really exist is sharing. We are talking proportionate regulation. In a share where someone is letting out their room there would still need to be transparency of supply. We need to understand what supply there is and we need some reporting of it.

Accommodation providers are required to report to Australian Bureau of Statistics and even though we have serious concerns about that reporting mechanism we have others. STR collects accommodation data. We have all of that. We are looking for transparency of supply, we are not looking to cut consumer options. These digital channels are not new. There is a company called Global Hotel Alliance that was set up in 2004. That has Georgian manses and palaces and all other types of individual accommodation that provide you a personalised experience and you can create your own holiday. It is exactly the same thing. That has been operating for years. It is not about that. It is about why let one channel have a whole range of unregulated accommodation on it and the other channels operate in a regulated environment.

You are operating two environments at the moment and that is the issue. You already have categories for a lot of this accommodation. It is about looking at that and looking at the category and how they apply, that is the important thing. If you can listen that would be fantastic. You would have to work with Federal as well because it all comes from the building code and the requirements under the building code and the disability provisions and the rest of it. It is not just New South Wales or the councils it is also federally driven and it is really important that this is looked at from a Federal and State level because we are already seeing variations in some of the stuff that is coming out.

Mr GEOFF PROVEST: I like to be realistic about enforcement. If I look back to local councils they have struggled with illegal brothels. Heaven help them if they had to enforce regulations in the shared market. I do not think they can physically do it.

Ms GIUSEPPI: Can I talk to that. I have had lots of conversations with the City of Sydney and I know owner operators in the city have a lot of conversations. We have had a lot of them come to us in absolute frustration so I have seen a lot of correspondence. Basically the City of Sydney—this is not just the City of Sydney, this is every city in the world that has tried to do this—their listings are not transparent, you do not have an address where the property is, it has to be somebody in that actual—

Mr GEOFF PROVEST: Your major concern is with units and apartments, not the stand alone house?

Ms GIUSEPPI: Our major concern is with units and apartments running quasi hotels. We know that is happening now. I could name you a few already. I will not use this to do that but that is the case.

Mr JAMIE PARKER: You pose the question to us, why is it that bed and breakfasts and traditional hotels have this regulatory environment and short-term accommodation does not? Part of the answer to that is, if you are an owner occupier mum and dad renting out the back granny flat a couple of weeks a year you should not have to have all these onerous regulations.

Ms CURTAIN: Agreed.

Mr JAMIE PARKER: The challenge we have is: is there a threshold and if there is what is that? The City of Sydney is saying if you have X amount of days then they require development consent and it is easy to manage clients once there is development application because provisional improvement notices [PIN] are so easy when someone is not complying with a development consent. When someone has not got development consent that is when it is challenging and the brothels example comes in there. What do you think? You talk about registration, what do you think the threshold is, where do you think we draw the line from the mums, dads and grandmothers renting out the bedroom to the Airbnb host that has 120 odd properties?

Ms GIUSEPPI: It is not what I think. It goes back to the City of Sydney. First of all, there has to be some proportionate regulation and we totally agree with the mum and dad renting out their own property and they are hosting that property. I would like to point to the fact that in overseas jurisdictions they have had the 90 days, 45 days, the 30 days, whatever the days are. That is fine, somehow we land on a day. Australian Bureau of Statistics, through their survey of tourist accommodation [STA] stats, require two months consecutively as part of it. Tasmania is looking at 42 days. The Residential Tenancy Act says something like 90 days. The reality of every jurisdiction overseas is they have not been successful in getting them to register and be compliant because you have to go back to the fundamental concept, it is an intermediated company, and therefore, the channel has to help with that compliance.

If the channel is not involved it is not going to happen and we have enough examples to show you that you can have all the regulation in the world but everyone by nature will try and get out of it. They will find a loophole. Like the change to the goods and services tax does not apply to residential so I can squeeze in there somewhere, that sort of thing. It is in the nature. If you want to leave open markets by all means let us tear away all the regulations that have existed. Why did the Fair Work Act come into place? It came into place so that we had the rights of workers at the heart of what we were doing. You cannot deregulate this. It is a complex market and there are already levels of regulation that exist. Ultimately you have to recognise that this is a different market.

Mr JAMIE PARKER: If you were to go down this path then you would prohibit the advertising of any form of short stay accommodation that did not have a permit number which came about as a result of you registering it?

Ms GIUSEPPI: That happens in lots of jurisdictions overseas. It still does not help, the channel has to work with the council or the authority to put on compliant licensed accommodation and not allow multiple properties to be listed unless they are licensed and they fall under the appropriate regulation.

Mr ANOULACK CHANTHIVONG: Carol, your first recommendation talks about the three tiers of licensing. Has Tourism Accommodation Australia given any thought about what those three tiers would look like? For instance, less than 90 days, the ones that are special residential, what is embedded in that licensing regime that you have been thinking about?

Ms GIUSEPPI: In respect of what is licensed and what is not?

Mr ANOULACK CHANTHIVONG: Yes, what does it look like for number one and number two?

Ms GIUSEPPI: We are saying transparency of supply. We are asking for licensing across the board. For example, if you look at—and everyone says that is difficult for councils to do—under Victorian legislation, the environmental health department has prescribed accommodation:

The Victorian state government and certain councils in other states require businesses that accommodate in excess of five guests to register as prescribed accommodation. This legislation was introduced to prevent overcrowding in rooms and ensure hygienic conditions.

It happens. It is happening now. It is not that it is difficult. We are not saying the 90 days, et cetera. We are saying you will need to land on something in respect of whether it is 90 days, or whatever.

Mr ANOULACK CHANTHIVONG: The onus in the disclosure of the registration would not be the host but the intermediaries that are—

Ms GIUSEPPI: The host would have to register. If it is your home, that is fine, then you get no regulation, because that is the way it is. If you have a holiday house, you get no regulation, but you have to do your normal thing, be with a real estate agent who manages your property, whatever it is—what exists currently. But then it means that where they are doing multiple dwellings and they are operating a business, it becomes very transparent, so then maybe there is some auditing role, pooling the data every now and then to ensure that compliance exists and we are not creating these businesses that are operating as quasi-hotels, which is where our major concern lies.

CHAIR: How do you stop overcrowding in, say, apartment living? There was an accident a few years ago at Bankstown where there were more than 12 people living in a three-bedroom apartment. They were actually cooking in their so-called rooms. The place caught on fire and a couple of people died. They are people who rent an apartment and then sublet to as many people as they can.

Ms GIUSEPPI: You cannot completely stop that behaviour. Ultimately, if they are registered and they are a class 1b, a bed and breakfast, they have certain fire safety regulations. If they are operating as a serviced apartment and they have commercial accommodation, they should be operating under the building code with the fire and safety regulations, otherwise they are class 3, motels, hotels, serviced apartments that are operating under fire safety regulations and councils are then responsible for ensuring that they are compliant.

CHAIR: Unless councils are knocking on their door once a week, you would not know what is going on. That is the problem.

Ms GIUSEPPI: We are not going to solve that. I am sorry, we are not going to solve that. All we are trying to solve is the fact that the greater transparency you have, the fewer issues you have. I know there are overcrowding problems and I know councils have issues with them. I know councils have issues with people who are advertising and all the rest of it, but councils are saying to me that the issue, when they have those buildings that are letting out and they are called by the owners corporation to get those people out—I actually think tightening body corporate legislation is one way of developing this, but councils are saying that there is no transparency. They get a picture of the place, they knock on the door, the person takes it off the site and then they do not know. At least if the site had the listing and the licence and all the rest of it, then they would know it was compliant. If they were not compliant and they did not have the listing, the licence number, et cetera, you could take them to court and you could stop that sort of behaviour. You actually have a tool to be able to take them to court.

Mr JAMIE PARKER: If we look at that path, one of the challenges is if we look to amend the exemption for complying—I will use this hypothetical example—as soon as you make a decision that more than 90 days is allowed, questions arise. Are they going to pay commercial rates or residential rates? What fire code do they have to comply with? There is an avalanche of regulatory impositions which can fall on them.

Ms GIUSEPPI: You have B and Bs at the moment. You have hostels. You have lighter touch regulation applying. You have levels of regulation that apply. What you need to do is have a look at—we have done some of this, and I know the B and B and Farmstay Association of NSW and ACT are going to be providing you with a document on what legislation they comply with and all the rest of it. I think that is what you have to look at proportionately. If you are somebody renting out your spare room, you would not have anything, but you would still require them to licence, to have some sort of registration, just so there is an understanding. Where do you stop? Where do you draw the line in all of this? That is what needs to be looked at. What exists? You can look at it and say, "This is a bit heavy and this can be touched here", and all the rest of it. Unlike the taxi industry, we have so many levels and different types of regulations and restrictions that have arisen for the very issues of safety, amenity, health and hygiene, noise issues, all of those sorts of issues, which have arisen from the need to protect the community and, equally, they need to protect visitors.

CHAIR: Thank you very much. We may wish to send you some additional questions in writing. Your reply will form part of the evidence and be published. Would you be happy to answer any additional questions?

Ms GIUSEPPI: Yes.

CHAIR: Thank you very much.

Ms GIUSEPPI: Thank you.

(The witnesses withdrew)

ALISON FRAME, Deputy Secretary, Policy and Strategy, NSW Department of Planning and Environment, and

ELIZABETH KINKADE, Executive Director, Planning Policy, New South Wales Department of Planning and Environment, sworn and examined:

CHAIR: Thank you for appearing before this Committee today. Do you have any questions about the information you have been sent and our process today?

Ms FRAME: No.

Ms KINKADE: No.

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

Ms FRAME: If that is okay. I have an opening statement that addresses some of where the planning system is involved in these issues. We thank the Committee for the opportunity to appear before you this afternoon. A submission from the Government has been provided to the inquiry. Without covering all the content in the submission, I would like to highlight a few matters, including our approach to working with industry and councils, how provisions are included in the local plans and the recent changes to enforcement provisions. The submission also details the way in which interested councils are able to work with Government to develop local planning provisions for short-term holiday letting and the roles council have in ensuring compliance with the relevant planning provisions and the requirements of other legislations, such as the Protection of the Environment Operations Act 1997.

Short-term holiday letting has been commonly carried out in coastal and other popular tourist and visitor destinations in New South Wales for many years without the need for development consent. It provides significant economic benefits to local economies and the wider State tourism economy. Short-term letting can also be a significant source of income for property owners, it can support the local economy and it can support local job creation. With the significant increase, in recent years, of web platforms that provide booking services, short-term letting has increased. Over this time the department has been working collaboratively with councils and industry to respond to the issues of short-term holiday letting. In doing this the department aims to strike the right balance between regulating a use and allowing an appropriate level of flexibility, and has applied this approach when working with industry and councils to address the regulation of short-term holiday letting.

In 2011, the Department of Planning and Environment began work with some industry members to develop a voluntary code of conduct to help industry address the management of the behaviour of occupants of holiday rentals. The code was released by industry in 2012, and was endorsed by the former Minister for Planning. It supports industry self-regulation and sets out a standard of conduct and behaviour to be used by owners, managers and occupants of properties let on a short-term basis as holiday rentals. A national version of the code was launched by the Holiday Rental Industry Association in March 2015.

Whilst the planning system can assist in the regulation of the land-use activity of short-term letting, it cannot however address all the operational issues that may arise from short-term holiday letting. The department works closely with councils interested in drafting local planning provisions to address their local needs. In New South Wales a council may use its Local Environmental Plan [LEP] to regulate short-term holiday letting by defining the activity and specifying where and when the use does and does not require development consent. The council can also use standards, including the number of visitors and the size of the premises, to regulate the use.

As the consent authority, local councils are primarily responsible for regulating land-use activity under the Environmental Planning and Assessment Act 1979, including short-term holiday letting. There are a range of legislative avenues for councils to undertake compliance and enforcement for amenity and associated issues, including issuing a penalty notice or an order to comply with a development consent, or when a consent is required but has not been obtained, and undertaking action in the Land and Environment Court or Local Court. Councils also have general powers under the Protection of the Environment Operations Act 1997 to address noise and disturbance impacts.

In summary, councils have a number of avenues which can assist them when considering how to address short-term holiday accommodation in their local areas. They can determine the best locations for use through their LEPs and develop appropriate local planning provisions. Where local planning provisions are breached, councils have compliance powers to assist them. The Department of Planning and Environment is keen to assist this inquiry wherever it can to inform future work on how to foster short-term holiday letting whilst ensuring appropriate regulations and also recognising that appropriate regulation might be through systems other than the New South Wales planning system. We are happy to take any questions.

Mr GEOFF PROVEST: I have four questions. Is short-term letting compatible with strata living? Would the department support amendments which would give strata owner corporations any powers to manage short-term letting within their buildings?

Ms KINKADE: Short-term holiday letting is a type of land use where there is no one-size-fits-all answer. That is the approach that the department has been taking. It has been working with councils to develop a response that suits their local needs and their areas of jurisdiction. I think that is the same with apartment buildings. There may be opportunities for short-term holiday letting in those buildings. It may depend on the nature of the use.

Mr GEOFF PROVEST: Currently the owners of the strata cannot prohibit that activity.

Ms FRAME: That is right.

Mr GEOFF PROVEST: So even if the majority said, "We don't want it here," they cannot do anything about it.

Ms KINKADE: That is, as I understand it, the current situation. To answer the second part of your question I think that the department would work with the appropriate Government agencies to look at how that could be implemented. I do not think that we have a strong position either way on this at the moment.

CHAIR: In apartment-style living, if 75 per cent of the owners wish to have a building torn down and a new one built that can be done. Didn't we move that through this Parliament not long ago?

Mr JAMIE PARKER: Yes.

CHAIR: Why wouldn't the 75 per cent work on this issue? In other words, if 75 per cent wanted short-term holiday letting it would be allowed through the strata or the body corporate. If 75 per cent did not want it there then it would not be permissible in that building.

Ms KINKADE: Looking at a figure of 75 per cent would be one option to approach it. Yes, there is that provision in relation to—

CHAIR: We have already put something in place with 75 per cent; we can actually sell a building. If we are all living in it and one of you did not want to move, that 75 per cent rule means that the place would be sold or bulldozed.

Mr GEOFF PROVEST: You are saying it is an option.

CHAIR: Yes.

Ms KINKADE: Those things could be options.

Mr GEOFF PROVEST: Do you see it evolving? The short-term rental accommodation just seems to be evolving every day or getting more popular

Ms FRAME: It is an industry that is evolving and becoming far more widespread. So, yes, the planning system evolves and responds to that, as well.

Mr GEOFF PROVEST: My second question is: what discussions has the department had with NSW Fair Trading regarding business registration and licensing models which may be provided for more effective regulation of short-term holiday letting?

Ms FRAME: We have not had any specific discussions with NSW Fair Trading on that issue.

Mr GEOFF PROVEST: What discussion has the department had with Fire and Rescue NSW authority regarding disaster management and consumer safety issues arising from the growth in short-term letting properties in bushfire-prone and remote areas?

Ms KINKADE: We have regular conversations with our colleagues in the NSW Rural Fire Service and the Fire and Rescue NSW. Short-term holiday letting is an issue that has been raised and we are continuing to have discussions with the New South Wales Rural Fire Service around that.

Ms FRAME: The discussions have not been specifically about bushfire-prone areas. There have also been discussions around overcrowding in urban apartments and other accommodation where fire safety is also a high order issue for Fire and Rescue.

Mr GEOFF PROVEST: My final question: how does the department respond to the argument made by the Youth Hostels association and the bed and breakfast association, amongst others, that both development consent conditions and compliance requirements placed on accommodation providers are onerous and place them at a commercial disadvantage with short-term letters?

Ms KINKADE: Did you ask whether we had a conversation with them? I missed the very beginning of your question.

Mr GEOFF PROVEST: What response do you have to their concerns? In their submissions to us they were saying that they offer a similar product, in a way, yet they have all these onerous conditions on them, whereas short-term letters do not.

Ms FRAME: Fundamentally, it comes down to the issue of a definition of short-term letting. Someone who is operating a youth hostel is, in perpetuity, offering a certain number of beds that are available every night with an expectation and indeed a hope that they would be occupied every night. So there are more stringent fire safety standards around how frequent the turn-over 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 just an acknowledgement in the development consent application 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 letting some properties might have those characteristics, but many more would be far less frequented and occupied on a more sporadic basis.

Mr GEOFF PROVEST: We have heard today that a number of other jurisdictions have 90 day restrictions. I believe Tasmania is going for 42. Throw a dart and you will get a number. Has the department formed any view of what number of days they would regard as short-term accommodation?

Ms FRAME: No, we have not. We have not been lobbied by councils to produce one, either.

Mr ANOULACK CHANTHIVONG: I thank you for coming. Today we have heard from a number of witnesses of their desire to have consistency and clarity across the whole State rather than having a council-by-council perspective on what is defined as short-term stays, where the threshold is, what is exempt and what is compliant. Has the department formed any view on that in terms of creating a SEPP or a planning instrument that applies across the board?

Ms KINKADE: No, we have not formed a view on that, and we have been working with councils in areas where the community wants the council to put provisions about short-term holiday letting in their local plans. There are 12 councils that have provisions, and we are working with a number of others to develop their provisions.

Mr ANOULACK CHANTHIVONG: What has been the feedback from your discussions with councils that have liaised with the department? What are they requesting the department actually do?

Ms KINKADE: In some areas where short-term holiday letting has been operating for a long time in a lot of the coastal areas, particularly on the South Coast, they have been seeking to allow those uses to continue as they are, where there are not major concerns with those issues. Another issue councils have raised in response

to the Gosford court case in particular was to provide some clarity around the way that their planning instrument works and to provide some certainty for their community. But generally I think people are seeking a response that meets the needs of their area. From my experience the needs of the areas appear to be quite different. The North Coast and the South Coast have different issues.

Mr ANOULACK CHANTHIVONG: In what sense are they different? Can you give us an example of the differences between the needs of the North Coast and the South Coast?

Ms KINKADE: In the South Coast areas and in the Australian Capital Territory there has been a lot of short-term holiday letting happening for a long time and a lot of holiday houses that are let. In the North Coast the sense I am getting from conversations with councils is that it has changed. The location close to the Gold Coast has brought different types of uses. We are working with the councils up there as well. We are very committed to working with the councils to understand what their specific issues are and to develop what we consider would be appropriate controls that the councils would be interested in and keen to apply.

Mr JAMIE PARKER: Obviously there are different areas. One of the challenges we have is that usually departments would recommend some way forward, but no-one is recommending anything. Everyone is saying they are addressing it as it comes. The courts have been driving a lot of the activity around this. The code, while it is welcome, is not taken up by all participants in the market so it is not providing the answer for some people. You may have seen the City of Sydney's submission. They are saying they would like it if there could be a definitional threshold and that could then be included in the State environment planning policy [SEPP] to decide exempt or complying. Do you not think that would be optimal? The department could then say, "This is the threshold. This is in the SEPP and can be applied across the State," instead of every single council having to go through a process of getting legal advice and talking to you guys back and forth. What have we got now—10 or 12? There are another 150 or something to go. It will be 2090 by the end of it. Would it not be more optimal to have a broader instrument that could set that out?

Ms KINKADE: To respond to your initial comment, I suppose the department is very interested in the outcomes of the inquiry. We have worked with councils. We helped work with industry in terms of the development of the code. We are very interested in ensuring that there is an appropriate response. We want to ensure the response is appropriate to the issues that need to be addressed. One of the responses taken by councils is including provisions in a planning instrument. An option is that you could have standard provisions and include them in the SEPP. We would be seeking to hear what your views are from the inquiry in terms of all the issues raised by the industry and how we can respond. That is definitely an available option.

Ms FRAME: I will add to that. Whether it is optimal or not, it is certainly more consistent. But there are some councils who would say that they are actually managing it quite effectively through local planning controls at the moment and do not need it. Any other definition might conflict with what they have currently got in place and would require them to go back. Obviously the councils that have moved more quickly on this are the ones that have a lot of short-term holiday letting in their local government area [LGA]. That is why they have moved quickly. So it is definitely a response. As you said, whether it is optimal or not is just based on whether the driver is consistency or more autonomy for councils to resolve the issue as they want to according to their local issues.

Mr JAMIE PARKER: I do not mean to go on about the City of Sydney but obviously it is a council with a high level of short-term stay accommodation. I do not know if you have had a look at City of Sydney's submission but I encourage you to look at it. The submission talks about some real problems about tourist and visitor accommodation and says there needs to be a new definition because as it stands there is a conflict with their zone. They would like to move to a more flexible definition. They say they do not feel like they can move because they are conflicting with the zone. I do not know whether that is something you could comment on later down the track. Maybe we could use that as something to write to the department and see if you could reply to some of their specific concerns where they feel that the standard instrument is boxing them in and not allowing them to make any other provisions.

The other question I want to ask which has come up a fair bit is the issue of registration or licensing—whatever you want to call it—somewhere where there can be some transparency about who is offering their properties, how many bedrooms they are offering and that type of thing. Have you put your mind to that? In terms of your planning functions do you think that transparency would assist the department if they had an idea of how many people were providing this service?

Ms FRAME: Any data like that is helpful in performing planning functions. That information can be really useful. Some councils we noted in some other jurisdictions have more data requirements around really high-end frequent use—properties that they call "party houses" that are going to be consistently used for that purpose. They have consent and data requirements around that. Certainly we would never say no to additional data around what is happening and where. It has been helpful in making planning decisions.

Mr JAMIE PARKER: Finally, there has been some concern expressed that there is clustering of short-term stay accommodation. In some communities and small towns 20 per cent plus of the properties are used for short-term stay accommodation. Have you got any information or have you seen any details that show this clustering exists and affects rental pricing or supply of longer term rental accommodation?

Ms FRAME: We do not have any information.

Ms KINKADE: We do not have any data on that.

Mr JAMIE PARKER: Okay. That is all right.

Ms KINKADE: It would be really interesting to see with those sorts of places whether they are holiday houses that people are letting out so there is not normally a permanent resident in them as happens in a lot of coastal areas.

Mr JAMIE PARKER: Thank you.

CHAIR: A lot of the speakers we have heard from today have talked about different models that have been put in place overseas but have not worked. If they have not worked overseas, how are we going to get them to work here?

Ms FRAME: Can you tell us a little more about what elements they have said have not worked or where?

CHAIR: Different regulatory bodies from overseas have tried to implement different classifications of a short-term holiday let. Different things that have been put into place have not worked overseas—for instance, classifying based on the length of stay. We were hearing stories about Spain or France where people have not been able to adapt with it over there. We are trying to regulate short-term holiday letting here. Where are we going to go right or wrong with what we do? At the end of the day this is going to be something in progress. This is something we are all going to have to work on. If anyone thinks they are going to get it right straight off the bat they are kidding themselves.

Mr GEOFF PROVEST: I think they were also referring to difficulty of enforcing it. If you set it at 90 days a year does everyone come in at 89 days a year? And who is going to check? Councils struggled with illegal brothels and there are only a handful of them as opposed to thousands of these.

CHAIR: It is about which regulatory body will do it. Are we going to push this onto local government and make them enforce it? Do we keep it in the State Government through Fair Trading or something so they enforce it? We can make all the laws or rules that we want, but at the end of the day someone has to enforce it. Someone has to go around and check these properties, which comes at a huge expense. Or it could be done through a cooperative of different groups—they could check and regulate themselves and report back to the Government. It is a lot bigger than any of us realise. Airbnb's introduction into the Australian marketplace has actually brought this to a head. It is something that has been going along out there without anybody doing too much about it. So congratulations to Airbnb for bringing this to a head.

Now it is in front of us and we are trying to sort it out. As much information as we have gathered so far, I still believe there is more information to come to us before any of us come to a decision. To get it right is a tall order. It is so complex with some saying government should deregulate and other saying it should be better regulated. I think we have a difficult job in trying to come up with some recommendations. We need all the help we can get from the Department of Planning and Environment, NSW Fair Trading and perhaps further witnesses at additional hearings of this Committee. At the moment we still do not have a clear idea of where to go on this issue.

Ms FRAME: We would be happy to assist wherever we can. We can assure you from a planning perspective that we recognise we are not starting from scratch. We are not the first planning system or government to confront this issue. We look exhaustively across the country and internationally to see how jurisdictions have dealt with it. It would be very useful for us to see transcripts of proceedings of this Committee to get assessments of what has worked well overseas. We are coming from an evidence-based perspective looking at what other jurisdictions have done and how to incorporate successful operations where applicable to the way we propose to manage it in New South Wales.

Mr ANOULACK CHANTHIVONG: There seems to be a divide of opinion on strata properties, which are the focus of the Tourism Accommodation Australia [TAA] and the Owners Corporation Network [OCN], who are concerned about apartment becoming quasi hotels, and some regional councils, who are more concerned about Torrens title properties becoming short-term accommodation. If a licensing or registration regime were to be considered, would we separate between strata and Torrens title buildings?

Mr GEOFF PROVEST: There are virtually two now, are there not?

Ms FRAME: Can we do some more work on that and come back to you?

Mr ANOULACK CHANTHIVONG: That is fine.

Mr JAMIE PARKER: There has been a lot of talk about the 2011 code that Minister Hazzard was involved in. What is the current status of that code? Is the department involved in that code and its ongoing development?

Ms KINKADE: We worked with industry in the development of that code and when it was released in 2012 it was endorsed by the Minister and the department. I understand there was then the development of a national code and so the national code has replaced the New South Wales code.

Ms FRAME: The national code was based on the New South Wales example.

Mr JAMIE PARKER: Do the department and the Minister have any ongoing involvement in the national code?

Ms KINKADE: No, we were not involved in the development of the national code. As Ms Frame said, it is based heavily on the work done in New South Wales with industry.

Mr GEOFF PROVEST: Have you seen it?

Ms FRAME: Yes, we have seen it.

Ms KINKADE: Yes, we have a copy.

Mr JAMIE PARKER: Not everyone uses that code and there have been suggestions that there be a mandatory code that is enforceable and not voluntary. What is your general view on that issue?

Ms FRAME: Are you asking for the department's view on whether it should be mandatory?

Mr JAMIE PARKER: What is the department's view on an enforceable as opposed to a voluntary code?

Ms KINKADE: It is a good question. The code was drafted as a voluntary code. If you were to develop a mandatory code then there may need to be refinements or modifications and then you would need to identify how it would be made mandatory.

Ms FRAME: We would need to look at the connections with planning consents if there were a mandatory code that pertained to properties. A mandatory code might reduce the onus on the planning system around regulating uses.

Mr JAMIE PARKER: What do you think about the problem the City of Sydney has with strata, and saying short-term letting is not permissible in some buildings?

Ms KINKADE: When owners have put a condition on the consent.

Mr JAMIE PARKER: The City of Sydney obviously does not have the resources to try to enforce this by exemption in thousands of strata buildings. Is there an opportunity to improve that situation? The City of Sydney in its submission has said the Government should change the LEP. Would you engage with the City of Sydney on that?

Ms FRAME: We would be happy to talk to the City of Sydney about that. We will come back to you on other issues flagged in the City of Sydney's submission. It highlights an anomaly in the way the system is operating at the moment.

Mr JAMIE PARKER: Thank you.

CHAIR: We may wish to send you some additional questions in writing, the answers to which will form part of the evidence and be published. Would you be happy to answer any additional questions?

Ms FRAME: Yes.

(The witnesses withdrew)

(The Committee adjourned at 4.45 p.m.)