**Consumer Property Acts Review Issues Papers No.2**

**OWNERS CORPORATIONS**

**CONSUMER AFFAIRS VICTORIA**

**Submissions in response to Consumer Affairs Victoria**

**Issues Paper No. 2 – Owners Corporations**

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| **About We Live Here Limited.**  We Live Here Inc. is a movement founded to advocate and lobby for persons in Victoria that own or reside in an Owners Corporation.  The movement aims to give a voice to, and protect the rights of, the owners and long-term residents in apartment buildings, and to generate changes to legislation to meet their needs as they live their daily lives in an Owners Corporation environment.  We Live Here Inc. was formed in December 2015 and has membership and representation from over 100 high-rise buildings in the Melbourne CBD, Docklands and inner suburbs.  We Live Here Inc. recently launched a change.org petition in relation to the issue of unlicensed and unregulated operators turning residential buildings into quasi-hotels. The movement expects to generate 100,000 signatures from around Australia to enforce state governments to put this issue back on their agenda.  We Live Here Inc. shall also use its broad supporter base to advocate for owners and residents for a range of issues using similar techniques and devices.  **About Owners Corporations in Victoria and in Australia.**  As of December 2015, there are 166,000 registered owners corporations and 747,336 lots in Victoria, and about 1,500,000 Victorians or 1 in 4 people living in or affected by owners corporations, it represents the management of property worth $300 billion. More than $1 billion per year is collected and spent.  The industry continues to grow rapidly in Australia with around 270,000 owners corporations comprising 2,000,000 lots Australia wide, with approximately 3.5 million people living or working in owners corporation schemes.. Urban planning policies around Australia are targeting annual growth of more than 10% for the next 15-25 years, so the prevalence and importance of this sector is increasing. |

**Introduction**

The following policy statements outline the position of We Live Here Inc. on a range of issues.

When Consumer Affairs considers the question of what is most urgent and how exactly legislative changes ought to be implemented, We Live Here Inc. commends this document unto Consumer Affairs and requests that its contents inform answers to the questions posed.

Representatives of We Live Here Inc. request to be heard orally on the issues raised in this paper, and request to be heard by the Minister and the Senior policy drafters involved with the review of the Owners Corporation Act.

**1. About Owners Corporations in Victoria**

We Live Here notes that while 75% of registered Owners Corporations in Victoria comprise 3 lots or less, these OCs are typically older developments that were formed as cluster subdivisions under now-repealed legislation.

As developers opportunistically develop or re-develop a mixture of Greenfield and Brownfield sites around the state, we are seeing an increase in the density and height of buildings (due to town planning controls and zoning that encourage greater density) which is leading to a higher proportion of Owners Corporations in the 10 - 99 lot categories.

High-density and ‘liveability’ are viewed in some quarters as mutually exclusive concepts, however that needn’t be the case. The legislation put in place by Consumer Affairs ought to be dynamic and forward-thinking to cater for living solutions brought about by technology and innovation (car share arrangements, electric car recharging stations, high-speed internet services, rooftop installations, community gardens and hives, together with break-out common property areas such as dining rooms, cinemas, and wine cellars.

Consumer Affairs also needs to set about empowering Owners Corporations to self-regulate and to set the rules and standards that will suit each particular community. The model Rules ought to be added to, however greater rule-making power and flexibility is needed, provided that the legal concepts of *ultra vires,* unreasonablenes*s* and invalidity are kept in place as constraints, in line with the Strata Schemes Management Act 2015 (NSW).

**2. Functions and powers of Owners Corporations**

**2.1 The power to commence legal proceedings**

The requirement to pass a Special Resolution in order for the Owners Corporation to bring legal proceedings in its own name works well for developers, builders and other service providers that are seeking to avoid liability.

However, for Owners Corporations it is administratively burdensome, expensive and in some cases, infeasible and practically impossible to pass a special resolution of 75% of owners. The high threshold acts as a bar to Owners Corporations bringing proceedings and is not in the interests of justice. By way of comparison, a publicly listed company is not held to the same account as an Owners Corporation in this regard.

We Live Here Inc. supports the amendment of the legislation to require an **Ordinary Resolution** to be passed prior to the commencement of legal proceedings. This will bring Victoria in line with the Strata Schemes Management Act 2015 (NSW) and the Body Corporate and Community Management Act 1997 (QLD).

The requirement to pass an Ordinary Resolution would still mean that the decision to file legal proceedings would not be taken lightly or on a whim, and the requirement to convene a Special General Meeting and to pass an ordinary resolution would still provide members of Owners Corporation with the requisite opportunity to scrutinize and consider the prospective decision.

**2.2 Personal property and water rights**

We Live Here agrees that Owners Corporations should be able to deal with water rights, including water that falls on common property.

We Live Here is also concerned about naming rights and their transferability to private individuals and corporations. By way of example, in some CBD buildings, the developer has retained the naming rights license, and the name of the building has been bought and sold and transferred many times over by third parties. Owners Corporations ought to retain full control and exclusive possession of naming rights. The naming rights of a building ought to be inalienable, although an Owners Corporation ought to be able to lease or license the naming rights to third parties.

**2.3 Goods abandoned on the common property**

We Live Here supports the adoption of legislation and regulations to match the NSW legislation in this regard.

However, Owners Corporations should elect whether they wish to exercise this power by passing an Additional Rule (together with conditions on the exercise of the power) as some Owners Corporations would be reluctant to take on storage costs / removal fees and potentially face legal proceedings from the owners for removing goods without authority or for conversion or for property damage.

**2.4 The Common Seal of the Owners Corporation**

The use of the common seal is an important issue for Owners Corporations.

Should the current requirements in the OC Act be relaxed in this regard there is the potential for its improper use and in the absence of full authority.

We Live Here support the retention of the current legislative requirements in relation to the use of the Seal.

**3. Financial Management of Owners Corporations**

**3.1 Levying of fees and charges – the ‘benefit principle’**

The benefit principle (as outlined in Mashane Pty Ltd v Owners Corporation RN328577 [2013] VCAT 118) is welcomed and in our view, the Mashane decision ought to be codified in the new legislation.

**3.2 Late payment of fees and charges**

An Owners Corporation ought to be able to recover debt collection costs prior to an application being filed, or once filed but settled before the VCAT or Court application is heard.

However, to avoid ambiguous or hefty charges being imposed on lot owners, there ought to be a maximum fee that can be awarded. The majority of Owners Corporation Managers would charge a flat $50 + GST ($55) fee for debt recovery reminder notices and letters. Once the matter is referred to a debt collection agency or to a law firm, that law firm might then set a further fee for a Letter of Demand prior to issuing a Statement of Claim.

Once the Statement of Claim is lodged at VCAT and the filing fee is paid, it is estimated that over 50% of the defaulting lot owners then contact the Owners Corporation and either clear the outstanding balance or enter into an acceptable payment plan arrangement with the Owners Corporation. This, then leaves the Owners Corporation out of pocket with (i) the Administration Fees charged by the Manager, (ii) solicitors fees for letters of demand and for preparing the application, and (iii) the VCAT or Court filing fees.

In most cases, this would add up to between $500 - $600. The Owners Corporation should not be out of pocket for these expenses that are necessarily incurred.

Often, the defaulting lot owner will agree to clear the outstanding balance of the levies, but will not pay the other fees, usually citing that they never received the levy notices and letters of demand due to incorrect address. This leaves the Owners Corporation in the unenviable position of either withdrawing the application and foregoing the fees, or instructing their solicitor to proceed to VCAT or the Court to argue for a costs order to be imposed. This necessitates further fees incurred by the Owners Corporation, and further unnecessarily clogs the VCAT and Courts with additional hearings that costs the Department of Justice in having to ensure that adequate staff and resources are in place.

The solution is for the OC Act to be amended to prescribe that the costs of the debt recovery (prior to judgment) are recoverable by the Owners Corporation as a debt. Consumer Affairs should simply adopt and insert the wording of Section 80 of the *Strata Schemes Management Act 1996 (NSW)*, which reads,

***80 How does an owners corporation recover unpaid contributions and interest?***

*(1) An owners corporation may recover as a debt a contribution not paid at the end of one month after it becomes due and payable, together with any interest payable and the expenses of the owners corporation incurred in recovering those amounts.*

*(2) Interest paid or recovered forms part of the fund to which the relevant contribution belongs.*

In addition, it is noted that currently an Owners Corporation may elect to apply a discount for the timely payment of fees and levies, as there is no prohibition against this practice.

Strata Community Australia estimates that the national average for levy recovery defaults is 6.8%. Now, a prudent Owners Corporation might elect to set their Annual Budgets based on 107% of estimated costs. Alternatively, an Owners Corporation might elect to apply a 7% discount to those owners that pay on time and in accordance with the Act, and might elect to then impose interest at the statutory rate and strictly enforce that rate for each owner that does not pay on time.

In response to the other options raised in the Issues paper, we do not support the prospect that an OC should have to complete the internal dispute resolution process prior to sending final fee notices, or otherwise proceeding to VCAT or to the Courts for the following reasons:

* Committee members are volunteers and do not have the time to attend grievance meetings to discuss with lot owners about the reasons **why** fees and levies have not been paid;
* Defaulting lot owners might raise concerns that place committee members in difficult situations (i.e. – recently got made redundant, health concerns, trouble meeting payment plans etc.). Committee members should not be placed in the position of having to deal with these types of issues, as it could lead to inconsistent decisions being made. Ultimately, the Owners Corporation could end up ‘carrying’ debts for prolonged periods of time, leading to inefficiencies and higher overall costs;
* Serial defaulters of debts would quickly ‘learn the system’, and would use the extra time and the extra steps involved to their advantage;
* Evidential matters could be raised by lot owners further down the debt recovery process – i.e. if the owner summoned committee members to attend the hearing to dispute what was said and resolved at grievance committee meetings about timeframes for payment or the forgiving of certain portions of the debt owed etc. This would lead to longer hearing times, and disengagement by Committee members who are already time poor, and who should be focusing their energy on governance issues.

**3.3 Charges for services provided by owners corporations**

In our view, no amendment is required to the legislation in this regard.

**4. Maintenance**

**4.1 Prescribed Owners Corporations**

In NSW, the legislation currently prescribes that a ‘Large Owners Corporation’ is one that comprises 100 lots or more (not including car parking lots, utility lots and storage lots). A Large Owners Corporation is then subjected to stricter governance requirements and oversight.

It is suggested that the OC Act ought to be amended to accord with the NSW definition that a Prescribed Owners Corporation should be one with **100** lots or more per the above definition.

**4.2 Maintenance plans and Maintenance funds**

Anecdotally, it is reported by some Owners Corporations that the developer and those in control of the Owners Corporation at the initial stages ensure that the Maintenance Plan is ‘basic’ and devoid of accurate and specific ongoing costs. A particular Owners Corporation in Southbank comprising over 300 lots (less than 4 years old) has found that its Maintenance Fund did not accurately prescribe all sorts of elevator and roof maintenance costs – which now means that an extra $400,000 per year is required to be raised.

Those associated with the development have the ability to carve out certain big-ticket items from the Maintenance Fund in order to ensure that the apartments can settle on the grounds that the estimated annual fees are kept low, or in accordance with the annual fees that were estimated and disclosed prior to purchase.

It is submitted that initial owners (developers) be required to ensure that the Maintenance Fund is accurate, and that at any time prior to the 5 year period after the Owners Corporation was registered, if the Maintenance Fund is found to be deficient, then the developer ought to be required to fund the differential.

In addition, we support the NSW position that, while Maintenance funds must be established, they do not have to be implemented. Owners are best placed to make decisions regarding the repair and maintenance and renewal of its fixtures. For example, a well-maintained piece of common property might not have to be replaced strictly in line with the Maintenance Plan, especially if it is fit for purpose and showing no signs of dilapidation.

**4.3 Payments from Maintenance Funds**

In all circumstances, the Owners Corporation ought to be able to access its funds from the Maintenance Funds to meet the costs of unplanned works that might arise.

In NSW, under Section 71 of the Strata Schemes Management Act 1996, an Owners Corporation may decide (by ordinary resolution) to borrow money from its sinking fund provided that it re-pay those funds within 3 months. A similar provision ought to be implemented in Victoria.

**4.4 Contingency Funds**

There are presently 3 financial institutions[[1]](#footnote-1) that provide finance to Owners Corporations in circumstances where urgent payments are required (to fund legal costs, carry out necessary repairs etc.).

However, the interest rates can vary considerably, and from a range of between 9 -15%.

Despite this, we do not support any amendments to the legislation that would require or obligate Owners Corporation to set aside funds for contingencies. As it stands, it is very difficult for Owners Corporations to keep budgets to a reasonable level, and apartment owners are very sensitive to any increase in the yearly levies and fees.

The solution as we see it is for Owners Corporations to be granted wider powers to borrow money from its Maintenance Fund (per the above at 4.3).

**4.5 Repairs and alterations to common property and services**

The common property is under the control and management of the Owners Corporation. We support the adoption of the NSW position that lot owners are strictly forbidden to alter or damage the common property in the absence of a special resolution.

Stronger enforcement powers ought to be given to Owners Corporations to enforce lot owners to pay for the costs of any repair to common property (including insurance and legal costs) noting that some Owners Corporations will have passed an Additional Rule to cover this situation. If warranted, Consumer Affairs ought to look at drafting a new Model Rule to cover this point.

**4.6 Insurance**

As it stands, the insurance regime under the current legislation is perfectly adequate, and no changes are necessary. Any amendment to impose Owners Corporations with the requirement to take up additional voluntary policies would only lead to higher annual fees for the Owners Corporation, and increased insurance premium commissions for the insurance brokerage industry and for Owners Corporation Managers.

Each year at the AGM, the Owners Corporation must decide the level of insurance cover that best suits their needs. A one size fits all approach is not required, and would be perceived by Owners Corporations as the Victorian government ‘helping out’ the insurance industry.

**5. Meetings and Decisions of Owners Corporations**

**5.1 Developers Obligations**

Developers have run roughshod over the interests of Owners Corporations in Victoria for too long.

There is no prohibition on a developer to appoint managers and service providers that are not connected to them, and the current Section 68 of the Owners Corporation Act 2006 is far to generalist and non-descriptive to have any teeth. Furthermore, any such allegation would require major litigation in the Supreme Court to bear out. Recently, an Owners Corporation was involved in such Supreme Court proceedings making out these such allegations, although the matter settled on confidential terms prior to trial.

In NSW, the maximum length of a caretakers agreement with an Owners Corporation cannot exceed 10 years (Section 40B of the SSMA). In Queensland, the maximum length of a caretakers agreement with an Owners Corporation is 25 years.

In Victoria, there is no such prohibition, and developers have taken the opportunity to ‘sell’ or assign caretaker agreements exceeding 50 years to caretaker companies, and for substantial profits.

As a vulnerable entity prior to settlement, Owners Corporations all over Melbourne find themselves locked into uncommercial and unreasonable caretaker agreements with no recourse outside of passing a special resolution to file legal proceedings in VCAT or the Supreme Court. Clearly, a 50-year or 60-year agreement is not in the best interests of the lot owners and occupiers, and stands only to benefit the service provider and the developer.

The Victorian regime is out of lockstep with the rest of Australia and is to be denounced. The legislation must be amended to ensure that a developer (initial owner) can only sign an Owners Corporation up to a caretaker agreement for a maximum length of 5 years. Thereafter, the Owners Corporation (once it is under the control and direction of the lot owners) may then decide to renew or extend the agreement or to engage an alternative caretaker on perhaps more competitive terms, and for a maximum length of 10 years.

**5.2 Voting and Proxies**

It is common practice for developers to insert special conditions into contracts to carve out the ability of a lot owner (or subsequent lot owners) to vote against the developer or any connected entity for all time in a manner that may cause the developer or any connected entity any loss or damage.

In addition, some developers insert a special condition that direct purchasers to provide their irrevocable proxy to the developer for certain specified acts.

These two types of special conditions ought to be prohibited. However in the author’s view, this would require an amendment to the Sale of Land Act, not the Owners Corporation Act 2006.

In relation to proxy farming, it is noted that Victoria has no restrictions in place on the maximum number of proxies. Queensland and NSW by contrast have put in place amendments to their legislation to deal with this issue.

We respectfully submit that either the Queensland **or** NSW model ought to be adopted in Victoria.

**5.3 Resolutions**

Special Resolutions and Unanimous Resolutions should be restricted for extraordinary situations only. The current regime under the Owners Corporation Act 2006 is adequate and ought to be retained, save for the fact that decisions to bring legal proceedings ought to be prescribed to require ordinary resolutions, rather than special resolutions.

**5.4 Meetings**

In our view, AGMs and SGMs ought not to be convened by the secretary or the chairperson. The decision to convene the AGM or an SGM ought to be a Committee decision only.

Putting such power in the hands of individuals does not conform with the overall scheme of the Act, which directs that governance and decisions ought to be done via the Committee.

Minutes of Meetings (Committee and OC) ought to be required to be distributed to all owners within 7 days of the meeting in line with the NSW legislation.

Tenants have no standing in respect of decisions made by Owners Corporations, and there ought to be no legislative amendments to mandate their attendance and participation in meetings. The requirement to send Agendas and Minutes and otherwise deal with the correspondence generated by tenants will put pressure on the Owners Corporation Managers and will result in increased administration costs to Owners Corporations, leading to higher fees and increased owner apathy.

**6. Committees**

**6.1 Requirements for Committees**

Owners Corporations are complex entities, in some cases managing annual budgets in excess of $1 million. They have all sorts of governance requirements and legislative duties, and yet these persons are volunteers.

Even very large Owners Corporations struggle to have a quorum at Committee meetings, and would struggle to have more than 4 meetings a year.

More needs to be done to ensure that Committees have strong and robust participation. The current requirement for Committees to have no more than 12 on the Committee is adequate. Reducing the maximum number of committee members (which is being considered) would be a mistake, as it would concentrate responsibility and liability to a smaller class of persons.

However, the above suggestion should perhaps apply only to prescribed Owners Corporations (those with 100 lots or more). For smaller Owners Corporations, a smaller number of Committee members may be preferable but should be kept flexible to suit their own individual needs.

In addition, the role, powers and functions of the Chairperson ought to be constrained and limited only to the conducting of business at Meetings.

Too often, the Chairperson is viewed as ‘the leader’ of the Owners Corporation, and their ‘decision’ tends to be viewed as final. This does not accord with the traditional legal role of a chairperson, whose sole authority is limited to running the meetings, organizing the order of speakers and debate, making rulings on motions out of order and declaring votes and declaring decisions.

Consumer Affairs ought to review *Horsley’s Law of Meetings* and ensure that the Chairperson’s role is constrained accordingly, otherwise the Chairperson’s powers may displace hundreds of years of common law.

**7. Rights and Duties of Lot Owners and Occupiers**

**7.1 Changes to the external appearance of lots and access to the common property**

Alterations to the external appearance of the lot ought to be a decision that can only be authorised by the Owners Corporation (after any town planning approval process has been completed).

We support the adoption of an additional Model Rule to deal with this situation, with the proviso that if the external appearance of the lot is being altered but only involves changes or additions to lot property, then the approval of the Committee (or an ordinary resolution of the Owners Corporation) is required. However, if the external appearance of the lot is being altered and that involves changes or additions to common property, then a special resolution ought to be required.

**7.2 Access to the Common Property**

As Owners Corporation are unlimited liability entities, it is incumbent on an Owners Corporation to ensure the health, security and safety of its members by controlling and regulating access to common property and services.

For these reasons, the Owners Corporations should be able to specify Rules about operating hours for gymnasiums, swimming pools and other amenities.

In addition, owners and residents ought not to have access to restricted areas such as hot water cupboards and utility services (for risk of interference with those services, and to negate the risk of personal injury). An addition to the model rules is not strictly necessary, but would be welcomed by Owners Corporations.

**8. Rules of the Owners Corporation**

We cannot fathom the submission from Consumer Affairs that Rules relating to how an owner may use their lot is outside of an Owners Corporation’s power. This appears to fly in the face of election promises made by Labor and the Liberals, and appears to run counter to the Second Reading Speeches made when introducing the Owners Corporation Act 2006.

An Owners Corporation is a statutory body, and it must not overreach its powers. However, Owners Corporations have been granted very wide rule-making powers, and may make rules regarding the use of lots. In New South Wales, it is settled law that an Owners Corporation may make rules regarding the use of lots, provided that the Rule is not inconsistent with another Act or Law, or is otherwise unreasonable or discriminatory.

Therefore, if a local planning scheme has classified particular activities (such as serviced apartments, or hairdressers, or barristers chambers or beauty parlours for example) as activities that do not require town planning approval, then it would not be proper for an Owners Corporation to enforce a rule to prohibit owners in the building from operating a serviced apartment or a hairdresser or a barristers chamber or a beauty parlour. However, an Owners Corporation ought to still be able to make Rules to **regulate** those uses and to impose reasonable conditions upon the use of those lots. This accords with the High Court principle in *Williams v City of Melbourne* [1933] HCA 56 that Rules ought to be regulatory, not prohibitory.

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| **The “We Live Here” View of Short-Term Letting****SUMMARY OF THE ISSUES** A current example of the impact of the collaborative economy is the impact that services such as Uber have had on the Taxi industry. Companies like Airbnb, Stayz and Expedia pose a similar risk to the Hotel industry. Unlike the Uber experience it is not only the Hotel industry that is at risk. Companies like Airbnb create quasi hotels in residential buildings that were not zoned or built for that purpose and detrimentally affect the ordinary mum and dad residents and owners of lots in such buildings. Airbnb as a concept may work well in the suburbs amongst freestanding houses or in coastal holiday towns but that’s not where the demand is. The demand for such accommodation is centred in dense population areas such as the CBD and inner-metro suburbs and can result in the informal conversion of entire apartment buildings into what is effectively a hotel without any regard to the consequences on the other owners as well as the impact on planning. There is already a chronic shortage of affordable residential accommodation in the CBD and inner-metro suburbs and the attractiveness of services such as Airbnb for investors will result in renters being forced out of the CBD and inner-metro suburbs as Airbnb customers offer a higher return. Also, unlike Uber where mainly Taxi operators are affected the Hotel industry represents a large network of interconnected industries where Airbnb will have a detrimental flow on effect on those industries. Hotels and serviced apartments are serviced by generally low-income hospitality staff, by administrative staff, but cleaning companies, security companies, pest controllers, plumbers, electricians, agents, and other contractors. Airbnb not only cuts out the middleman but can also decimate entire industries that are reliant on the operation of legal hotels. This will put large numbers of people out of work and also reduce tax revenue. Any tax revenue collected from the operation of Airbnb will be substantially less than what is generated by the hotel industry. Without proper regulation the impact of the collaborative economy created by services such as Airbnb would be a net negative impact that outweighs the superficial attractiveness. The impacts are summarised as follows:   1. Councils approve the use of buildings depending on the need of the community. There are large numbers of properties in the CBD and inner-metro suburbs that are zoned for permanent residential accommodation only. That is to provide affordable living by maintaining a supply of permanent residential properties. Operations such as Airbnb render the development considerations of the Council meaningless, which goes against the policy objective of maintaining supply. Airbnb operations would in fact reduce the available supply and make housing in the CBD and inner-metro suburbs even more unaffordable. The Council has no feedback on the Airbnb numbers and as such is unable to plan for the future. 2. Owners who buy properties, especially in the CBD and inner-metro suburbs, made investments to buy property where they had a legitimate expectation that such property had development consent as a purely residential property. Such owners often have taken out substantial mortgages that they are expected to repay with interest. It is a fact that a building that has development approval for the operation of hotels or serviced apartments devalues the other residential lots in the building. The market value can be decreased by up to 30-40%. Valuers decrease the market value because hotels and serviced apartments have a detrimental impact. If the government allows the operation of quasi hotels to take a foothold, such as Airbnb, then it will result in a devaluation of the investments of all those purchasers who purchased in good faith in the belief that they were buying a property that was zoned for permanent residential accommodation. Such residents will be extremely unhappy with the government if Airbnb operators devalue their investments by 30-40% when their mortgages still have to be paid. 3. Airbnb and other operators create quasi hotels where the costs of the hotel are shared by the other ordinary owners. That’s because a hotel or serviced apartment operation increases the use of common resources such as shared water expenses, lift wear and tear, energy consumption, as well as cleaning and maintenance expenses because holiday visitors want to enjoy their stay and maximise their use of the resources. Holiday makes also don’t have a vested interest in maintaining the common property or reducing expenses. The net result is that all the owners in an Owners Corporation have to chip in to pay for the additional costs generated by the Airbnb operator. In other words, the other owners end up subsidising the costs of running the Airbnb property. 4. With hotels and serviced apartments there is a security industry, which services such properties to ensure the safety of residents. The security of a residential building differs. A residential building doesn’t have the increased security and surveillance that would be typical of a hotel. The Airbnb operations affect the security of the buildings as there is a larger turnover of unknown occupants who also invite in other unknown occupants. Such residential buildings not only lose their sense of community which comes from knowing their neighbours but are also required to pay more money for security staff as guests are often noisy and disruptive. 5. The collaborative economy can be accommodated for moving forward by providing development consents, which take into account the operation of such quasi hotels in the design of the buildings. That would mean that such buildings would be specifically purpose built to accommodate such use. The existing buildings are not purpose built for such quasi hotels nor can they be cheaply changed into quasi hotels. In fact, permitting quasi hotels is akin to allowing a hotel operation to start up without the development considerations that protect owners by having an analysis of the suitability of the residential property to accommodate a hotel, and by putting conditions on the operation of the hotel. 6. Owners of buildings already struggle to combat a single illegal hotel or serviced apartment operator. If quasi hotels were allowed then with Airbnb there will be multiple moving targets (being the operators), which effectively makes it too expensive and unworkable for Owners Corporations to take effective action against such operators. In other words, the collaborative economy will effectively be unregulated and undermine the entire existing planning system.  **A QUALITATIVE BREAKDOWN OF THE ISSUES AFFECTING A RESIDENTIAL BUILDING** The breakdown of the problem is as follows:   1. RELIANT ON LOCAL COUNCIL. Owners Corporations and owners are usually reliant on their Local Council spending public monies to commence legal action seeking compliance with the Development Consent on a building. 2. RELUCTANT COUNCILS.Councils are, understandably, reluctant to spend public monies and resources on litigation, which is a costly and time-consuming exercise. 3. LIMITED PUBLIC RESOURCES. Councils ‘pick and choose’ where to spend limited public resources and that means many smaller complaints are usually not addressed, leaving owners with little-to-no recourse. 4. UNREALISTIC FOR OWNERS. It is unrealistic to expect individual Lot Owners in large, high-rise apartment buildings to take on sophisticated short-term letting operators with deep pockets. 5. DEEP POCKETS. Large, commercial Short-Term Letting operators have deep pockets and can afford to pay top lawyers, barristers, experts, investigators, and to risk adverse Orders that they can afford to pay. The imbalance in power is extreme. Individual owners are just that: Individuals. They often cannot afford the time away from employment, or to fight or pay the costs associated with litigation, plus they are exposed to financially devastating adverse costs orders if they are unsuccessful. 6. OPERATORS ARE SOPHISTICATED AND EXPERIENCED. They can organise their staff to do all the administrative work, collect proxies and phone owners while owners only have limited time & resources. 7. STARVE THEIR OPPOSITION. Given the **millions of dollars in profits** after tax, such operators can easily starve the finances of opponents and win protracted Court proceedings by attrition. 8. MILLIONS OF DOLLARS. Where the serviced apartment operator stands to make millions in dollars of after tax profits they have quite literally millions of reasons to fight.  THE PAIN OF LONG-TERM RESIDENTS **The conditions which make short-term letting agencies unacceptable in multi-residential properties**:   1. *Short-term apartments devalues the residential properties by up to 30%* 2. *Devalues the property through excessive wear and tear* 3. *Increased repair and maintenance costs* 4. *Excess lift usage, eg peak hour demands on lifts at checkout times, resulting in increased maintenance costs and shorter working life of lifts, which are hugely costly to replace* 5. *Breach of building security/fire standards/safety protocols* 6. *Overcrowding, excused as ‘residential’ letting* 7. *Insurance risks for Class 2 buildings and Owners Corporation* 8. *Increases in strata insurance* 9. *Increased strata contents and Landlords’ Insurance risk if short-term occupant is harmed – is OC liable for common property?* 10. *Undesirable use of short-term lets e.g. as brothels, casual drug dealing, drug taking.* 11. *Excessive noise eg late night parties, loud music* 12. *Dangers posed by drunken behaviour, disturbance of neighbours, damage to common property* 13. *Garbage disposal issues/ additional costs for owners* 14. *Excessive use of utilities, eg water, gas and power* 15. *Increased cleaning costs for ‘serviced’ short-term letting* 16. *Violation of by-laws eg illegal parking on common property and private car spaces, smoking; no possibility of enforcement by Owners Corporations*  ****The Experience Overseas and the current battleground in Australia – summary of overseas jurisdictions in USA, CANADA, SPAIN, GERMANY, FRANCE, AUSTRIA, IRELAND**** It seems that there has so far been precious little “comparison with other jurisdictions” made in Submissions to the Parliamentary Inquiry. None of the various government documents touching on the subject make more than passing reference to inter-state, let alone international situations.    Yet short-lets of residential accommodation is a world-wide phenomenon, and it is because it is a world-wide phenomenon reflecting global social, economic and technological changes that it is so intractable at the local level.  New York City (1) is taking action against short-term letting in residential properties: $10M more for new staff, cutting edge data to find illegal hotels and a public awareness campaign. The current administration is giving the money — which will be spread out over the next three years — to its newly beefed-up Mayor’s Office of Special Enforcement, which goes after illegal hotels that advertise on sites like Airbnb[[2]](#footnote-2).  https://scontent-syd1-1.xx.fbcdn.net/hphotos-xlt1/v/t1.0-9/12227218_915050785241753_6808831529637109942_n.png?oh=fa8abfa84aae7f140e069afb0abc92ff&oe=575D15AD  Opponents of short-term home rental services waste no time blasting Airbnb’s peace overtures. Just hours after Airbnb pledged to make nice with municipal officials in the pages of the [New York Times](http://www.nytimes.com/2015/11/12/technology/airbnb-pledges-to-work-with-cities-and-pay-fair-share-of-taxes.html?ref=technology&_r=0), New York State Attorney General Eric Schneiderman and San Francisco affordable housing activists — two of the company’s most vocal and consistent critics — called the move a mere PR gimmick.[[3]](#footnote-3)  New York City (2) demands more data from Airbnb on law-breaking host [[4]](#footnote-4). After news that Airbnb purged more than 1,000 shady listings from its site before opening its books to lawmakers, the city is demanding more data from the company - including the names and addresses of hosts who are breaking the law.  In a letter to Airbnb, Deputy Mayor Alicia Glen said the quiet scrubbing shows that the company has the ability to root out hosts who violate rules, something she said it previously claimed to have no way to do. [Mayor De Blasio Puts Airbnb On Notice](http://www.nydailynews.com/new-york/mayor-de-blasio-puts-airbnb-notice-article-1.2534084) “Your confirmation of this purge shows an ability and willingness by Airbnb not only to identify hosts who violate multiple city and state laws, but also to drop these bad actors from your platform. You have previously indicated to us that these actions were not feasible or even possible,” Glen wrote to Airbnb director for global policy and public affairs Chris Lehane.  "Although the city is concerned that Airbnb chose not to disclose that it had purged bad actors from its platform before publicly releasing data regarding hosts, we are even more concerned by recent reports that these bad actors have begun to return to your site," she wrote. "We request that you continue to proactively engage in this process and make efforts to prevent purged hosts from returning. Additionally we ask that you provide us with data on these individuals and any others who may be violating our laws." [Fight Against Airbnb Turns Enemies Into Pals](http://www.nydailynews.com/new-york/fight-airbnb-turns-enemies-pals-article-1.2546873) Glen told the company to hand over the names and addresses of hosts who offer stays for fewer than 30 days and have two or more units listed, so the city can hit them with fines and other enforcement.  The city also plans to send requests to similar services like HomeAway, FlipKey, Vacation Rentals, and VRBO.  Austin, Texas **[[5]](#footnote-5)**, has voted to phase out some short-term rentals. After months of debate that culminated in a march of HomeAway advocates on Austin City Hall, a divided City Council revamped its rules on short-term rentals to phase out a certain kind of units from neighbourhoods by 2022.  The provision applies to Type 2 units, which are owned by someone who doesn’t live on site and are leased for less than 30 days at a time to guests throughout the year — giving rise to what some residents have described as “party houses” in the heart of neighbourhoods. Austin has 434 such units licensed throughout the city, though it is unclear how many exist in commercial areas where they would be allowed to remain.  City of Manhattan Beach, transient uses including short-term vacation rentals (less than 30 days) in residential zones are not allowed under the City Zoning Code and are incompatible with the goals and objectives of the City’s General Plan.  The General Plan aims to preserve and maintain residential neighbourhoods and to protect residential neighbourhoods from the intrusion of incompatible and character-changing uses. Short-term vacation rentals and other transient uses in residential zones can have a severe negative impact on the character and stability of the residential zones and its residents.  The Planning Commission and City Council considered allowing transient uses on a limited basis. Numerous residents emailed the City and testified at the public hearing about the negative impacts on residential neighborhoods, such as increased traffic congestion, overuse of public parking, noise, and crime.  Based upon such public input, the City Council maintained the status quo of prohibiting transient uses on June 16, 2015. Property owners that registered by April 30, 2015 with the City for tax purposes, may continue operating renting their property on a short-term basis until the end of the year.  Rentals in Commercial Zones are not affected, nor are long-term rentals of 30 days or more to single housekeeping units.[[6]](#footnote-6)  ‘The fight against *Airbnb* (and other short-term letting operators) turns enemies into pals’. That includes tenant activists, the powerful Real Estate Board of New York – and even some Democrats and Republicans. “It’s a united front because it harms landlords and tenants and the housing market in general,” said NY Assemblywoman Linda Rosenthal, who is sponsoring a bill to ban advertising illegal units.[[7]](#footnote-7)  Sacramento, California the council has taken up a proposed Airbnb ordinance which recommends striking a balance between the new economy and protecting neighbourhoods. Short-term rentals would be capped at 90 or 120 days annually, and neighbours would be notified. The iteration would limit short-term hosts to six guests at a time, and require people renting to follow the same rules as hotels and bed-and-breakfasts, including obtaining a business operations tax certificate and collecting the 12% transient occupancy tax mandated by the city. They also pay a nominal price for a short-term rental permit that the city could tighten or revoke in the event of a violation. Once issued, the city would notify neighbouring property owners within 200 feet. The council’s law and legislation committee recommends a 90-night aggregate limit on rentals, while the planning and design commission thinks the city should cap it at 120 nights. [[8]](#footnote-8)  Santa Barbara, California. In December 2015, despite Airbnb’s hiring of local lobbyists and organizers, the Santa Barbara City Council voted for a ban on short-term rentals, saying guests using the service had become a nuisance and were squeezing residents out of the local housing market. Within an hour’s drive from there, the City of Oxnard and Ventura County are proposing similar regulations. In January 2016, the tiny wine town of Ojai unanimously approved rules that prevent short-term rentals on sites like Airbnb.  “We could probably collect somewhere in the range of $6 million a year of taxes from website companies, but in the end we felt that in order to limit growth and preserve the local quality of life, we would have to make difficult choices,” Gregg Hart, a Santa Barbara City Council member, said of the recent vote.[[9]](#footnote-9)  Nearly a third of the revenue generated by the short-term rental company Airbnb in 12 major markets comes from homes and apartments that are rented out on a full-time basis.  That was one of the conclusions of Penn State study commissioned by the American Hotel and Lodging Assn., a trade group for the nation's hotels. The group said the findings point out a "very disturbing trend" that suggest the rentals are operating like **"unregulated hotels".**  "This report shows a troubling trend as **a growing number of residential properties are being rented out on a full-time, commercial basis**, in what amounts to an illegal hotel, and using Airbnb as a platform for **dodging taxes, skirting the law and flouting health and safety standards**," she said.[[10]](#footnote-10)  The “Los Angeles **Appeals Court Rules Airbnb Illegal In Residential Zones**.  This decision means that short-term rentals are no longer a legal "gray area." There is NO QUESTION that it is illegal to short-term rent your apartment on Airbnb or another STR platform. At least in Los Angeles. Your landlord can evict you if you do. This also makes it illegal for any landlord to convert to STR use, regardless if rent-stabilized or not. Now, the folks that enforce the law, can proceed to enforce the law, armed with the knowledge that the courts will, and must, back them up, because of this decision[[11]](#footnote-11):  **“You can’t put your apartment on Airbnb. At least in Los Angeles your landlord can evict you if you do.”**  “Let’s get real…Airbnb could make enforcement easy by simply refusing to advertise unregistered properties. Of course, they won’t do this because it would mean significant revenue loss. The greatest proportion of their profits are from illegal activity, i.e., commercial operators and unregistered illegal units. The company’s ability to evade regulations around the world remains a key factor in their financial success. Nudging hosts with e-mails is hardly sufficient. Who are they fooling?” Airbnb will start pestering hosts in its hometown of San Francisco to register with the city and report their rental activity each quarter, executives wrote in two letters to the city obtained by Bloomberg.[[12]](#footnote-12)  Vancouver, Canada, a Simon Fraser University master’s student’s findings (June 2016) showed short-term rentals on Airbnb may be contributing to the city’s near-zero vacancy rate.  Airbnb is the hugely popular site where people the world over can make money by providing accommodation in their homes, or helping people find affordable places to stay while travelling. The accommodation can be as basic as someone’s couch or as opulent as someone’s yacht or penthouse. The sky is the limit. As part of her thesis, Karen Sawatzky obtained the data from Airbnb’s website, crunched the numbers and discovered that 71 per cent of Vancouver Airbnb listings are for entire homes. It’s a significant finding, because it means that if the majority of Vancouver Airbnb hosts have entire apartments or houses to spare, then they’re not renting them out to full-time tenants. A significant chunk of the rental stock is lost. [[13]](#footnote-13)  And the problem is not unique to Vancouver. It's also hitting **Toronto** and **Montreal**, where the number of Airbnb listings is growing.[[14]](#footnote-14)  Barcelona, Spain. Barcelona’s tourism industry has been recognized as out of control for some time, and when Mayor Ada Colau entered office this June, she did so promising to crack down on its excesses. Now, just that is happening. This week the homestay sites Airbnb and HomeAway were slapped with Euro 60,000 fines for advertising apartments that did not possess the permit the city now requires. Long-simmering local resentment has boiled over at times. Last summer the waterfront Barceloneta neighborhood saw nightly demonstrations against party tourists with up to 1,000 sleep-starved protestors, a phenomenon that came to be called the Barceloneta Crisis.[[15]](#footnote-15)  Berlin, Germany. In ***Tourism Troubles: Berlin Cracks down on Vacation Rentals****.* Berlin passed a law banning unregistered vacation rentals in the city because of a shortage of residential housing. A sharp increase in tourism and the popularity of renting private apartments is exacerbating a serious problem. In autumn of 2013, Berlin city government passed a law banning all vacation rentals that had not been registered with the local authorities by summer 2014. The city granted an extension to just under 6,000 accommodations, but they, too, will have to be made available on the normal apartment rental market beginning by May 2016.[[16]](#footnote-16)  Paris, France officials have been carrying out "raids" on apartments in the 1st and 6th arrondissements in the 1st and 6th arrondissements - both hugely popular areas for tourists. The raids follow a similar crackdown in the Marais six months ago.    And there are many landlords who play by their own rules. A recent survey that across France, 44 percent of the homes advertised on Airbnb are permanently available for rental.    But perhaps not for long. Those who offer more than their share of nights face fines of up to €25,000, but officials are looking into hiking this fourfold to €100,000.    Parisians are expressing a growing frustration with the never-ending stream of Airbnb tenants carting luggage up the stairs of their apartment buildings.  City officials are also well aware that the ever-profitable properties are making life tough for Parisians who want to find their own lodgings so they can live in the city.    These housing problems add to the already expensive Paris property market, which is notoriously difficult to crack - especially for renters.[[17]](#footnote-17)  Vienna, Austria taxman tells Airbnb users to cough up: Vienna is to follow Berlin and New York in cracking down on people who rent their private accommodation to tourists through websites such as Airbnb.“International platforms cannot escape these obligations and should not believe that the rules that apply to Austrian hotels do not apply to them,” said the city financial advisor Renate Brauner.  If a house is used commercially - for example if it is one of many operated by the same landlord or if there are employees involved - then a business license must also be obtained.  The fine for people who do not have a license who should has also been increased from €420 to €2,100 - and those who do not pay can expect inspectors to come knocking on their door, the city warned.[[18]](#footnote-18)  Dublin, Ireland. What a surprise, Airbnb ChoosesDublin as European Headquarters, Here comes the 2% tax rate:“It would have been almost criminal if Airbnb hadn’t chosen somewhere in Ireland to be its European headquarters: arguably, given what we know about the tax advantages of doing so, possibly getting close to a breach of fiduciary duty to shareholders.[[19]](#footnote-19)  At least 8,000 residences in Athenshave been illegally rented out to visitors in a “property share” model popularized by sites such as Airbnb, which has led to increased tax losses for the state from illegal accommodation, according to date presented on Tuesday by the head of the Athens-Attica & Argosaronic Hotel Association, Alexandros Vassilikos.  He noted that while some properties are rented out to tourists without paying any tax at all, legal hotels have to pay a total of 24 various levies to the state.  Vassilikos also cited other illegal forms of tourism accommodation, such as the suspicious case of 126 apartments supposedly rented by a single tenant, or the 32 apartments in the same block of flats that were all rented out to tourists.[[20]](#footnote-20)  SUMMARY FROM AIR MATTRESSES TO UNREGULATED BUSINESS**: An Analysis of the Other Side of Airbnb (January 2016) PennState University**  *Airbnb’s* submission to NSW Parliament claims that *85% of hosts* are renting out *the home in which he or she lives.* But a January 2013 PennState report[[21]](#footnote-21) provides statistics and highlights the predominance of hosts in the US who rent out multiple residential properties on the site.  If the US statistics are representative of Australia, the 85% of NSW hosts who rent out their own home could well account for less than 5% of short-term lets because they may only rent out their “primary residence” once or twice a year.  Data provided by *Inside Airbnb[[22]](#footnote-22)* clearly demonstrates individual *Top Hosts[[23]](#footnote-23)* in Sydney are renting out in excess of 100 properties each. And as the US report points out, these multiple-unit hosts are in reality unregulated businesses operating within a black market.    Two of the most blatant examples of unlawful short-term letting in NSW were in Sydney’s CBD:   * **Maestri Towers**: 142 of 364 Residential Units were short-term let to Tourists – no primary resident was ‘in house’ to *host* the guests. * **Bridgeport Apartments**\*: upwards of 66 of 163 Residential Units were short-term let to Tourists – no primary residents was ‘in house’ to *host* the guests.   **At both properties, all apartments were advertised and sold 52 weeks of every year as short-term tourist/visitor accommodation.**  \* At Bridgeport Apartments, two units were listed through *Airbnb* as *Private Rooms*. Reviews from guests regularly showed that after check-in the tourists were either *“left alone to enjoy the property”* or found that other unrelated *Airbnb* guests occupied other bedrooms within the same unit.  In many jurisdictions, reports reveal that *Airbnb* regularly (and currently) alters data handed to State and City officials: ***Airbnb defends decision to drop 1,500 listings before handing over books, saying ads didn't reflect company 'vision'*** [[24]](#footnote-24). And: ***Airbnb purged over 1,000 listings before December data release*** [[25]](#footnote-25)  *Airbnb also* removes listings without warning: ***Guneep Luther had 14 of his 17 properties on Airbnb delisted*** ****ANNEXURE -**** ARTICLES ON AIRBNB **New York:-**  **New York State Attorney General's Report on Airbnb in New York City:** [**http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf**](http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf)  **New York Communities for Change – Real Affordability for All – Airbnb in NYC: A Housing Report:** [**http://nycommunities.org/airbnb-nyc-housing-report**](http://nycommunities.org/airbnb-nyc-housing-report)  **San Francisco:-**  **San Francisco Budget and Legislative Analyst’s Office - Analysis of the impact of short-term rentals on housing:** [**www.sfbos.org/Modules/ShowDocument.aspx?documentid=52601**](http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=52601)  **San Francisco Planning Department Amendments Relating to Short-Term Rentals:** [**commissions.sfplanning.org/cpcpackets/2014-001033PCA.pdf**](http://commissions.sfplanning.org/cpcpackets/2014-001033PCA.pdf)  **SF Office of Economic Analysis: Amending the Regulation of Short-Term Residential Rentals: Economic Impact Report: ‎**[**sfcontroller.org/Modules/ShowDocument.aspx?documentid=6457**](http://sfcontroller.org/Modules/ShowDocument.aspx?documentid=6457)  **Barcelona:**  **Barcelona Mayor’s tourism Crackdown Puts Airbnb in Firing Line:** [**http://www.businessinsider.com/r-barcelona-mayors-tourism-crackdown-puts-airbnb-in-firing-line-2015-8?IR=T**](http://www.businessinsider.com/r-barcelona-mayors-tourism-crackdown-puts-airbnb-in-firing-line-2015-8?IR=T)  **Paris:**  **Last summer, this Paris neighbourhood had more Airbnb guests than actual residents – it’s bad news for the city’s Hotels** [**http://qz.com/438410/last-summer-this-paris-neighborhood-had-more-airbnb-guests-than-actual-residents/**](http://qz.com/438410/last-summer-this-paris-neighborhood-had-more-airbnb-guests-than-actual-residents/)  **North America:**  **Turning Housing into Hotels** [**http://www.eastbayexpress.com/oakland/turning-housing-into-hotels/Content?oid=4499687**](http://www.eastbayexpress.com/oakland/turning-housing-into-hotels/Content?oid=4499687)  **Airbnb Violations Now Being Used More Often Than The Ellis Act in Evicting San Francisco Tenants** [**http://sfist.com/2015/04/24/airbnb\_violations\_now\_being\_used\_mo.php**](http://sfist.com/2015/04/24/airbnb_violations_now_being_used_mo.php)  **Apartment-sharing Websites Like Airbnb.com pose ‘concerns’ for New York City, Controller Says**  [**http://www.nydailynews.com/news/national/city-controller-airbnb-poses-concerns-city-article-1.2084690**](http://www.nydailynews.com/news/national/city-controller-airbnb-poses-concerns-city-article-1.2084690)  **Enterprising house sitter rented out couple’s home on Airbnb while they were away**  [**http://mashable.com/2015/09/18/housesitter-rented-home-airbnb/#ZblzF.rKb8qk**](http://mashable.com/2015/09/18/housesitter-rented-home-airbnb/#ZblzF.rKb8qk)  **Barcelona Mayor’s tourism Crackdown Puts Airbnb in Firing Line** [**http://www.businessinsider.com/r-barcelona-mayors-tourism-crackdown-puts-airbnb-in-firing-line-2015-8?IR=T**](http://www.businessinsider.com/r-barcelona-mayors-tourism-crackdown-puts-airbnb-in-firing-line-2015-8?IR=T)  **Nearly 40% of @Airbnb revenue goes to real estate Moguls** [**https://www.youtube.com/watch?v=-yHRy7Hn2qg&feature=youtu.be**](https://www.youtube.com/watch?v=-yHRy7Hn2qg&feature=youtu.be)  **Airbnb: where does fire safety come into play?** [**http://www.shponline.co.uk/airbnb-where-does-fire-safety-come-into-play/**](http://www.shponline.co.uk/airbnb-where-does-fire-safety-come-into-play/)  **Dallas Has Hundreds of Airbnb Hosts. 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**8.1 Visitors and Guests**

It is one thing for Rules to be made by Owners Corporations to be given the ability to enforce the rules against invitees, however it is quite another matter altogether as to whether an Owners Corporation can locate those invitees and bring enforcement action against them sometimes months after the event?

Moreover, as the current VCAT penalty systems subscribes that only a penalty of up to $250 may be levied against those that breach the Rules, there is little utility to be gained by an Owners Corporation filing any such enforcement action.

Owners Corporations ought to be provided with the express power that owners and / or occupiers are responsible for the actions of their guests and invitees. Owners Corporations may therefore bring enforcement proceedings and / or damages claims as against owners and occupiers, rather than their invitees. This is the position in NSW under the *Strata Schemes Management Act 1996 (NSW)*, and respectfully we agree that this ought to be the position in Victoria.

**8.2 Pets and Smoke Drift**

We respectfully adopt the position that an Owner or Occupier ought to be able to keep a pet or pets in their residential unit. However, the existing rules regarding nuisance and behaviour ought to apply to them, and Owners Corporations should have the ability to enforce a Model Rule to deal with pets that bark excessively and cause nuisance, leave urine and faeces on common property, or cause disruption and intimidation / harassment to others. The penalties could range from fines and could ultimately gradate upwards towards a final order for the removal of the pet or pets from the unit in the event of continued or repeated infringements.

In relation to cigarette smoke and smoke drift, we adopt the position that Owners Corporations ought to be empowered to register their own special rules to regulate smoking (cigarette smoke, BBQ smoke and otherwise) as they see fit. If 75% of a particular building pass a special rule prohibiting or regulating smoking within residential units, then all owners would be bound to comply, or else they risk fines and penalties being imposed by VCAT in the normal manner.

**8.3 Energy Saving and other sustainability measures**

In our view, the only restrictions that ought to be placed on owners installing any energy-saving measures is where those installations affect the external appearance of the lot or the building. Please refer to the comments made in Section 7.1 of this submission.

**8.4 Penalties for breach of the Rules**

The current maximum penalty that VCAT may impose of $250 is manifestly inadequate. The penalty ought to be increased to $5,500 (in line with NSW).

In addition, 50% of those penalties ought to be payable to the Owners Corporations, otherwise there would be a lack of incentive for an Owners Corporation to expend the time and effort and the risk of costs to file an application for enforcement in VCAT.

**9. Owners Corporation Records**

**9.1 Availability of Owners Corporation records**

Our stated position is that owners are very concerned about the disclosure of the Register under Section 151 of the OC Act as it contains personal information revealing the names of owners, and their address, telephone numbers and email address. The legislation needs to conform with the National Privacy Principles under the Privacy Act (Commonwealth).

Only an owner’s name and physical mailing address need be disclosed. A fee should be charged by the Owners Corporation Manager for providing this list, and the request should always be made in writing, and can only be obtained after attending the scheduled appointment at the office of the Owners Corporation Manager.

**9.2 Owners Corporation Certificates – short stay accommodation**

This particular proposal is impractical and unworkable. Short-stay accommodation is an unregulated industry with no requirements for disclosure or registration to any government authority. An owner (or tenant that elects to sub-let) is not currently required to disclose to the Owners Corporation nor to anyone else (not even the ATO) that they have made the unit available for short-stay accommodation.

Unless very sophisticated surveillance methods are undertaken, it would be impossible for an Owners Corporation to accurately estimate the numbers of apartments being used for short-term letting.

Therefore, an Owners Corporation should not be required to, or otherwise responsible for and be held liable for, estimating the number of units being used in a particular building for unregulated and uncontrolled short-term lets.

**10. Dispute Resolution**

The Dispute Resolution process is only relevant and helpful as a grievance procedure for dealing with disputes between residents.

However, the Dispute Resolution process does not work, and is of no benefit at all in the situation where an Owners Corporation has discussed an issue and has decided to pursue a potential breach of Rules. The Dispute Resolution process in this instance should be dispensed with.

It is noted that CAV offers conciliation. Furthermore, the VCAT process offers Mediation and / or a Compulsory Conference as a first step before hearings, and we endorse those processes as more helpful than the internal Dispute Resolution process.

**11. Applications to VCAT**

We Live Here Inc. supports VCAT and its jurisdictional measures and the legislation that supports it. Currently, VCAT may make rulings and declarations about the validity of Rules, and that jurisdiction ought not be removed.

Otherwise, parties in dispute regarding the validity of a Rule (for example\_ would be required to file an application with a Court of equity such as the Supreme Court, thus increasing the costs for all parties concerned. VCAT was established as an informal and cheap and effective means of determining disputes in community living. It is vital for the community that VCAT’s jurisdiction to hear these types of disputes remains.

**12. Owners Corporations in retirement villages**

This is no doubt a complex issue however We Live Here can offer no insights or solutions in this regard, save that in principle, an Owners Corporation and a retirement village as separate entities are incompatible and this model should not be encouraged nor allowed to flourish.

The Retirement Villages Act ought to be strengthened to oversee the entire range of governance issues. Existing owners corporations (with a retirement village operator) ought to be encouraged to extinguish and de-register the Owners Corporation and move across to the Retirement Villages Act jurisdiction.

**13. Part 5 of the Subdivision Act**

**13.1 Sale of Apartment Buildings**

A conservative approach ought to be taken in relation to this issue. Anecdotally, many leading NSW academics and lawyers consider that the 75% re-development threshold will not be successful in its current form, nor will be there a high uptake of schemes to commence such a process.

Additionally, the rights of minority owners may not be adequately addressed under the proposed NSW legislation, and it is highly likely there will be legal challenges to the model.

In our view, Victoria should adopt a wait and see approach. By keeping a close eye on the success (or otherwise) of the NSW legislation, Consumer Affairs ought to consider raising this issue as part of a standalone review after say, 5 years has passed. This should give sufficient time for case studies in NSW to come through.

**13.2 Setting and changing, lot liability and lot entitlement**

There have been many examples where Developers have set lot liabilities at 1 and lot entitlements at 20 for the lots that they own and retain. Developers have a conflict of interest and ought not to be entrusted with the responsibility to set lot liabilities and lot entitlements how they see fit.

Instead, the lot liabilities and lot entitlements ought to be determined by an independent licensed surveyor and an independent licensed valuer, taking into account the size and value of the respective lots. This will need to be done at an early stage when the lots are offered for sale ‘off the plan.’

If there are changes required, i.e., the developer finds, during the construction process, that lots may need to be amalgamated, or if they are granted further approvals to build an extra 2 levels above the maximum height – then the independent surveyor and valuer may need to adjust the lot liabilities and lot entitlements, and the Plan of Subdivision may need to be amended and re-registered with Land Victoria. The standard clauses in Off the Plan sales contracts will need to be amended to take this hypothetical situation into account.

In all other instances, a unanimous resolution ought to be retained, in regards to changing the lot liabilities and lot entitlements. This accords with the NSW position under the *Strata Schemes Management Act 1996 (NSW*).

**Concluding Comments**

We reserve our rights to supplement these submissions with an oral presentation, and we request the right to be heard as part of the Consumer Affairs Review Process into the Owners Corporation Act.

Yours faithfully,

Barbara Francis

Marshall Delves

Rus Littleson

Helina Marshall

Directors of We Live Here Inc.

A charitable organization.

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