

Independent panel on short-stay accommodation in CBD apartment buildings

**The Hon. Jane Garrett MP, Minister for Consumer Affairs, Gaming and Liquor
Regulation**

Level 26, 121 Exhibition Street, Melbourne

The Hon. Richard Wynne MP, Minister for Planning

Level 20, 1 Spring Street, Melbourne

Dear Ministers

Report of the independent panel on short-stay accommodation in CBD apartment buildings

On behalf of the members of the panel, I enclose the report on ways to improve the regulation of CBD residential buildings, so property is protected from unruly 'short-stay' parties.

The recommendation for reform is not the unanimous view of the panel but is the majority position.

On behalf of the members of the panel, I thank you for the opportunity to engage with this issue, which is of great importance to the various stakeholders.

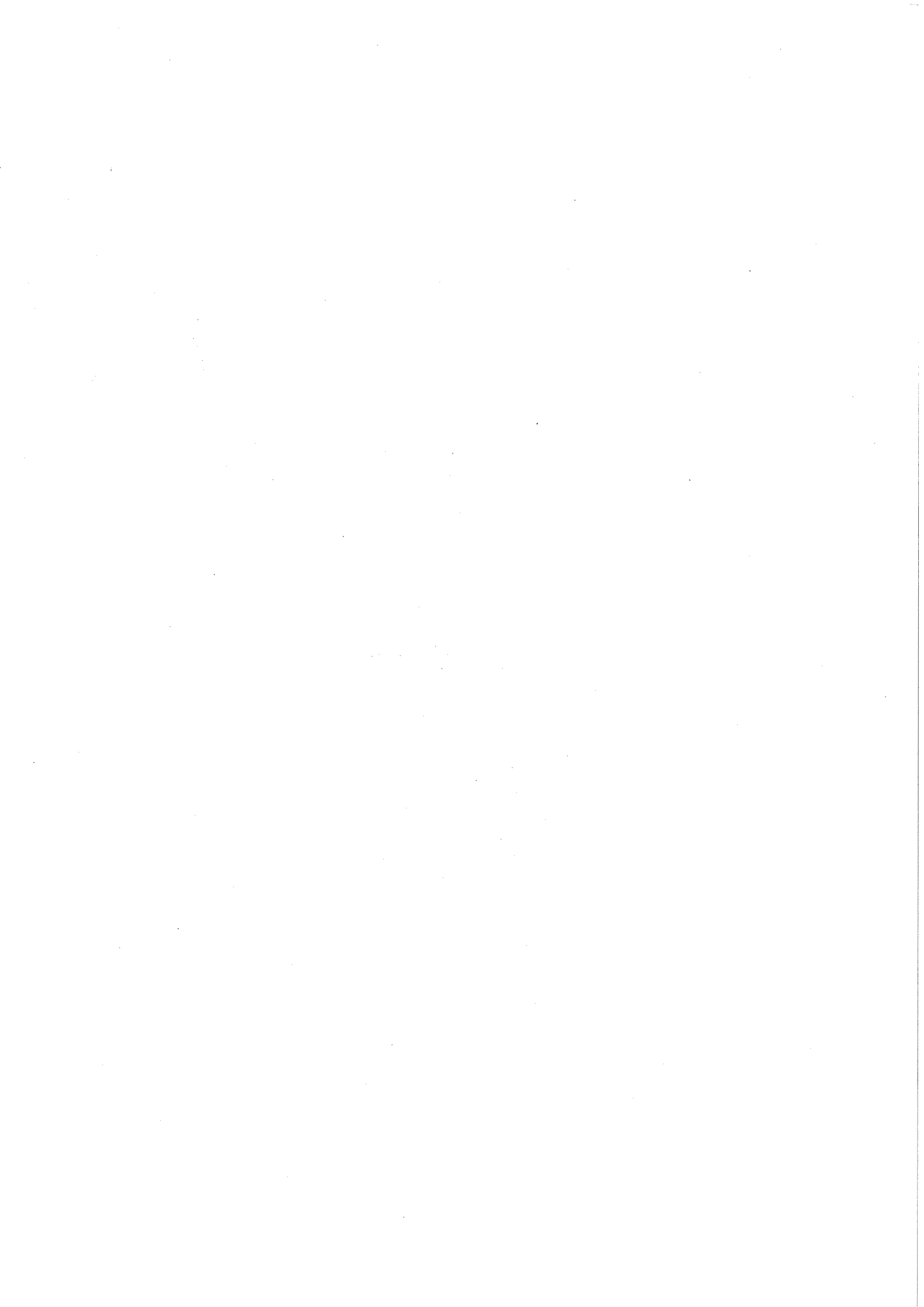
Yours sincerely



Simon Libbis

Chair

5/6/2015



**Independent Panel on Short-Stay Accommodation in CBD
Apartment Buildings**

Final Report

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Shortened Forms, Terms and Acronyms

ABCB	Australian Building Codes Board
ABS	Australian Bureau of Statistics
BCA	Building Code of Australia
Building Act	Building Act 1993
CBD	Central Business District (including Docklands and New Quay)
HRIA	Holiday Rental Industry Association
MOCCA	Melbourne Owners Corporation Committee Association
P&E Act	Planning and Environment Act 1987
Owners Corporations Act	Owners Corporations Act 2006
OCNV	Owners Corporation Network Victoria
SCAV	Strata Community Australia (Vic)
VCAT	Victorian Civil and Administrative Tribunal
VicAIA	Victorian Accommodation Industry Association
VPP	Victorian Planning Provisions
VTIC	Victoria Tourism Industry Council

1 Introduction

1.1 About the panel

In *Keeping it Liveable – Labor’s Plan for Your Community*, the Government committed to establishing an independent panel to recommend ways to improve the regulation of CBD residential buildings, so property is protected from unruly ‘short-stay’ parties.

The panel was constituted in February 2015 with the following members:

- Mr Simon Libbis of Subdivision Lawyers, Chair
- Mr Michael Nugent of Bencorp OCM Pty Ltd (an owners corporation management company) and nominee of Strata Community Australia - Victoria
- Ms Kristina Burke, Policy Manager, Victoria Tourism Industry Council
- Mr Paul Salter, President, Victorian Accommodation Industry Association
- Ms Angela Meinke, Manager, Planning and Building, City of Melbourne
- Mr Justin Butterworth, Director, Holiday Rental Industry Association, and
- Mr Roger Gardner, President, Owners Corporation Network Victoria and Docklands Community Association Inc.

Consumer Affairs Victoria and the Department of Environment, Land, Water & Planning (Building Branch) provided secretariat support to the panel.

The terms of reference for the panel (see annexure 1) required it to clarify:

- what constitutes a ‘short-stay’ occupant
- what problems they cause in CBD apartment buildings
- whether those problems are significantly greater than those caused by longer-term and owner-residents, and
- whose legitimate interests need to be considered in resolving the issue.

The answers to those questions determined the scope and nature of the options for improving the regulation of CBD residential buildings and, ultimately, the panel’s recommendation.

The panel met six times between 6 March and 28 May 2015.

1.2 What is ‘short-stay’ accommodation? Who are ‘short-stay’ occupants?

Media reports on the conduct of ‘short-stay’ occupants of apartments often focus on ‘weekend parties’. However, ‘short-stay’ occupants are variously regarded as those who stay for less than 7 days, less than 14 days or less than a month.

‘Couchsurfers’ (people who stay in the apartment with the owner as guests, whether paying or otherwise) are not generally regarded as ‘short-stay’ occupants.

‘Short-stay’ apartments can be let as serviced apartments, as part of a business, or on a ‘one-off’ or intermittent basis. They can be let directly by the apartment owner or on their behalf by a management company.

The panel notes that booking of short-stay accommodation is increasingly occurring through peer-to-peer websites such as Airbnb and Stayz.

The panel considers that the general characteristics of 'short-stay' occupants in CBD apartment buildings, the subject of the Government's commitment, are that:

- they have sole occupancy of the apartment, i.e. they are not sharing the premises with the owner (i.e. 'couchsurfing') or with unrelated people (such as in a bed and breakfast or backpacker establishment), and
- they are not occupants of buildings dedicated to serviced apartments but are (usually) occupants of serviced apartments in residential buildings.

The panel accepts that an effective definition requires an occupancy-duration limit, while noting that it may be difficult in practice to identify or monitor the duration of any particular short-stay occupancy. Therefore, if a short occupancy-limit is specified (for instance, a duration of 3 days would ensure focus on the highly problematic 'weekend parties'), this identification/monitoring problem could encourage unscrupulous operators to evade any new regulation of such short-stays by falsely recording a slightly longer duration for them, which might be difficult for an aggrieved resident or owners corporation to disprove.

The panel also accepts that a longer occupancy-limit, say, 14 or 30 days, would make it harder for operators to disguise these highly problematic occupancies in this way, while noting that the longer the occupancy-limit, the greater the regulatory 'overreach', i.e. regulation of largely unproblematic occupancies.

Taking into account that the Government's commitment focuses on CBD apartment buildings, the panel adopts the following definition for the purposes of its report and recommendation: 'a short-stay occupant is one who occupies a whole apartment in a Class 2 building in the CBD for 7 days (6 nights) or less'.

2 Background

2.1 The short-stay apartment accommodation industry generally¹

Structure of short-stay apartment accommodation industry

The Holiday Rental Industry Association (HRIA) says that in Melbourne there are 1,173 'establishments' providing short-stay accommodation (of which 757 are 'apartment establishments'), comprising 3,315 bedrooms (1,789 in apartment establishments) with a guest capacity of 6,439 (3,395 in apartment establishments)².

In apartment establishments, 7 per cent of bookings are for 1 night; 17 per cent for 2 nights; 22 per cent for 3 nights; 18 per cent for 4 nights; 12 per cent for 5 nights; 6 per cent for 6 nights; 8 per cent for 7 nights; and 11 per cent for 8+ nights. Apartment establishments are currently rented at an average of \$263.74 per night.

By way of comparison with the hotel/motel industry, the Australian Bureau of Statistics (ABS) Survey of Tourist Accommodation (June 2014: hotels, motels and serviced apartments of 15+ rooms) found that, as at 30 June 2014, there were 303 hotel/motel establishments in Melbourne with 27,950 rooms; and that for the year ending 30 June 2014, they generated 7.9 million 'room nights occupied' at an average 'yield per room night occupied' of \$185.

There is no specific data on the structure of the Melbourne short-stay apartment accommodation industry, except to note that short-stay apartments can be operated on a single-apartment or multiple-apartment basis by:

- owner-managers
- managers who lease the apartment/s from the owner/s
- managers acting as agent for the owner/s, or
- serviced apartment providers.

An indication of the structure of the industry on a national basis can be gleaned from the IBISWorld report for 2014-15 on the Australian serviced apartment industry³.

The report does not include unserviced apartments and therefore underestimates the total number of short-stay apartments available but nevertheless provides some insight.

It states that:

- 22.8 per cent of serviced apartments are in Victoria (32.1 per cent in NSW and 23.2 per cent in Queensland), and
- serviced apartments are used by domestic holiday or leisure travellers (50.2 per cent), domestic business travellers (28 per cent - greater in city locations), international visitors (17.6 per cent) and 'other' (4.2 per cent).

¹ The Background material uses a broader meaning of 'short-stay accommodation' than the definition adopted by the panel for the purposes of its report and recommendation.

² This data is based on Stayz listings and excludes hotel and motel accommodation. Because it is based only on Stayz listings, it underestimates the number of non-hotel/motel establishments providing short-stay accommodation in Melbourne. Melbourne apartments listed on Stayz represent 27% of the guest capacity of premises listed across Victoria.

³ IBISWorld Industry Report H4404 *Serviced Apartments in Australia* (October 2014).

Further, that:

‘The industry’s market share in the Accommodation subdivision is expected to continue growing over the next five years. Currently, around 25% of all Australian travel accommodation rooms are serviced apartments, and the shift away from traditional hotels is expected to continue, as investment in serviced apartments remains strong. ...Serviced apartments have become attractive investments because they are cheap to develop compared with traditional hotels. This is especially important in Australia’s capital cities, where suitable sites are scarce and land is expensive. ...New developments are now largely financed by ordinary buyers who invest in individual units’⁴.

On market-share concentration, the report states:

‘The serviced apartments industry exhibits a low level of market-share concentration [with] the industry’s top four players collectively accounting for less than 40% of industry revenue⁵ [and] slightly more than 40% of total rooms in 2014-15, reflecting the higher concentration in rooms managed. These operators have management agreements with serviced apartment owners or investors to manage the establishments’⁶.

Contribution to the economy

The short-stay accommodation industry contributes to economic activity and job creation, as well as providing consumers and property owners with choice and flexibility.

A January 2014 report prepared by BIS Shrapnel estimates that:

- 169,073 short-stay properties are in Victoria (27.12% of the national total), and
- the short-stay industry supported \$31.3 billion in economic activity and 238,000 jobs nationally.

It can therefore be estimated that short-stay accommodation in Victoria represents a multi-billion dollar industry supporting over 64,000 jobs.

There is limited data on the economic contribution of short-stay accommodation in apartment buildings in Victoria/Melbourne⁷.

The IBISWorld report estimates the total Australian revenue generated by the serviced apartment industry for 2014-15 to be \$3.1 billion (paying \$660.4 million in wages) but does not break down the data by state or region.

However, taking the 22.8 per cent Victorian share of serviced apartments, a similarly approximate indication of the revenue generated by Victorian serviced apartments can be obtained (22.8 percent of \$3.1 billion = \$706.8 million); and of wages paid (22.8 percent of \$660.4 million = \$150.6 million).

The approximate totals, therefore, for all short-stay apartments in Victoria in 2014-15 are \$791.8 million in revenue and \$161.3 million in wages paid.

⁴ Op cit p.8.

⁵ In fact, the top four account for 30 per cent: Mantra Group, 12.7 per cent, QSA Group (Quest) 9.8 per cent; Oaks Hotels & Resorts, 4 per cent; Toga, 3.5 per cent.

⁶ ibid p.17.

⁷ The *National Visitor Survey* and the *International Visitor Survey* conducted by Tourism Research Australia analyse the spending patterns of day-trip and overnight visitors staying in a rented house, apartment, flat or unit, and those staying in their own holiday house but do not break down the data by accommodation type and region.

By way of comparison, the ABS Survey of Tourist Accommodation found that for the year ending 30 June 2014, Melbourne's hotels and motels generated takings of \$1.46 billion (no data for wages paid).

2.2 Regulatory environment

Owners Corporations Act

While the Owners Corporations Act is silent on whether owners corporations can make rules interfering with the ability of lot owners to lease their units, Victorian Civil and Administrative Tribunal (VCAT) rulings have confirmed that the rule-making powers of owners corporations under the Act do not enable them to make such rules⁸ or rules that exclude certain occupants from common property, such as pools and gyms⁹.

Except for Tasmania, none of the Australian jurisdictions' owners corporation/body corporate legislation enables the making of rules interfering with the ability of lot owners to lease their units. Indeed, the New South Wales, South Australian and Western Australian legislation expressly prohibits such rules. On the other hand, Tasmania's legislation expressly enables rules that impose a minimum lease term of six months.

Under the Owners Corporations Act, owners corporations can make rules prohibiting the use of apartments for the carrying on of a business (as can the planning permit applicable to the building) but it is a moot point whether the use of an apartment for short-stay accommodation, as part of a short-stay business carried on by the owner, constitutes the carrying on of a business in the apartment¹⁰.

Building Act

Under the Building Code of Australia (BCA), an apartment building is a Class 2 building ('a building containing 2 or more sole-occupancy units each being a separate dwelling'). A hotel or motel is a Class 3 building ('a residential building, other than a building of Class 1 or 2, which is a common place of long-term or transient living for a number of unrelated persons, including ... (b) a residential part of a hotel or motel'). Class 3 buildings are required to have fire-safety, energy-efficiency and disability-access features that are not required in Class 2 buildings.

Occupancy permits are issued on the basis of the building's classification and the Building Act (section 40) prohibits a person from occupying a building in breach of the occupancy permit.

⁸ For example, *Lovison v Muir* [2014] VCAT 138.

⁹ For example, *Metro Real Estate Services Pty Ltd v Owners Corporation No 1-PS511424U* [2103] VCAT 2138.

¹⁰ In an undefended case in VCAT - *Owners Corporation PS339677W v Boglari* (VCAT Ref OC2259/2013) - an owners corporation obtained an injunction to prevent a lot owner letting her apartment as a serviced apartment, based on a rule prohibiting apartments being used 'for carrying on any trade or business'.

Paul Salter v Building Appeals Board, Giuseppe Genco and City of Melbourne¹¹ – Giuseppe Genco and City of Melbourne v Paul Salter and Building Appeals Board¹².

This case concerned the Class 2 classification of apartments in a large apartment building in Docklands and the accompanying occupancy permit.

Mr Salter commenced using a number of apartments in the building for short-stays. The City of Melbourne (Mr Genco was the Municipal Building Surveyor) contended that a short-stay apartment is not a 'dwelling' and that Mr Salter's use was a breach of the occupancy permit. The City required Mr Salter to evacuate the apartments or carry out works to bring them up to Class 3 standard and obtain a Class 3 occupancy permit.

The Building Appeals Board dismissed Mr Salter's appeal and upheld the City's claim but the Supreme Court upheld Mr Salter's appeal, which was confirmed by the Court of Appeal. In the Court of Appeal, Appeal Justice Osborn said:

'In essence a dwelling is a building (or part of a building) which contains within it the facilities necessary for separate residential occupation. In its ordinary meaning, a 'dwelling' is simply a place of residence or abode, whether temporary or permanent. ...There is no justification for implying a further criterion with respect to permanency of occupation. ...[A]n apartment will remain a dwelling as a matter of ordinary language even if its owner lives overseas or interstate and uses it only occasionally and then for relatively short periods. It will remain a dwelling even if it is let for short-term use. There is nothing in the fundamental concept contained in BCA clause A3.1 or the ordinary meaning of dwelling which requires that a dwelling be occupied for extended periods of time by the same person.'

The matter was referred back to the Building Appeals Board where it was resolved on the basis of an agreement between the parties that:

- Mr Salter install a smoke alarm in each bedroom to AS3786 standards (interconnected) and affix an emergency evacuation plan to the rear of each entry door, and
- the City of Melbourne instruct the owners corporation to upgrade the exit signs in the corridors.

Planning and Environment Act

The relevant land-use term in the latest version of the Victorian Planning Provisions (VPP) under the P&E Act is 'Accommodation' (defined as 'land use to accommodate persons')¹³.

The 'Accommodation' land-use term includes:

- 'dwelling' (defined as 'a self-contained residence, which must include: a kitchen sink; food preparation facilities, a bath or shower, and a closet-pan and wash basin'), and
- 'residential building' (defined as 'land used to accommodate persons'),

but does not specifically include short-stay apartments¹⁴.

¹¹ [2013] VSC 279.

¹² [2013] VSCA 365.

¹³ See clause 24.

¹⁴ However, one type of short-term accommodation is included as an example of a 'dwelling', namely, 'bed and breakfast', defined as 'a building used, by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence'. 'Residential building' includes two types of short-term accommodation, namely,

The Supreme Court decision referred to above establishes short-stay apartments as 'dwellings' and, conceptually, they would also be 'residential buildings'¹⁵.

The VPP states that 'a permit is not required to use a building...to house a person, people and any dependents of 2 or more people...if the building meets all of the following requirements:

- is in an area or zone which is commonly used for housing
- provides self-contained accommodation. and
- does not have more than 10 habitable rooms'¹⁶.

Therefore, whatever land-use term is applicable to short-stay apartments, it appears that a planning permit is not required if they meet these VPP provisions. This has been confirmed by VCAT¹⁷.

2.3 Media reports

These excerpts from a non-exhaustive survey of media reports over the past two years give an indication of some of the issues.

- 'The City of Melbourne council had issued orders against Docklands Executive Apartments, a serviced apartments operator, after the owners corporation of the 350-unit Watergate building complained about party noise, damage to common property, fighting, smoking and tampering with fire exits, fire extinguishers and lifts over a three-year period.' *News Domain*, 29 March 2013¹⁸.
- ' "Property owners have a fundamental right to use their property for accommodation purposes irrespective of the length of stay," Mr Salter [chair of the Victorian Accommodation Industry Association] said. "In addition, Melbourne has a responsibility to provide a suitable range of accommodation to visitors in our city." ' *Docklands News*, 30 July 2013.
- 'Residents claim that rowdy behaviour of short-stay guests in serviced apartments at the [Watergate] building has damaged parts of the property, frightened residents and forced some apartment owners to move out. ... Paul Salter said operations such as his brought much-needed tourism to locations like Docklands. He said short-stay accommodation could cater for the overflow of tourist in the city during major events when facilities were at capacity.' *Melbourne Times*, 3 March 2014.
- ' "If people purchase an investment property, they should be entitled to offer those properties as fully self-contained residences. It shouldn't matter whether the occupants stay for a week or a year," [Mr Salter said.] [T]he industry of short-stay apartment lets generates significant revenue and employment for a wide range of businesses in the local areas including cafes and restaurants.' *The Australian*, 8 March 2014.

'backpackers' lodge' (not defined) and 'residential hotel', defined as 'land used to provide accommodation in serviced rooms for persons away from their normal place of residence'.

¹⁵ Holiday houses have been treated by VCAT as 'accommodation' (*Armato v Hepburn Shire* [2007] VCAT 603) and as 'residential buildings' (*Ogilvie v Yarra Ranges SC* [2010] VCAT 658).

¹⁶ Clause 52.23 ('Shared Housing').

¹⁷ See the *Armato* and *Ogilvie* cases.

¹⁸ The panel notes that Mr Salter asserts that the complaints referred to were not against Docklands Executive Apartments but against another short-stay operator in the Watergate building.

- ‘The Accommodation Association of Australia, which represents 2000 tourism accommodation providers, said illegal letting of private homes as holiday or short-stay accommodation was severely undermining legitimate operators, was potentially dangerous and did nothing for job creation. ...”These operators don’t have public liability insurance, they don’t comply with safety requirements, they are not promoting tourism and they are not creating any new jobs.” *Australian Financial Review*, 13 March 2014.
- ‘...Airbnb is a great concept, provided it’s people renting out a spare room in their homes, not a strata parasite letting their whole flat to complete strangers who don’t give a flying focaccia about how much noise they make on their bucks’ party/footy trip/schoolies week. ...Residential apartment blocks are not hotels and people who are on holiday behave differently from long-tem residents.’ *theage.com.au*, 28 October 2014.
- ‘There exists an opportunity to strike a legislative balance between the rights to enjoy one’s property in quiet peace and enjoyment versus the right to lease and let one’s own property to others with reasonable flexibility.’ *Docklands News*, 30 October 2014 (‘Owners Corporation Law with Tom Bacon’).

2.4 Interstate and overseas experience on short-stay accommodation generally

Queensland: initiative to alter definition of Class 2 building to exclude short-stay accommodation; empowerment of local councils

In May 2009, the Queensland Department of Infrastructure and Planning announced that because ‘the Australian Building Codes Board (ABCB) has not been able to obtain agreement on a way forward on this issue’ and because ‘this issue remains a significant concern within Queensland’, it would consult with stakeholders on options. These included a local amendment to the BCA definition of a Class 2 building to exclude buildings with units ‘that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not) such as a serviced apartment used for short-stay, holiday or business accommodation’.

However, in 2012, the Queensland Department of Housing and Public Works decided not to pursue the proposal for a local amendment to the definition of a Class 2 building, on the basis that the matter should be dealt with at a national level by the ABCB.

In June 2014, the Government introduced amendments to the Sustainable Planning Act 2009 to enable local councils to:

- specify areas in their planning schemes as ‘party house restriction areas’, with the consequence that permits for premises in those areas are deemed not to authorise their use as a ‘party house’
- require permits to be obtained for the use of a premises as a ‘party house’, and
- develop codes for assessing such permit applications¹⁹.

¹⁹ The amendments commenced on 15 August 2014 (Part 7A of Ch 9 of the *Sustainable Planning Act 2009*).

A 'party house' is defined as premises 'regularly used by guests for parties, including, for example, bucks nights, hens nights, raves, wedding receptions or similar' that are let for a fee and for a period of less than 10 days.

Consideration by the ABCB of an amendment to the definition of a Class 2 building to exclude short-stay accommodation

In 2012, the ABCB announced that it had conducted 'extensive consultations to assess the claims and identify the need, if any, to make changes to the BCA', noting that 'respondents provided mixed and polarised views, with no clear way forward' and concluding that:

- 'the issue appears primarily to be focussed around amenity and commercial interests, and not life-safety'
- 'no evidence is available to the ABCB on fire safety grounds that would justify the introduction of Class 3 stringency provisions to Class 2 apartments without imposing significant costs on the design and construction of all apartments for little or no life-safety gains'
- 'the economic impacts of any change to the BCA classification are considered significant and may negatively impact on housing investment, supply and affordability'
- 'relevant amenity issues are starting to be addressed through a short-term accommodation industry non-regulatory Holiday Rental Code of Conduct', and
- 'a second stakeholder consultation will be undertaken in 2014 following implementation of the industry Holiday Rental Code of Conduct'²⁰.

Trial of a Code of Conduct in New South Wales

In May 2012, the short-stay holiday rental industry – in conjunction with the New South Wales Department of Planning and Environment, Destination New South Wales, and the Local Government and Shires Associations of New South Wales – commenced a self-regulation trial involving a code of conduct for apartment owners.

The trial period nominally ended in May 2014; however, a March 2014 report of the General Purpose Standing Committee No. 3 of the New South Wales Legislative Council entitled 'Tourism in local communities', recommended that the Government publish the results of the trial as soon as possible. However, to date, no announcement had been made by the New South Wales Government.

Overseas experience

Without attempting an exhaustive survey of the overseas experience, it can be said that there is a mixed experience of managing short-stay accommodation.

A number of destinations permit short-stay accommodation including New Orleans, Nashville, San Diego, Milan, Lisbon, Singapore and London.

On the other hand, in 2011, New York revised and clarified its law banning apartment rentals for less than 30 days. In 2013, Airbnb, one of the world's biggest holiday-apartment rental sites, was subpoenaed by the State's prosecutor to disclose information on property owners

²⁰ No further advice to date regarding the second round of consultation.

who advertised their residences for rent, which provoked a protest petition of more than 100,000 signatures.

In the last three years, Berlin and Paris have banned short-stay rentals.

Various reasons were cited for these restrictions:

- protecting the amenity of full-time residents
- freeing up rental accommodation for local residents and driving down rents
- stopping hotel-tax avoidance, and
- supporting the local hotel industry.

Moving somewhat in the other direction, in 2014, San Francisco passed an ordinance (effective 1 February 2015) providing for an exception to its law banning apartment rentals for less than 30 days but only for a maximum of 3 such lettings in any 12-month period. The apartment owner must register with the city and pay the 'transient occupancy tax' levied on hotels for any such letting.

3 Issues

3.1 Whose legitimate interests need to be considered in resolving the issue?

Stakeholders

The panel considers that the following stakeholders have legitimate interests that must be considered in framing the options and recommendation/s.

Residents of CBD residential buildings

Residents of apartment buildings are key stakeholders. Complaints from longer-term residents, including owner-residents, about the conduct of short-stay occupants were the genesis of the Government's commitment.

Longer-term residents, including owner-residents, have a legitimate interest in enjoying their apartments in reasonable peace and quiet.

Owner-residents have a further legitimate interest in protecting the capital value of their apartments.

Owners of short-stay apartments in CBD apartment buildings

The other key stakeholders are the owners of apartments who let them for short-stays. They have a legitimate interest in exploiting their legal right to let their apartments as they see fit and to maximise the return on their investment.

Short-stay occupants of CBD apartments

While the interests of potential short-stay occupants may largely be reflected by those of the owners of the short-stay apartments in which they intend to stay, and by those of the tourism industry, their interest in the continuing availability of this form of short-stay accommodation in the CBD should be noted.

Owners corporations in CBD apartment buildings

Under the Owners Corporations Act, owners corporations are responsible for the repair and maintenance of the common property. Further, owners corporations make and enforce rules that affect the use of apartments, including rules regarding safety, noise and nuisance.

Owners corporations in apartment buildings have a legitimate interest in preventing damage to the common property and unauthorised, inappropriate or excessive use of facilities on the common property, such as car parks, swimming pools and gyms, and in enforcing rules regarding safety, noise and nuisance.

Tourism industry

Many short-stay occupants are interstate and overseas tourists. Interstate tourists, in particular, use apartments (as well as hotels and motels) when attending major events in Melbourne (Spring Racing Carnival, AFL Grand Final, Formula One Grand Prix and Australian Tennis Open).

The tourism industry has a legitimate interest in promoting tourism in Victoria and in ensuring that visitors - domestic, interstate and international - have a positive experience when visiting Melbourne, including that they have a range of accommodation options to suit their lifestyles and finances.

Accommodation industry

The accommodation industry encompasses a variety of accommodation providers. As well as providers of short-stay accommodation in CBD apartment buildings (and in other apartment buildings), the industry includes hotels, motels, serviced apartment establishments²¹, bed and breakfast establishments, backpacker hostels and holiday accommodation.

The accommodation industry has general interests in the growth of the industry and in the resolution of the problem of the conduct of short-stay occupants in CBD apartment buildings. However, the industry does not necessarily have a united view; for instance, the hotel/motel segment of the industry opposes the existence of the short-stay apartment segment as currently operated.

City of Melbourne and other regulators

The City of Melbourne enforces aspects of the planning and building legislation in its municipality. It and other regulators also enforce health and safety laws, including as they relate to nuisances emanating from apartments in CBD buildings and to higher-than-anticipated occupancy rates.

The City has a particular interest in the well-being of its residents (including those in CBD apartment buildings) and in the residential amenity of the CBD and has a general interest in the availability of quality accommodation in the CBD.

Victorian community

The panel considers that the Victorian community as a whole is too diverse to isolate any particular interests it may have in the resolution of the problem, separate from those of the tourism and accommodation industries. The panel accepts that short-stay accommodation in CBD apartment buildings is a substantial contributor to both industries.

3.2 What problems do short-stay occupants cause?

The panel accepts that:

- some short-stay occupants of CBD apartment buildings are responsible for loud music; smoking, drinking, urinating and vomiting in common areas; littering of and damage to common areas; drunken behaviour and nudity in common areas; loud and offensive language; urinating and dropping objects from balconies; and parking in resident bays
- some of these acts endanger the safety of people in the building, and
- these acts invariably constitute breaches of the owners corporation rules and/or the Owners Corporations Act²².

In addition, some inconvenience is caused to residents when lifts are used by cleaners of short-stay apartments, with trolleys and other equipment; some loss of amenity is caused by the presence of non-residents in apartment buildings, including in facilities such as pools and gyms; and that unsightliness is caused when short-stay occupants deposit used linen in the hallways.

²¹ Buildings consisting solely or predominantly of serviced apartments.

²² See section 137 of the Act, which, among other things, obliges occupiers of lots to comply with the owners corporation rules and not to use the common property in a manner that is likely to cause damage or deterioration to it.

The panel also accepts that some short-stay apartments have higher-than-anticipated occupancy numbers, giving rise to health and safety issues, including breaches of health, building and safety laws.

Finally, the panel accepts that some owners corporations in CBD apartment buildings have instituted security measures because of short-stay occupants, which has resulted in increased costs, and that some have incurred increased maintenance costs because of short-stay occupants (these costs arise from more frequent maintenance rather than from discrete, extra items of maintenance and therefore cannot be quantified).

3.3 Is there a significantly greater problem with short-stay occupants of apartment buildings as against longer-term and owner residents?

The panel accepts that:

- it is not only short-stay occupants who cause the problems it has identified and that many of these problems arise simply because of the nature of high-density living
- not all short-stay occupants cause those problems, and
- short-stay occupants do not cause those problems in all CBD apartment buildings.

The panel notes that resident-complaint data might be somewhat biased against short-stay occupants if short-stay occupants generally do not complain about other residents' conduct; and that resident-complaint data do not show to what extent, if at all, complaints about short-stay occupants are subsequently resolved to the satisfaction of the complainants.

However, having reviewed the data and evidence provided by panel members, and the survey data provided by Consumer Affairs Victoria (see annexure 2)²³, the panel accepts that short-stay occupants cause a disproportionate number of problems in some CBD apartment buildings, particularly in Docklands and New Quay, and that this requires addressing.

²³ The panel accepts that the survey sample-size was large enough to enable conclusions safely to be drawn.

4 Options for addressing the issues

4.1 The Terms of Reference options

The Terms of Reference for the short-stay accommodation panel require the panel to identify and examine options for addressing the issues that maximise the amenity of living in apartment buildings and minimise:

- interference with property rights
- any negative impact on the Victorian tourism industry, investment in Victoria and the Victorian economy generally, and
- divisiveness within owners corporations.

These options include but are not limited to the following six proposals, which the panel has considered.

Option 1: prohibiting short-stay accommodation in apartment buildings under the Building Act 1993 or the Planning and Environment Act 1987

This option involves the prohibition of short-stay accommodation in existing and future CBD apartment buildings.

The panel considers that this option has the following advantages:

- it would be a comprehensive and immediate resolution of the problems created by unruly parties, and
- by removing the problem from owners corporations, it would avoid encouraging divisiveness within them.

The panel considers that this option has the following disadvantages:

- it would impose a significant burden on industry because it would –
 - negate the property rights of apartment owners
 - unfairly disadvantage apartment owners whose short-stay occupants do not engage in anti-social conduct, and
 - discriminate against buildings where the majority of apartment owners are in favour of short-stay accommodation, and
- it would negatively impact on –
 - tourism by eliminating short-stay apartments in the CBD
 - investment in CBD apartment buildings, and
 - employment in the short-stay accommodation industry.

Consideration

Except for Mr Gardner, who supports prohibiting lettings of less than 30 days in existing and future CBD apartment buildings (but that if a prohibition on lettings of less than 30 days is considered too long, supports prohibiting lettings of less than 5-7 days), the panel considers that prohibition would be an unnecessarily wide approach to the problem of unruly short-stay parties in CBD apartment buildings and that its negative impact on property rights, tourism and investment would be out of proportion to the problem.

Mr Gardner believes that it is unacceptable for people who buy into a residential apartment building to have to tolerate the unacceptable conduct of short-stay occupants and that the only way to address the issue is the prohibition of short-stay accommodation in CBD apartment buildings, as has been implemented in some overseas cities, which would force the construction of buildings dedicated to short stays, such as Quest buildings. Mr Gardner does not believe that short-stay accommodation in CBD apartment buildings is necessary for tourism, as there is sufficient accommodation in hotels, motels and holiday houses and apartments.

Option 2: self-regulation by industry through implementation of the Holiday Rental Industry Association's Holiday Rental Code of Conduct, with assistance from Tourism Victoria

This option could include linking the HRIA Code to existing tourism or accommodation sector education or accreditation schemes, to broaden participation, and would involve regular reporting by the HRIA to the Government on complaint and dispute resolution data.

Assistance could also be provided by the City of Melbourne.

The panel considers that this option has the following advantages:

- it would address the problem without –
 - negating property rights
 - imposing a regulatory burden on industry, or
 - affecting tourism or employment in the short-stay accommodation industry
- the HRIA would be in a unique position to work with industry to institute practices that minimise the inconvenience to residents of short-stays, such as reception facilities for short-stay occupants and appropriate cleaning times/practices
- self-regulation would provide a responsive method for dealing with problems as they arise, and
- by removing the problem from owners corporations, it would avoid encouraging divisiveness.

The panel considers that this option has the following disadvantages:

- unless membership of HRIA is mandated for operators of short-stay accommodation in CBD apartment buildings, non-members – those considered most likely to let their apartments to problematic occupants – may continue to operate without ramifications
- the capacity of HRIA to enforce its Code is unclear, although the panel notes that it has undertaken to allocate the necessary resources for appropriate complaint-handling and disciplinary processes
- its feasibility would also depend on whether –
 - the Code is strengthened to prohibit problematic members from letting their apartments for short-stays, and
 - Tourism Victoria or other Government agency supports the Code through education campaigns and membership support.

Consideration

The panel does not consider that this option, on its own, would be a viable solution to the problem of unruly short-stay parties in CBD apartment buildings, principally because operators of problematic short-stay apartments may not be listed with participating or supporting organisations. However, the panel also considers that the implementation of the HRIA Code in CBD apartment buildings could educate providers operating in those buildings as to appropriate industry standards, and that this option should be adopted in conjunction with the appropriate regulatory option.

Option 3: alternative dispute resolution (ADR) and mediation options to manage tensions between residents and short-stay apartment owners

This option could involve:

- mandatory or voluntary ADR/mediation
- industry-funding, or co-funding by the parties on a case-by-case basis
- linkage to a code of conduct
- ADR/mediation being a condition to taking a dispute to a court/tribunal, and
- mediators coming from an appointed panel, or chosen from the open market on a case-by-case basis.

The panel considers that this option has the following advantages:

- it would address the problem without negating property rights, imposing a regulatory burden on industry or affecting tourism, and
- it would tend to ensure that problems are addressed in a way that does not create divisiveness within owners corporations.

The panel considers that this option has the following disadvantages:

- it would –
 - address breaches of the Owners Corporations Act, regulations or rules only on an individual basis and only after they have occurred
 - be costly and time-consuming
 - not guarantee successful outcomes
 - not prevent repetition of the problematic conduct, and
 - not address the issue systemically
- the Owners Corporations Act already requires owners corporations to have an internal dispute resolution process for complaints by a member against another member for breach of the Owners Corporations Act, regulations or rules, and
- Consumer Affairs Victoria already has powers to mediate such disputes.

Consideration

The panel does not consider that this option, on its own, would be a viable solution to the problem of unruly short-stay parties in CBD apartment buildings and that it could only be considered in conjunction with an option that more immediately addressed the problem if it offered something more than the existing internal dispute resolution processes required under the Owners Corporations Act, of which the panel is not convinced. However, if a

better scheme was devised, the panel considers that it, as well as option 2, could be adopted in conjunction with the appropriate regulatory option.

Option 4: strengthening the powers of owners corporations under the Owners Corporations Act 2006 to deal with the conduct of short-stay occupants

This option refers to powers short of those allowing owners corporations to prohibit or restrict short-stays; for example, allowing owners corporations to make rules requiring bonds to be lodged with them by owners letting their apartments for short-stay accommodation, as insurance against loss or damage caused by breaches of the Act and the owners corporation rules.

The panel considers that this option has the following advantages:

- it would allow each owners corporation to deal with the issue as it saw fit, without the imposition of a one-size-fits-all regime and without negating the property rights of owners or affecting tourism.
- a bond requirement would –
 - provide for immediate and certain compensation to owners corporations for damage to common property, and
 - deter owners from letting to problematic occupants.

The panel considers that this option has the following disadvantages:

- it would not be effective for buildings where the owners corporation is controlled by pro-short-stay members, who are unwilling to address issues, particularly where the developer has retained majority voting rights
- it would tend to encourage divisiveness in owners corporations, particularly where litigation, with its associated costs, arises, and, in any case, it would be difficult to obtain the 75% majority for the special resolution needed for rule changes
- it would operate somewhat unfairly on apartment owners whose short-stay occupants do not engage in anti-social conduct
- the powers could be abused in buildings controlled by anti-short-stay members so that they effectively result in prohibition, and
- in the case of the bond proposal, it would –
 - require a regime for holding, dealing with, making deductions from and refunding bonds (including right of appeal to VCAT)
 - rely on apartment owners advising their owners corporation of their intention to let their apartments for short-stays
 - not compensate residents for loss of amenity/enjoyment of their apartments, and
 - tend to discourage letting to non-problematic occupants as well as problematic occupants.

Consideration

The panel considers that providing further powers to owners corporations to make rules to manage the problem of unruly short-stay parties in CBD apartment buildings would not be a viable solution because it would not represent a significant advance on the existing situation

(owners corporations already have sufficient powers). In particular, the panel considers that the bond proposal would not be viable.

Option 5: amending the Owners Corporations Act 2006 to allow owners corporations to make rules prohibiting or restricting short-stays

The panel considers that this option has the following advantages:

- it would allow each owners corporation to deal with the issue as it saw fit, without the imposition of a one-size-fits-all regime
- allowing owners corporations to prohibit or restrict short-stay accommodation in their building would provide them with a comprehensive and immediate resolution of the problems created by unruly parties, and
- has already been adopted in Tasmania, which enables owners corporations to make rules imposing a minimum lease term of 6 months.

The panel considers that this option has the following disadvantages:

- the powers would be ineffective in buildings where the owners corporation is controlled by pro-short-stay members, particularly where the developer has retained majority voting rights
- in many cases, it would be difficult to obtain the 75 per cent majority for the special resolution needed for rule changes
- it would tend to encourage divisiveness in owners corporations including where one faction or another pursues pre-emptive action to lock in their preferred position
- to the extent that owners corporations exercised the powers, it would impose a significant burden on industry because it would –
 - negate the property rights of apartment owners, and
 - unfairly disadvantage apartment owners whose short-stay occupants do not engage in anti-social conduct, and
- it would negatively impact on –
 - tourism by reducing the amount of short-stay accommodation in the CBD
 - investment in CBD apartment building, and
 - employment in the short-stay accommodation industry.

Consideration

Except for Mr Nugent and Mr Gardner, the panel either does not consider that this option would be workable, because of the need for a special resolution to change the rules, or that it would be appropriate, because it would:

- enable CBD owners corporations to interfere with the property rights of lot owners and to discriminate against apartment owners whose short-stay occupants do not engage in anti-social conduct, and
- cause divisions within CBD owners corporations.

Mr Nugent supports this option on the basis that owners corporations should be allowed to determine the use of their own buildings and on the basis that, as a safety measure, the special resolution required for such a rule change not be subject to the interim-resolution provisions of the Owners Corporations Act, and:

- notes that some owners corporations have passed rules prohibiting short-stay accommodation in their buildings but that determinations in VCAT have indicated that such rules are invalid either because they discriminate against lot owners letting for short-stays or because, unlike in Tasmania, the Owners Corporations Act does not permit rules to be made interfering with property rights in this way,
- believes that the rights of a small number of owners to use their properties for short-stays adversely impacts on the rights of the other owners to retain the character of their property as a residential apartment building, which was the basis on which they purchased their units,
- believes that in complying with point 1 of the Terms of Reference ('Identify and assess the issues arising from short-stay accommodation in Victorian apartment buildings') the panel gives undue emphasis to behavioural issues and insufficient consideration to the other impacts of hotel-type accommodation in residential buildings; and that it is these issues, along with the behavioural issues, that create the significant resident-opposition to short-stays,
- says that as an owners corporation manager, he regularly receives complaints about short-stay occupants from residents in the buildings his company manages and that they reflect more than just behavioural issues, in particular:

Hotel-like ambience

- cleaning staff, after every short-stay, bring hotel-type cleaning trolleys into the lifts (often when occupied by residents) regularly leave them propping open apartment doors or in the hallway, and take soiled linen, left in hallways, down in lifts (again, often when occupied by residents),
- short-stays change the character of a building from a residential *community* to a transient hotel,

Lack of security

- residents consider that their security systems - usually allowing for residents to have access only to their level and for guests to be 'buzzed in' and have access only to their invitee's level – are compromised by short-stay occupants who book on line and who may not be physically vetted by the provider, and by cleaning staff who have multiple-level access, and often feel uncomfortable when travelling in lifts with these (unescorted) strangers,

Overcrowding

- it is relatively common for one or two short-stay occupants to book in and then invite other guests to move in, which creates safety issues and results in over-use of building facilities such as the gym and pool; and although hotels, with their reception desks, are alert to and can prevent this, there is no such monitoring in a residential apartment building where the short-stay provider does not have a physical presence, and

Ignorance of owners corporation rules

- short-stay occupants, often staying only for a weekend, often breach the rules through ignorance or otherwise and the owners corporation cannot effectively address them because the Owners Corporations Act requires 28 days' notice to be given to rectify a breach,
- notes that there are already a number of CBD apartment buildings, particularly at Docklands, where the percentage of lot owners letting for short-stays exceeds 25%, which would mean that anti-short-stay residents in those buildings would be unable to pass the special resolution required to change the owners corporation rules if Option 5 is adopted, and that the adoption of Option 5 would therefore not affect those buildings or the tourist industry around them.

Mr Gardner agrees with Mr Nugent.

Option 6: amending the Owners Corporations Act 2006 to make apartment owners liable for the conduct of their short-stay occupants

This option could involve amending the Act to:

- increase the maximum civil penalty for a breach of the rules (currently \$250) to an amount that would provide a stronger deterrent
- make apartment owners liable for –
 - fines imposed by VCAT for breaches of the rules by their short-stay occupants, and
 - damage to common property caused by their short-stay occupants, which could involve empowering owners corporations to levy the owner for the cost, with a right of recoupment from the short-stay occupant²⁴, and
- enable VCAT to award damages to residents for loss of amenity/enjoyment of their apartment caused by breaches of the rules by short-stay occupants and make apartment owners liable for such damages (with a right of recoupment from the short-term occupant).

The panel considers that this option has the following advantages:

- it would address the basic problem with short-stay occupants, namely that unlike permanent or long-term residents, they cannot effectively be pursued by owners corporations or aggrieved residents for breaches of the Act or the owners corporation rules, particularly because they often cannot readily be identified or located
- it would operate to deter owners from letting their apartments to problematic occupants or encourage them to put systems in place to vet occupants, for example by requiring a sufficient bond (from which they could also recoup any vicarious liability incurred because of the occupants' conduct)
- it would provide effective remedies for aggrieved residents²⁵ and owners corporations, without: –

²⁴ Thus overcoming the fact that the Act does not make lot owners responsible for breaches of the Act or rules by their occupants (affirmed by VCAT in the case of *Lee v Owners Corporation No. 501391P* [2013] VCAT 1942).

- negating the property rights of apartment owners
- unfairly disadvantaging apartment owners whose short-stay occupants do not engage in anti-social conduct, or
- negatively impacting on tourism
- by removing the need for owners corporations to make rules to address the problem, it would avoid or, at least, minimise divisiveness, and
- it would address the problem without negating property rights or affecting tourism and would impose a burden only on the problematic section of the industry.

The panel considers that this option has the following disadvantages:

- it would not necessarily operate to deter owners from letting their apartments to problematic people
- it would discriminate against providers of short-stay accommodation as against providers of long-term accommodation
- the unfairness to owners, especially those who acted responsibly in letting their apartments, of making them liable for the conduct of their short-stay occupants would not necessarily be mitigated by a right to recoup from the short-stay occupant, and
- the scope of owners' vicarious liability would need to be carefully defined.

Consideration

The panel notes that imposing liability on short-stay providers for damage caused by their occupants would create an incentive for them to require bonds and that this would almost invariably deter problematic short-stays. It also notes that many short-stay providers already require substantial bonds and that some CBD owners corporations already levy them for the cost of damage to common property caused by their short-stay occupants.

The panel considers that while the principle of making short-stay operators responsible for consistently letting to problematic occupants should inform the appropriate regulatory option, it would be unfair to make them liable for their occupants' conduct to the extent envisaged by this option.

4.2 Other options

In the course of its deliberations, the panel considered several other options:

Option 7: empowering the City of Melbourne to specify residential apartment buildings as 'party house restriction areas'

This option follows Queensland's *Sustainable Planning Act 2009*, under which local councils can:

- specify areas in their planning schemes as 'party house restriction areas', with the consequence that permits for premises in those areas are deemed not to authorise their use as a 'party house'
- require permits to be obtained for the use of a premises as a 'party house', and

²⁵ Including for those where substantial loss of amenity/enjoyment of their apartment may be the cumulative result of a number of breaches of the rules by successive occupants of a short-stay apartment, none of which, on its own, would be substantial enough to warrant action.

- develop codes for assessing such permit applications.

A 'party house' is defined as premises 'regularly used by guests for parties, including, for example, bucks nights, hens nights, raves, wedding receptions or similar' that are let for a fee and for a period of less than 10 days.

The option entails an amendment to the Planning and Environment Act 1987 to give similar powers to the City of Melbourne under its planning scheme in relation to CBD apartment buildings.

The panel considers that this option has the following advantages:

- with an appropriate code for assessing permit applications, it would address the problem of unruly parties without –
 - an outright prohibition on short-stay accommodation in the CBD (and so would not negate property rights)
 - an outright prohibition on the use of short-stay apartments for parties (and so would not unfairly disadvantaging apartment owners whose short-stay occupants do not engage in anti-social conduct), and
 - affecting tourism significantly
- it would allow the City of Melbourne to deal with each apartment building individually and to take owners' and residents' wishes into account, and
- by removing the problem from owners corporations, it would avoid divisiveness.

The panel considers that this option has the following disadvantages:

- if the City of Melbourne specified all CBD apartment buildings as 'party house restriction areas', it would impose a burden on industry because it would discriminate against buildings where the majority of apartment owners are in favour of short-stay accommodation
- in any case, it would impose a burden because of the expense involved in obtaining a permit, particularly if fees are involved
- it would not necessarily resolve the problems caused by unruly parties or would only do so to a limited extent, including because permits would only be required for apartments that are 'regularly' used as 'party houses'
- it would probably result in significant non-compliance, necessitating increased enforcement resources for the City of Melbourne
- it would somewhat impact on tourism by raising the cost of short-stay accommodation in the CBD, and
- it would involve costs that are disproportionately high compared to the problem.

Consideration

The panel does not consider that this option would be workable, for the reasons given above.

Option 8: empowering the City of Melbourne to penalise short-stay apartment owners for excessive noise regularly emitted from their apartments

This option follows section 42B of Queensland's *City of Brisbane Act 2010* and section 38B of its *Local Government Act 2009*, under which the City of Brisbane and other local councils can make a local law that:

- makes the owner of a residential property liable for a penalty because of 'excessive noise regularly emitted from the property'
- fixes the number of times constituting 'regularly' emitted, and
- makes a 'noise abatement direction' given by an authorised officer to anyone at the property prima facie evidence of 'excessive' noise

The option entails an amendment to the Planning and Environment Act to provide for a similar power for the City of Melbourne in relation to CBD apartment buildings.

The panel considers that this option has the following advantages:

- it would address the major problem caused by short-stay occupants without –
 - negating the property rights of apartment owners
 - unfairly disadvantaging apartment owners whose short-stay occupants do not make excessive noise, or
 - affecting tourism
- it would operate to deter owners from letting their apartments to problematic occupants or encourage them to put systems in place to vet occupants
- by removing the problem from owners corporations, it would avoid divisiveness, and
- it would impose a regulatory burden only on the problematic section of the industry.

The panel considers that this option has the following disadvantages:

- it would not deal with the other problems caused by short-stay occupants
- it would entail resourcing issues for the City of Melbourne, particularly in enforcement
- it would not necessarily operate to deter owners from letting their apartments to problematic occupants, and
- it would be unfair to owners, especially those who acted responsibly in letting their apartments, even if there was a right of recoupment from the short-stay occupant.

Consideration

The panel does not believe that this option would be a viable solution to the problem of unruly short-stay parties in CBD apartment buildings because the City of Melbourne finds the existing powers under the Environment Protection Act regarding noisy parties to be difficult to enforce, and notes that the City of Melbourne would not support it.

Option 9: restricting the number of short-stay apartment lettings

This option follows a recent San Francisco ordinance providing, among other things, for:

- an exception to its law banning short-term rentals for less than 30 days but only for a maximum of 3 such lettings in any 12 month period
- registration of short-stay properties, and

- penalties for listing agencies, such as Airbnb, that list unregistered properties.

The option entails an amendment to suitable legislation such as the Planning and Environment Act to provide for the City of Melbourne to limit short-stays in CBD apartment buildings to, say, a maximum of 3 such lettings in any 12 month period, with similar requirements for registration etc.

The panel considers that this option has the following advantages:

- it would tackle the problem short of outright prohibition but represents a reasonable compromise, and
- by removing the problem from owners corporations, it would avoid divisiveness.

The panel considers that this option has the following disadvantages:

- it would at best limit but would not remove the problems caused by short-stay occupants
- it would impose a significant burden on industry because it would –
 - limit the property rights of apartment owners
 - discriminate against buildings where the majority of apartment owners are in favour of short-stay accommodation, and
 - unfairly disadvantage apartment owners whose short-stay occupants do not engage in anti-social conduct
- it would somewhat negatively impact on –
 - tourism by reducing the amount of short-stay accommodation in the CBD
 - investment in CBD apartment buildings, and
 - employment in the short-stay accommodation industry, and
- it would entail resourcing issues for City of Melbourne, particularly in enforcement, as there would probably be substantial non-compliance.

Consideration

The panel notes the reports that the municipal authorities in San Francisco are having great difficulty in monitoring and enforcing the maximum number of short-stay lettings and that the City of Melbourne would have similar difficulties. It also notes that the City of Melbourne would not support this option. For these reasons and because limiting the number of short-stays would not directly address the problem of unruly short-stay parties in CBD apartment buildings, the panel, except for Mr Gardner, considers that this option would not be a viable approach. Mr Gardner's view is that if Option 1 is not accepted, this option should be adopted, for the reasons given above.

Option 10: registration of CBD short-stay apartments as 'prescribed accommodation' under Divisions 2 and 4 of Part 6 of the Public Health and Wellbeing Act 2008

Under these provisions of this Act (and of the regulations made under the Act):

- a provider of 'prescribed accommodation' must register the accommodation with the local council

- 'prescribed accommodation' currently excludes 'a self-contained flat under the exclusive occupation of the occupier'²⁶
- the provider of 'prescribed accommodation' must keep a register of the names and addresses of occupiers
- 'prescribed accommodation' that is let for less than 31 days must conform to the following bedroom density requirements –
 - maximum of 2 persons in bedrooms with a floor area of less than 10 square metres
 - maximum of 3 persons in bedrooms with a floor area of 10 square metres or more, and
 - one additional person for every extra 2 square metres
- 'prescribed accommodation' must also be kept in 'good working order', in 'a clean, sanitary and hygienic condition' and 'in a good state of repair', including that each bedroom and ensuite must be cleaned, and the linen changed, after each occupation, and
- other conditions can be prescribed for specific classes of 'prescribed accommodation'.

The option entails regulations being made under the Act to:

- include CBD apartments used for short-stay accommodation as a specific class of 'prescribed accommodation', and
- prescribe appropriate further conditions of registration to address all issues arising from the conduct of short-stay occupants, such as –
 - compliance with Class 3 building safety requirements, and
 - compliance with a code of conduct such as HRIA's Code,meaning that continued registration would depend not on whether unruly parties occur but on whether the provider was complying with the safety requirements and code of conduct.

This option could also entail a requirement that businesses that advertise short-stay accommodation must only list registered providers, including de-listing de-registered providers.

The panel considers that this option has the following advantages:

- with appropriate prescribed conditions, including empowering owners corporations to apply to VCAT for a deregistration order, it would address the problem of unruly parties without –
 - an outright prohibition on short-stay accommodation in the CBD (and so would not negate property rights)
 - an outright prohibition on the use of short-stay apartments for parties (and so would not unfairly disadvantaging apartment owners whose short-stay occupants do not engage in anti-social conduct), and
 - affecting tourism significantly, and

²⁶ Therefore, may therefore exclude such flats let under a tenancy agreement, which entails exclusive possession, and so conforms to the panel's definition of 'short-stay accommodation'.

- it would provide valuable data on the short-stay industry in the CBD, not currently available, regarding numbers of apartments/bedrooms, locations etc.

The panel considers that this option has the following disadvantages:

- it would impose a burden on industry because it would –
 - discriminate against buildings where the majority of apartment owners are in favour of short-stay accommodation, and
 - involve expense in obtaining registration, particularly if fees are involved
- some of the general conditions for ‘prescribed accommodation’ are not appropriate for short-stay accommodation in CBD apartment buildings
- because of the difficulties that would be expected in obtaining the special resolution needed for an owners corporation to apply to VCAT for a de-registration order, enforcement would effectively be a matter for the City of Melbourne
- it would entail resourcing issues for City of Melbourne, particularly in enforcement, as there would probably be substantial non-compliance (wholly or partially offset by any fees charged)
- it would not necessarily resolve the problems caused by unruly parties or would only do so to a limited extent because –
 - compliance with a code of conduct would not necessarily stop unruly parties but would enable continued registration
 - de-registration would normally be a slow process that would only follow from repeated breaches, and
 - the regulator would be expected to be slow to cancel a registration where it involved the short-stay accommodation provider’s livelihood
- it would somewhat impact on tourism by raising the cost of short-stay accommodation in the CBD, and
- it would involve costs that are disproportionately high compared to the problem.

Consideration

While the panel considers that this option, tied to a code of conduct and including the ability of individual owners corporations to initiate deregistration in VCAT, could, through the threat of de-registration, indirectly address the problem of short-stay providers who consistently let to problematic occupants, it does not consider that it would directly or adequately address the problem of unruly parties.

The panel does not believe that this option would be viable, particularly because of the need for the City to monitor breaches of the registration conditions and given the current limitations experienced by the City in enforcing its powers under the Environment Protection Act regarding noisy parties. The panel notes that the City would not support this option.

The panel also considered the ‘cheaper’ alternative of a ‘negative’ licensing regime, under which apartments could be used for short-stays unless and until prohibited because, say, three infringement notices had been issued by the police or City of Melbourne for unruly parties in the apartment. However, the panel considered that the same monitoring/enforcement problems would apply and that problematic short-stay providers would easily evade the system by ‘rotating’ unruly parties through their stock of apartments.

Option 11: amendment of the definition of Class 2 building in the Building Code of Australia

This option, which would apply to apartment buildings constructed in the future, involves an amendment to the definition of Class 2 building in the Building Code of Australia to:

- require all buildings that could potentially be used as short-stay accommodation to be built to the standards of Class 3 buildings (issues about which were agitated in *Salter v Building Appeals Board* and *Genco v Salter*), or
- provide that a Class 2 building is a place of long-term accommodation, excluding short-stay and serviced apartment accommodation.

The panel considers that this option has the following advantages:

- neither amendment would interfere with the rights of existing short-stay apartment owners, who purchased their properties on the basis of existing law
- providing for Class 2 buildings to exclude short-stay and serviced apartment accommodation would be a comprehensive resolution of the problems created by unruly parties, at least for future CBD apartment buildings
- requiring all buildings that could potentially be used as short-stay accommodation to be built to the standards of Class 3 buildings would also recognise short-stay accommodation as essentially being hotel-type accommodation and the consequent need for it to conform to the same safety standards and to be placed on the same playing field, and
- by removing the problem from owners corporations, either amendment would avoid encouraging divisiveness within them.

The panel considers that this option has the following disadvantages:

- requiring all buildings that could potentially be used as short-stay accommodation to be built to the standards of Class 3 buildings would –
 - not address the problem of unruly parties
 - still enable short-stay accommodation to operate in appropriate buildings
 - make application of the Building Code difficult because their ultimate use as short-stay accommodation may not be known at the time of construction
 - as a related matter, increase the construction costs of such buildings, unfairly so if they are not actually used for short-stay accommodation or only to an insignificant level, following construction, and
 - probably require national consensus due to the need to involve the Australian Building Codes Board
- providing for Class 2 buildings to exclude short-stay and serviced apartment accommodation would, in the future, negatively impact on –
 - tourism by reducing short-stay apartments in the CBD
 - investment in CBD apartment buildings, and
 - employment in the short-stay accommodation industry, and
- either amendment would –
 - take a considerable amount of time to achieve, allowing for short-stay accommodation to become further entrenched

- only affect future CBD apartment buildings, leaving all existing short-stay apartments to continue operating and so not address the problems they are causing, and
- require resources to be diverted from consideration of the structural safety of buildings to pursuing issues around nuisance.

Consideration

The panel does not consider that this option would be a viable solution because:

- building short-stay apartments to Class 3 standards would not address the problem of unruly short-stay parties in CBD apartment buildings
- providing for Class 2 buildings to be places of long-term accommodation is essentially prohibition of short-stay accommodation and suffers from the same problems as option 1
- either amendment would only apply to apartment buildings constructed in the future, and
- of the Australian Building Codes Board's prior stance on the matter and the necessity of achieving consensus across states and territories.

Option 12: amendment of the City of Melbourne Planning Scheme

Unlike many other areas of Melbourne, the CBD, Southbank and Docklands areas are not covered by conventional planning scheme zones, such as 'residential' and 'commercial' zones but are instead covered either by a specialised 'Capital City Zone' or 'Docklands Zone', each with schedules applying to certain areas in the zones.

These zones and their schedules do not require a permit to use a building as a 'residential hotel'²⁷ or impose any conditions on their use as such, nor do they differentiate between long-term and short-term accommodation.

This option, which would apply to apartment buildings constructed in the future, involves:

- amending the planning scheme to prohibit the use of certain Class 2 buildings in the CBD as 'residential hotels', and/or
- reviewing the planning scheme as to the desirability of the Capital City Zone and Docklands Zone delineating between long-term residential uses and other uses of buildings and requiring a permit for use as short-term accommodation.

'Residential hotels' prohibition

The panel considers that this prohibition has the following advantages:

- it would not interfere with the rights of existing short-stay apartment owners, who purchased their properties on the basis of existing law
- it would be a comprehensive resolution of the problems created by unruly parties, at least for future CBD apartment buildings, and
- by removing the problem from owners corporations, it would avoid encouraging divisiveness within them.

The panel considers that this prohibition has the following disadvantages:

²⁷ 'Residential hotel' is defined in clause 74 of the City of Melbourne Planning Scheme to be 'Land used to provide accommodation in serviced rooms for persons away from their normal place of residence'.

- it would only affect future CBD apartment buildings, leaving all existing short-stay apartments to continue operating and so not address the problems they are causing
- it would reduce flexibility in the use of buildings
- it would probably result in significant non-compliance, necessitating increased enforcement resources
- it would, in the future, negatively impact on –
 - tourism by reducing short-stay apartments in the CBD
 - investment in CBD apartment buildings, and
 - employment in the short-stay accommodation industry.

Zoning review

The panel considers that delineating between long-term residential uses and other uses of buildings, and requiring a permit for use as short-term accommodation has the following advantages:

- it would not interfere with the rights of existing short-stay apartment owners, who purchased their properties on the basis of existing law
- it would provide an appropriate long-term solution to the problem by minimising the risk that buildings would be used for inappropriate short-stay accommodation in the future
- well-established processes exist for evaluation of applications for permits, with clear channels of appeal for aggrieved applicants and residents, and
- by removing the problem from owners corporations, it would avoid encouraging divisiveness within them.

The panel considers that this option has the following disadvantages:

- it would not address the problem of unruly parties
- it would still enable short-stay accommodation to operate where permits are granted
- it would only affect future CBD apartment buildings, leaving all existing short-stay apartments to continue operating and so not address the problems they are causing, and
- it would, in the future, negatively impact on –
 - tourism by reducing the supply of short-stay apartments in the CBD
 - investment in CBD apartment buildings, and
 - employment in the short-stay accommodation industry

Consideration

The panel does not consider that this option would be a viable solution to the problem of unruly short-stay parties in CBD apartment buildings because it would only affect apartment buildings constructed in the future, and notes that the City of Melbourne would not support it. The panel is divided on whether this option could or should be implemented for future CBD apartment buildings: Mr Gardner and Mr Nugent support that proposal but Ms Meinke, Mr Butterworth and Mr Salter oppose it (Mr Libbis and Ms Burke not deciding).

Option 13: empowering VCAT to prohibit the use of apartments for short-stay accommodation

This option involves:

- empowering owners corporations to serve a 'notice to rectify breach' on providers of short-stay accommodation (whether the owner of the apartment, or their lessee or agent) regarding breaches of the owners corporation rules by their short-stay occupants, and
- including in the orders that VCAT can make in determining disputes based on such breach notices, an order prohibiting the use of the relevant apartment for short-stay accommodation for a specified period or until the apartment is sold to someone unconnected to the provider.

Mr Salter considers that breach notices should only be able to be served regarding breaches of rules relating to unruly parties and Mr Butterworth considers that applications to VCAT for prohibition orders should be conditional on the service of breach notices in relation to three separate occasions/parties within a 12-month period and compliance with the owners corporation's internal dispute resolution process.

The panel considers that this option has the following advantages:

- because any application to VCAT would be to enforce the owners corporation's rules, only an ordinary resolution would be required to make the application, which would provide an expeditious enforcement mechanism for problematic apartments
- it would not penalise short-stay accommodation providers who do not allow unruly parties
- it would still require the owners corporation to prove its case, including that the breaches are serious or frequent enough to warrant prohibition,
- the owner of a prohibited apartment could still let the apartment for longer-term stays, and
- it would minimise –
 - interference with property rights
 - any negative impact on the Victorian tourism industry, investment in Victoria and the Victorian economy generally, and
 - divisiveness within owners corporations in apartment buildings.

The panel considers that this option has the following disadvantages:

- breach notices followed by an application to VCAT would still involve a lengthy process and some owners would continue to let their apartments for unruly parties in the meantime
- it would not necessarily operate to deter owners from letting their apartments to problematic people, and
- it would discriminate against providers of short-stay accommodation as against providers of long-term accommodation.

Consideration

The Panel considers that repeated breaches of the rules by the short-stay occupants of an apartment indicate that the provider is not taking adequate steps to screen occupants and

that, with the exception of Mr Butterworth, VCAT should therefore have the power to prohibit the continued use of the apartment for short stays.

With the exception of Mr Gardner and Mr Butterworth, the panel considers that this option provides a good balance between the need to directly address the problems of short-stay accommodation in CBD apartment buildings and the need to avoid penalising unproblematic providers or imposing an unfair degree of liability on short-stay providers for the actions of their occupants.

Mr Gardner refers to and repeats the view he expressed regarding Option 1.

Mr Butterworth considers that implementation of Option 2 would successfully deal with issues raised by short-stay accommodation in CBD apartment buildings, making any regulatory response unnecessary. Further, he considers that:

- it is generally unfair to make short-stay providers responsible for the actions of their occupants,
- there is insufficient evidence to support a contention that the conduct of short-stay occupants is significantly worse than that of other residents of CBD apartment buildings,
- there is insufficient detail about the matters that VCAT would consider in making any prohibition order, and
- there is a serious risk that owners corporations would misuse the powers to drive out short-stay providers, but
- Option 13 (with modifications – see below) should be considered if a 12-month trial of Option 2 proved unsuccessful.

5 Recommendation

The panel notes the difficulty in formulating a recommendation that fully meets all the criteria in the Terms of Reference

Mr Libbis, Mr Salter, Ms Meinke, Mr Nugent and Ms Burke consider that the appropriate regulatory approach to deal with unruly parties in existing CBD apartment buildings is to:

- make providers of short-stay accommodation responsible, to a limited extent, for such parties in the apartments they let, and
- empower owners corporations to deal with the problem using existing powers, prescriptions and processes under the Owners Corporations Act.

Mr Gardner considers that the appropriate regulatory approach is to prohibit short-stay accommodation in CBD apartment buildings.

Mr Nugent considers that a further regulatory approach is to amend the Owners Corporations Act to empower owners corporations to make rules to deal with the issue as they see fit.

Mr Butterworth considers that a regulatory approach is unnecessary and that the appropriate approach is industry self-regulation.

In general, the panel considers that most of the options it considered are inappropriate, on their own, to deal with unruly parties in CBD apartment buildings either because they are too broad, too heavy-handed, unworkable, inapplicable to existing buildings or insufficiently enforceable.

Mr Libbis, Mr Salter, Ms Meinke, Mr Nugent and Ms Burke recommend Option 13 as the appropriate regulatory response to the issue although Mr Salter considers that breach notices should only be able to be served regarding breaches of rules relating to unruly parties. They also recommend that Option 13 be supplemented by the implementation of Option 2.

Mr Salter's recommendation of Option 13 is also subject to Mr Butterworth's qualifications. Mr Nugent also recommends Option 5.

Mr Gardner recommends Option 1, namely the prohibition of lettings of less than 30 days in existing and future CBD apartment buildings (but if a prohibition on lettings of less than 30 days is considered too long, the prohibition of lettings of less than 5-7 days). If, and only if that is not adopted, he recommends Option 6 in conjunction with Option 2.

Mr Nugent recommends Option 5 but if that is not adopted, recommends Option 13 in conjunction with Option 2.

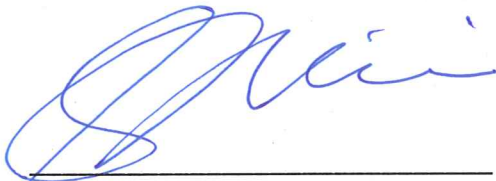
Mr Butterworth recommends Option 2 but that if a regulatory approach is to be adopted, recommends Option 13 subject to:

- a trial of Option 2 for 12 months to assess whether it can successfully address the issues,
- applications for prohibition orders being conditional on the service of breach notices in relation to three separate occasions/parties within a 12-month period and compliance with the owners corporation's internal dispute resolution process,

- the refusal of any such application where the short-stay provider establishes that it used reasonable endeavours to prevent the breach of the rules or that it will do so in the future,
- any prohibition order not taking effect until after a reasonable time has elapsed for the provider to honour, or find alternative accommodation for forward bookings,
- prohibition orders not exceeding three months and no other penalty or compensation order applying,
- a right of appeal to the Supreme Court, and
- formal consultation with and involvement of the HRIA and the industry about the design and articulation of the rules, enforcement procedure, penalties and defences, including consultation on any draft Bill.

Although the panel has no particular recommendation arising from Option 3 (Alternative dispute resolution and mediation options to manage tensions between residents and short-stay apartment owners) several members note the importance of ADR in resolving disputes between residents in CBD apartment buildings and recommend that further consideration be given to whether an ADR model other than that in the Owners Corporations Act would produce better outcomes in this context.

The panel agrees that before any regulatory change is made, the Government should consult with industry and residents.



Simon Libbis

Chair, Independent Panel on Short-Stay Accommodation in CBD Apartment Buildings

5/6/2015

Annexure 1 – Terms of Reference

Short Stay Accommodation Panel

The Victorian Government has established the panel to examine the short-stay accommodation issue in residential apartment buildings, and to recommend ways to improve regulation in this area. In particular, the panel is to:

- 1 identify and assess the issues arising from short-stay accommodation in Victorian apartment buildings, including:
 - the legitimate interests of stakeholders, including residents, investor-owners, the accommodation industry, tourism and the tourism industry, and the Victorian community, and
 - whether there is a significantly greater problem with the conduct of short-stay occupants as against that of longer-term occupants and owner-residents themselves
- 2 research the interstate and overseas experiences in dealing with the issue, and
- 3 identify and examine options for addressing the issues that maximise the amenity of living in apartment buildings and minimise:
 - interference with property rights
 - any negative impact on the Victorian tourism industry, investment in Victoria and the Victorian economy generally, and
 - divisiveness within owners corporations in apartment buildings.

These options should, at a minimum, include but not be limited to –

- prohibiting short-stays in apartment buildings under the *Building Act 1993* or the *Planning and Environment Act 1987*
- self-regulation by industry through implementation of the Holiday Rental Industry Association's Holiday Rental Code of Conduct, with assistance from Tourism Victoria
- alternative dispute resolution and mediation options to manage tensions between residents and short-stay apartment owners
- strengthening the powers of owners corporations under the *Owners Corporations Act 2006* to deal with the conduct of short-stay occupants
- amending the *Owners Corporations Act 2006* to allow owners corporations to make rules prohibiting or restricting short-stays
- amending the *Owners Corporations Act 2006* to make apartment owners liable for the conduct of their short-stay occupants, and
- make recommendations to address the issues.

The panel is to report to the Minister for Consumer Affairs, Gaming and Liquor Regulation and the Minister for Planning by the end of May 2015 on the issues, options and recommendations to address the issues.

Annexure 2 - Complaint survey of CBD apartment buildings

Methodology

The survey's purpose was to collect information on the number and the nature of complaints against short-stay and long-stay occupants in Melbourne CBD residential apartment buildings, including in Docklands and Southbank.

For the purposes of the survey, short-stay accommodation constituted a stay of less than thirty days. It did not include occupants sharing apartments with the owner, whether paying or otherwise (i.e. 'couchsurfing') nor residential buildings solely providing serviced apartment accommodation. Responses were collated to provide aggregate anonymous results.

The survey was circulated to 11 owners corporation management companies operating in Melbourne CBD apartment buildings, all of whom provided responses. However, due to insufficient data being provided in several cases, only six responses could be considered.

The survey firstly asked managers for the total number of CBD apartments and number of apartments used for short-stay accommodation in the buildings that they managed. Secondly, to evaluate the impact of short-stay accommodation in CBD apartment buildings, the survey asked for the number of complaints relating to all apartments and to short-stay apartments.

Both sets of data allowed for an assessment of short-stay complaints as a proportion of the total complaints.

However, two respondents included data for buildings that did not contain short-stay accommodation (the inclusion of data from buildings with no short-stay accommodation does not assist in clarifying whether short-stay occupants cause more complaints than long-stay occupants). This was counter-balanced by the fact that two of the other four respondents helpfully provided separate data for each building managed (totalling five separate buildings).

To quantify the occupancy rate for short-stay apartments and so to enable short-stay complaints to be put in context, the HRIA separately surveyed nine CBD short-stay operators and found that the average annual nightly occupancy rate is 78 per cent. For the purposes of the survey, it is assumed that the long-stay occupancy rate is 100 per cent.

Additional data was requested on buildings' security and maintenance costs, and the level of use of security and emergency services personnel.

Summary of results

A Aggregate data for apartment buildings with short-stay accommodation²⁸

	Total	Short-stay proportion
Accommodation nights	1,172,895 ²⁹	15% ³⁰
Total complaints	1042	39%
Linen and cleaning trolleys blocking corridors	1	100%
Damage to other residents' property or to common areas	45	62%
Noise including loud music, loud and offensive language in common areas or audible from apartment	548	44%
Parking in residents' bays	51	41%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	187	39%
Other anti-social behaviour	140	21%
Dropping of articles from balconies	70	17%
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	0	n/a
Short-stay occupants requesting assistance to find their apartment	0	n/a
Overcrowding of apartments or common areas	0	n/a
Number of times building security, police or other emergency services been called to attend to complaints	15	27%

One respondent replied that security and maintenance costs had increased in the buildings it managed arising from short-stay occupants but did not provide dollar amounts. A second respondent replied that security and maintenance costs had not increased in the buildings it managed. The other two respondents did not know.

²⁸ Table A aggregates data from two respondents that provided data by each building (this data is separately reported in Part B below) and from two respondents that provided data totalled for all buildings they managed that contain short-stay accommodation.

²⁹ Derived as follows: Number of long-stay apartments x 365 days + Number of short-stay apartment x 284 days (reflecting 78 per cent occupancy rate).

³⁰ Derived as follows: Number of short-stay accommodation nights ÷ Number of total accommodation nights (see footnote 29).

B Data for five apartment buildings with short-stay accommodation

Building 1

	Total	Short-stay proportion
Accommodation nights	67,978 ²⁹	26% ³⁰
Total complaints	151	49%
Damage to other residents' property or to common areas	8	63%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	31	58%
Noise including loud music, loud and offensive language in common areas or audible from apartment	92	50%
Other anti-social behaviour	18	28%
Parking in residents' bays	2	0%
Dropping of articles from balconies	0	n/a
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	0	n/a
Linen and cleaning trolleys blocking corridors	0	n/a
Short-stay occupants requesting assistance to find their apartment	0	n/a
Overcrowding of apartments or common areas	0	n/a
Number of times building security, police or other emergency services been called to attend to complaints	0	n/a

No data was provided on security and maintenance costs regarding short-stay occupants.

Building 2

	Total	Short-stay proportion
Accommodation nights	128,241 ²⁹	9% ³⁰
Total complaints	300	49%
Damage to other residents' property or to common areas	24	63%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	34	59%
Noise including loud music, loud and offensive language in common areas or audible from apartment	186	50%
Parking in residents' bays	10	50%
Other anti-social behaviour	46	28%
Dropping of articles from balconies	0	n/a
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	0	n/a
Linen and cleaning trolleys blocking corridors	0	n/a
Short-stay occupants requesting assistance to find their apartment	0	n/a
Overcrowding of apartments or common areas	0	n/a
Number of times building security, police or other emergency services been called to attend to complaints	0	n/a

No data was provided on security and maintenance costs regarding short-stay occupants.

Building 3

	Total	Short-stay proportion
Accommodation nights	149,983 ²⁹	15% ³⁰
Total complaints	116	40%
Damage to other residents' property or to common areas	8	50%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	19	47%
Noise including loud music, loud and offensive language in common areas or audible from apartment	68	43%
Parking in residents' bays	4	25%
Other anti-social behaviour	17	18%
Dropping of articles from balconies	0	n/a
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	0	n/a
Linen and cleaning trolleys blocking corridors	0	n/a
Short-stay occupants requesting assistance to find their apartment	0	n/a
Overcrowding of apartments or common areas	0	n/a
Number of times building security, police or other emergency services been called to attend to complaints	0	n/a

No data was provided on security and maintenance costs regarding short-stay occupants.

Building 4

	Total	Short-stay proportion
Accommodation nights	35,608 ²⁹	2% ³⁰
Total complaints	23	13%
Noise including loud music, loud and offensive language in common areas or audible from apartment	12	17%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	8	13%
Parking in residents' bays	3	0%
Damage to other residents' property or to common areas	0	n/a
Dropping of articles from balconies	0	n/a
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	0	n/a
Linen and cleaning trolleys blocking corridors	0	n/a
Short-stay occupants requesting assistance to find their apartment	0	n/a
Overcrowding of apartments or common areas	0	n/a
Other anti-social behaviour	0	n/a
Number of times building security, police or other emergency services been called to attend to complaints	0	n/a

No data was provided on security and maintenance costs regarding short-stay occupants.

Building 5

	Total	Short-stay proportion
Accommodation nights	634,320 ²⁹	13% ³⁰
Total complaints	297	15%
Damage to other residents' property or to common areas	2	100%
Noise including loud music, loud and offensive language in common areas or audible from apartment	106	23%
Other anti-social behaviour	57	12%
Dropping of articles from balconies	64	11%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	68	7%
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	0	n/a
Linen and cleaning trolleys blocking corridors	0	n/a
Short-stay occupants requesting assistance to find their apartment	0	n/a
Overcrowding of apartments or common areas	0	n/a
Parking in residents' bays	0	n/a
Number of times building security, police or other emergency services been called to attend to complaints	12	17%

The respondent reported that security and maintenance costs had not increased as a result of short-stay occupants.

C Aggregate data for apartment buildings, some of which do not contain short-stay accommodation³¹

	Total	Short-stay proportion
Accommodation nights	3,729,070 ²⁹	27% ³⁰
Total complaints	209	33%
Short-stay occupants requesting assistance to find their apartment	3	100%
Passenger lifts used for the servicing of apartments eg. trolleys carrying linen and cleaning agents	25	84%
Linen and cleaning trolleys blocking corridors	2	50%
Noise including loud music, loud and offensive language in common areas or audible from apartment	25	48%
Dropping of articles from balconies	12	42%
Overcrowding of apartments or common areas	10	40%
Prohibited behaviour including: littering of common areas; drinking or drunkenness in common areas; smoking in common areas; vomiting in common areas; urinating or defecating in common areas; nudity in common areas or visible from apartment; physical altercations	10	40%
Damage to other residents' property or to common areas	16	31%
Other anti-social behaviour	33	30%
Parking in residents' bays	73	4%
Number of times building security, police or other emergency services been called to attend to complaints	9	44%

One respondent replied that maintenance costs had increased as a result of short-stay occupants (no dollar amount provided); the second respondent reported no increase. Neither respondent reported an increase in security costs.

³¹ Table C aggregates data from two respondents that provided data totalled for all buildings, some of which do not contain short-stay accommodation.