

28 June 2019

Economics and Industry Standing Committee
C/- Dr David Worth
Via email: laeisc@parliament.wa.gov.au

Your Ref: A760905

Dear Dr Worth,

RESPONSE TO REQUEST FOR INFORMATION

Thank you for your letter dated 13 June 2019 requesting that SCA WA provides answers to the following questions in regard to the information contained in our submission. Please find SCA WA's response to these questions as follows.

1. SCA WA's Short Stay Accommodation Policy states that "at least one short-stay aggregator is planning to introduce caps on short stay use of a property and share income with strata companies":
 - a. To which short-stay aggregator(s) and jurisdiction(s) are you referring?
 - b. Have the caps and sharing of income been introduced?
 - c. If yes to (b), how have these mechanisms operated?

Response: This relates to Airbnb's Friendly Buildings Program that has been piloted in the US and in 2017 was being considered in NSW. We are not aware of the current status of the program in Australia and are not aware of it being introduced in WA. The Committee may find these links useful for more information on the program.

[What's the Airbnb Friendly Buildings Program?](#)

[Airbnb's new building program to give strata bodies a cut of short-stay rentals](#)

[Airbnb's latest Friendly Buildings Program could help anti-holiday letting campaigners in NSW](#)

2. The SCA WA submission lists several issues SCA members have experienced as a result of short-stay accommodation (p6). Does SCA WA believe the "simplified dispute resolution" introduced under the 2018 strata reforms will help to address some of these issues and, if so, how?

Response: Most of the issues described are, or are the result of, a breach of strata company by-laws. Accordingly, SAT has always had the ability to hear and determine disputes in relation to breaches of the by-laws. However applications to SAT are sometimes viewed as ineffective, particularly because SAT has no power to impose financial penalties for breach of by-laws unless the by-laws themselves contain provisions about penalties, and then in amounts not exceeding the prescribed amount.

The 2018 Amendments will make the SAT process more attractive and more effective primarily because:

- 1) there is no need for the by-laws to specify a penalty in order for SAT to order a penalty be paid;
- 2) the amount which SAT can impose as a penalty will likely be higher than the current prescribed amount (the Regulations specifying the penalty amount are yet to be promulgated); and
- 3) SAT will also be empowered to make other monetary compensation orders. Strata companies (and owners) might increasingly apply to SAT for monetary compensation orders where by-law breaches result in loss, for instance if short-stay use results in damage to common facilities by short-stay tenants.

3. **Under the amended Strata Titles Act 1985 (WA):**
 - a. **What percentage of owners will need to approve beginning legal action against owners non-compliant with by-laws prohibiting short-term rentals?**

Response: No percentage is specified. The Council of Owners would ordinarily have power and authority to commence proceedings for breach of the by-laws, so a majority of the Council of Owners would be a sufficient number. The strata company is arguably obliged under the Act to enforce the by-laws.

- b. **What percentage of owners will be needed to amend a strata company's by-laws to prohibit short-term rentals in their strata scheme?**

Response: The answer depends on whether the by-law is a governance by-law or conduct by-law. We expect that the such by-laws will be classified as conduct by-laws, but note that the Act provides that a governance by-law includes a by-law classified by the regulations as a governance by-law, and the Regulations are yet to be promulgated. Also, by-laws that are required by a planning condition will be governance by-laws. Again, this creates the possibility that such by-laws will be governance by-laws.

Assuming the by-law is a conduct by-law (which will be the position if the Regulations or a planning condition do not specify otherwise), then a special resolution is required under the 2018 amendments. A special resolution is not expressed as a percentage of owners in favour, but 50% of both the number of lots and 50% of the unit entitlement must vote in favour, and no more than 25% of lots and 25% of unit entitlement votes against the proposal. Therefore, a special resolution can be passed by 50% of the number of lots provided that number is also 50% or more of the unit entitlement for the scheme but might require 75% of all lots and unit entitlement to vote in favour

4. **The Committee understands Victoria is currently considering laws that would allow strata companies to separately levy lot owners for any additional costs incurred as a result of short term letting activity. Is this also possible under the amended Strata Titles Act 1985?**

Response: The Act currently makes express provision for a strata company to make a by-law to alter the basis for levying proprietors (section 42B). Section 100(1)(c) of the amended Act appears to contemplate that such by-laws can continue to be made under

the amended Act, although there is no section that is in precisely the same terms as section 42B.

5. The SCA WA submission states the amendments to the Act “enable SAT to impose fines for breach of the by-laws for a scheme” which “will go some way to assisting strata companies to manage these issues” (p6). Can you please describe the new powers the State Administrative Tribunal will have under the amended Act to address common issues arising from short-term rentals in strata schemes?

Response: Section 200 of the amended Act will enable SAT to make orders:

- Requiring a person to take specified action or to refrain from taking specified action to remedy a contravention or prevent further contravention of scheme by-laws.
- For a person to pay money by way of compensation for pecuniary loss or damage suffered;
- On an interim basis.

Under section 199 SAT can make a declaration that a by-law is valid or invalid.

Under section 47 a strata company can apply to SAT for an order for enforcement of a scheme by-law and SAT can make an order for payment of a penalty, including daily penalties for continuing breaches.

We trust this provides the information that the Committee is seeking however please don't hesitate to contact me should you have any further queries.

Yours sincerely,



Kara Grant
General Manager