

ECONOMICS AND INDUSTRY STANDING COMMITTEE

INQUIRY INTO SHORT-STAY ACCOMMODATION



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 12 JUNE 2019**

SESSION TWO

Members

**Ms J.J. Shaw (Chair)
Mr S.K. L'Estrange (Deputy Chair)
Mr Y. Mubarakai
Mr S.J. Price
Mr D.T. Redman**

Hearing commenced at 10.08 am

Ms RACHEL COSENTINO

Board member, Strata Community Association WA, examined:

The CHAIR: On behalf of the committee, I would like to thank you for agreeing to appear today for a hearing into our inquiry into short-stay accommodation. My name is Jessica Shaw and I am the Chair of the Economics and Industry Standing Committee. I would like to introduce the other members of the committee. To my right is Yaz Mubarakai, member for Jandakot, and to my left is Stephen Price, member for Forrestfield, and Terry Redman, member for Warren–Blackwood. Our Deputy Chair, Sean L'Estrange, is an apology today.

I advise that the proceedings of the committee's hearing will be broadcast live within Parliament House and via the internet. The broadcast may include documentation provided by you to assist the committee in its investigations. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege. However, this privilege does not apply to anything you might say outside of today's proceedings. Before we begin with our questions, do you have any questions about your attendance here today?

Ms Cosentino: No.

The CHAIR: Would you like to make an opening statement?

Ms Cosentino: My statement today is made on behalf of the Strata Community Association, WA branch. It is a voluntary organisation representing mainly strata managers, so the professionals who are engaged in the management of strata properties, as well as other service providers to the strata industry. It also has a membership base of strata companies, a council of owners, and individual lot owners as well.

The primary interest that SCA has in the matter of short-stay accommodation is in relation to the management of the adverse impacts, essentially. The strata managers are at the frontline when things go wrong in short-stay accommodation. They have firsthand experience of the types of things that can go wrong. Having said that, there is also the tension with the interest in ensuring that people's property interests are properly respected and the value of their investments in property are protected by there not being any unreasonable interferences with their proprietary rights. That is the tension and the balance ultimately that SCA would like to see achieved and has, to the extent that it can, educated its members to try to ensure that there are policies, examples and guidance around management that achieves a balance between those tensions.

The CHAIR: Thank you. I found your submission very interesting. I would like to really thank you for it. It was very informative. I really want to tease out the points that you make around strata companies making by-laws. One of the things that you say in your submission is that thoroughly considered and well-drafted by-laws can go a long way to ensure that problems are avoided. But obviously with by-laws there are very different drafting techniques and they can vary quite considerably between different strata companies. You are a lawyer by training, I understand.

Ms Cosentino: I am, yes.

The CHAIR: I know lawyers come in all different flavours. I do not know which particular type of lawyer you are but I am sure you will probably have a view on the benefit in potentially government working with industry to develop model by-laws that seem to manage these things well and to get

around the variations that you can see in strata arrangements. I wondered if maybe you could give us a view on whether that is something you think might be beneficial?

Ms Cosentino: I think that has a great deal of benefit. There are two ways in which by-laws can become problematic. The first is that they are a catch-up. They are drafted in the past and do not necessarily address things that have not been foreshadowed as future developments. Where there is a mismatch between what is happening now and how the by-laws were drafted in the past, that is the first problem.

The other is that there is nothing that requires by-laws to be professionally drafted, if you like. A strata company can amend its by-laws without the involvement of a lawyer and, indeed, without the involvement of a strata manager. They are the two high-risk areas that can result in by-laws being a cause of problems rather than creating solutions. They can create solutions, and model by-laws certainly can create solutions. I would not go so far as to say that by-laws should be mandatory in all instances. The strata company should ultimately retain the ability to self-govern.

The CHAIR: Could you explain to me—I am a complete novice in the strata world—how is it that these by-laws come into existence? Presumably, an apartment complex is built by a property developer and a strata company forms. How do the original by-laws that are used for the first mob of people coming in and buying apartments within the complex, come into existence?

Ms Cosentino: There are two scenarios. One is that there is no management statement, in which case schedule 1 and 2 by-laws in the Strata Titles Act apply by default. The more common instance for at least larger developments is that there will be a management statement, which the developer has had drafted, and that is registered on the strata plan.

The CHAIR: Are you aware if the developers that provide the first template, if you like, have considered these issues? Is there some way that maybe developers could be engaged around incorporating into these first set of by-laws some sort of model by-laws to address when you do a development that you can specifically market it as, “You can live here but a few floors in it are going to be for Airbnb”, or, “This is a 100 per cent residential-only property”? Do you think there is scope for a few different sets of model by-laws to accommodate these types of developments and how would you suggest that the developer community could be engaged around that?

Ms Cosentino: I have not engaged with the developer community. I have seen by-laws and management statements that have had the involvement of developers and those that have not had the involvement of developers. Where schemes are designed specifically for short-stay accommodation, there is sophistication around by-laws that are in existence and examples in existence for where schemes are designed for short-stay accommodation, particularly around schemes down south or around Broome and those sorts of places.

The area where it is less developed is in the schemes which are probably designed for residential use as opposed to those commercially operated as short-stay accommodation. I suppose, ultimately, I cannot speak to whether developers see a role for model by-laws or not in that area.

A common term used in by-laws is “use as a residence”. That term was the subject of the case that is referred to in our submission—the Ceresa River Apartments case—but that is not necessarily the form that will appear in all by-laws. Certainly schedule 1 and 2 by-laws do not talk about residence. It is common for the term “residence” to appear. There is now some case law that indicates what that does and does not mean, but there will be a whole range of other by-laws out there that use the phrase in different contexts or use different phrases.

The CHAIR: I am going to ask you a semi-technical question and, by all means, feel free to say that you do not feel prepared or comfortable answering it. Obviously there have just been a whole raft

of changes that have been introduced to the Strata Titles Act and the introduction of community title. Have you got a sense of the degree to which the amendments that have been made recently either address this issue or facilitate the emergence of more short-stay forms of accommodation, or hinder it? Do you have a bit of a sense of that?

Ms Cosentino: The one thing that the reforms do is, I think, enable a by-law dealing with a residence to be effectively a schedule 2 by-law or no longer a schedule 1 by-law. Currently, under the act, if you were to make a by-law to restrict the use of a lot to either short-stay or to restrict the ability to use it for short-stay, it needs to be schedule 1 and it needs a resolution without dissent in order for it to be amended or implemented. I think, in effect, the changes to the act will be that that will no longer be a schedule 1 type by-law; it will be a schedule 2 type by-law, with a lower threshold for amendment and implementation by special resolution.

The CHAIR: I find the whole strata-title mechanism fascinating because almost all of the evidence that we have had presented to us so far looks at the planning system or local government management as the way of dealing with this issue, and the considerations in the south west, the great southern and the Kimberley are very, very different from what is going on here in Perth, where it seems that the by-law mechanism, the strata-title-type mechanism, is another way of skinning this cat. Do you have a sense of planning, local government or this by-law mechanism? Or is it a mixture of the three? How do you think we could effectively address it here in the Perth metro area?

[10.20 am]

Ms Cosentino: There is a danger in relying on the by-laws too much to regulate the area, I think. The danger is that you have basically your neighbourhood dictating what you can and cannot do with your private property. That is, I think, a dangerous precedent and a dangerous concept that potentially undermines proprietary rights. You would not have that in a neighbourhood that was not a strata community—it would not be able to dictate how you use your freestanding home—and yet your neighbours in a strata scheme potentially could. So, I think there is a danger in relying on the by-laws too much, so the SCA's preference and the position that we have put in the submission was that a planning approach should drive how private property can be used and what restrictions there should be on how private property should be used.

The CHAIR: It is a really interesting debate because if you actively buy in to a set of by-laws and you accept that there are certain restrictions placed on the way that you will or will not use your property, that is one thing that I would say is really quite legitimate. The problem is that by-laws can change by vote. If retrospectively you think you have bought one thing and it ends up being another, that is, I think, where perhaps that becomes more problematic. Interesting.

Mr D.T. REDMAN: There is something in your application referring to a desire to use the planning platform as a tool, if you like, to manage the issues. I am assuming one of the reasons for that is you want to maintain a level of flexibility. You just talked about proprietary rights: flexibility for those to either use it as a full-time residence or short-stay if they choose to do the short-stay market. In terms of compliance to that, it is one thing to have the rules in place; it is another thing to have a level of compliance where people actually follow those rules. Do you have any comment about the tools to ensure compliance? And in a strata context, is that a big challenge?

Ms Cosentino: Compliance with by-laws is big challenge currently. I think the changes to the act will reduce the difficulties in that area or make it easier to enforce by-laws. The other part that is difficult about compliance is where there are disputes about the meaning of the by-laws and how they apply, as opposed to the mechanism for compliance itself. I do not know that there is an easy solution to that. That is probably the nature of the beast.

Mr D.T. REDMAN: For example, it has been presented to us that at a state level there might be scope to have some sort of regulatory, legislative tool that says if you are advertising on these platforms, you have to have a level of registration and that registration may reside with state government or it may reside with local government. In your case, it may reside with the strata. Have you got a view about that?

Ms Cosentino: I think that is akin to the New South Wales model. As I understand it, New South Wales has a system for registration, and our submission was that that is an effective way of having a mechanism, at least for the resolution of disputes—having registration and a dispute-resolution process. The signs and what we hear from New South Wales are that it is welcomed and is positive.

Mr D.T. REDMAN: And a more broad question: what have you seen in terms of the behaviour that is happening in strata complexes in the last two to five years? Has there been a significant increase in those using it for short-stay accommodation? There have been some submissions to us suggesting, “I used to be able to get long-term rent for \$300 per week, but I am now getting short-stay and making \$60 000 per year”, sort of thing, so it is a big shift. I do not know how much that has proliferated. How much has it proliferated, and is it a real tension point that is sitting within strata complexes?

Ms Cosentino: The SCA does not have any data on the incidence and whether the incidence has changed over time, but it seems to be anecdotally that it is increasingly an issue that is being raised with strata managers for management, particularly around the use of common facilities, noise and the management of noise, and security being compromised because there is higher turnover of keys, fobs and those sorts of things going out, and the pressures that places on the common property infrastructure, and wear and tear. Another concern that people raise frequently—although I am not aware of it ever coming to a head in the sense of it causing actual harm or loss—is the risk around fire management and ensuring that occupants are aware of escape and fire safety methods that the scheme might have implemented. The concern is losing control over all of those sorts of risk managements.

The CHAIR: One thing that has cropped up through the course of this inquiry and that pops its head up every now and then is the assertion that across Perth there are now entire apartment buildings or significant tranches of apartment buildings that are just being utilised for short-stay accommodation, and they are almost a proxy for hotels. Is that something that you have heard of happening or have seen happening in Perth at all?

Ms Cosentino: I think it has happened for a long time —

The CHAIR: Buildings that are built specifically as residential buildings, not necessarily hotels or specific short-stay premises. There are all sorts of serviced apartment buildings that are obviously used for that purpose but residential apartment complexes that are essentially being built and utilised for this purpose to get around the more stringent building code requirements.

Ms Cosentino: I do not think I could shed any light on that.

The CHAIR: That is fine. It is good to get that feedback.

Mr Y. MUBARAKAI: Rachel, could I just ask a segue question from that? Like we said, we are not experts on how strata works, but just to get your input on this: from a planning perspective, if the local planning scheme were to deem a certain strata building to have certain uses, and if there were a provision in there for that particular strata building or set of strata blocks in a residential area—because there are various ways of looking at strata laws; one is you have high-rise buildings and then you also have strata amongst smaller residential dwellings—if under the local planning scheme that strata title was deemed to be non-provisional for short-stay accommodation, can those strata

by-laws be amended to allow short-stay accommodation? What we are getting at here is that the local government framework has an ability to make sure that if they deem certain strata titles to be non-exclusive of short-stay accommodation, is that a good way to mitigate an internal problem that you have within a strata's by-laws?

Ms Cosentino: Yes, if the local planning scheme prohibits short-stay in a particular area, the strata by-laws will not be able to supersede or override that.

Mr Y. MUBARAKAI: Thanks for the clarity.

The CHAIR: In your submission, you talk about short-stay aggregators. Can you expand a little bit on what that is and how many of them—or do you have a general awareness of how many of them are out there?

Ms Cosentino: I do not have a great deal of awareness. Airbnb is the main aggregator —

The CHAIR: So you are talking about the platform itself as opposed to somebody out there who calls himself an aggregator?

Ms Cosentino: I think that is the intention, yes.

The CHAIR: That was very interesting. Thank you very much for your evidence today.

I will proceed to close today's hearing and thank you for your evidence before the committee today. A transcript of this hearing will be emailed to you for the correction of minor errors. Any such corrections must be made and the transcript returned within seven days of the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you very much.

Ms Cosentino: Thank you.

Hearing concluded at 10.30 am
