

ECONOMICS AND INDUSTRY STANDING COMMITTEE

INQUIRY INTO SHORT-STAY ACCOMMODATION



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 13 FEBRUARY 2019**

SESSION ONE

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 9.38am

Ms JOANNE BURGES

Executive Manager, People and Place, Western Australian Local Government Association, examined:

Ms VANESSA JACKSON

Policy Manager, Planning and Improvement, Western Australian Local Government Association, examined:

The CHAIR: On behalf on the committee, I would like to thank you for agreeing to appear today for a hearing for the committee's 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, Mr Yaz Mubarakai, member for Jandakot; and to my left, Deputy Chair, Mr Sean L'Estrange, member for Churchlands; Mr Stephen Price, member for Forrestfield; and Mr Terry Redman, member for Warren–Blackwood.

I advise that the proceedings of the committee's hearing will broadcast live within Parliament House via the internet. This 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 extend 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 Burges: No questions. Thank you, Chair.

The CHAIR: I understand that we need to allow the ABC to leave the room before we begin the questions. Thank you. There are just some rules in this place, and I am not a rule-breaker. Before we start with questions, would you like to make an opening statement?

Ms Burges: Thank you, Chair. I would very much like to do that, and we do thank you very much for the opportunity to provide some clarification on our submission if required, and, as you know, I am joined by my colleague Vanessa Jackson today.

By way of context, in 2017, WALGA—which we will also refer to as “the Association” just so you know that we are referring to the same entity—prepared a short-term rental accommodation discussion paper in response to members' concerns, which reviewed the effectiveness of current policy responses concerning short-stay rental accommodation. That paper outlined policy approaches around Australia while focusing on local government responsibilities governing short-stay accommodation. At that time, and now, the absence of any clear guidance from the state government about how to manage the rapid rise of the number and scale of short-term accommodation has been challenging for some local governments. Within this policy void, many local governments have acted to regulate more proactively short-stay accommodation through the planning system and through the *Local Government Act 1995*.

Following consultation with our members on this discussion paper, the 2017 paper, the Association presented member feedback to our State Council in December 2017. The State Council resolution that was outlined in our submission shows a clear commitment from the local government sector to work with the State Government to review the policy framework around short-stay

accommodation while still reflecting the varied nature of local government. The Association, through our submission to this inquiry, has attempted to provide the members with an up-to-date assessment on the manner in which currently local governments regulate short-stay accommodation. Just to finalise, that can really be distilled into five key areas:

Local governments have a varying exposure to this issue. Any regulation possibly proposed by this committee should be framed with this in mind—we would respectfully request—and be based on context-based policy setting, and that remains our preferred approach.

The fundamental of this is: what is the appropriate level of regulation for this land use? We often get caught up in discussions around the sharing platform but, in reality, the land use on the ground has not really changed since 2009.

A dwelling let to someone for profit is a holiday house, regardless if it is let through a local real estate agent or online. Local governments who seek to establish a local planning framework for short-stay accommodation should be able to continue this approach, with the approach supported further by state government guidance.

Fourthly local government has found local government laws to be effective as a way to regulate those environmental health and management matters that can be more prevalent in holiday houses without an on-site manager present. So, we are very clear on that one.

Lastly, local governments have found it difficult to determine the addresses of holiday houses, particularly of those online. This restricts the ability to effectively regulate the land use, and you may have some questions later on about access to data, which we would very much like if we were to be involved in the process of regulation.

The CHAIR: Do you have anything to add, Ms Jackson? I thank you very much for your submission. It was a fantastic overview and, I think, a very well structured and concise explanation of many of the issues that have come through in the many hundreds of submissions that we have received so far so thank you very much. I know it takes quite a bit of effort to put these things together. We really do appreciate it.

You mentioned in your opening comments the variation between local government areas. I would be very interested to understand from your membership what sorts of variations there are—between metro and regions and even between the regions themselves. What are your members telling you are the impacts of this Airbnb—this short-stay—phenomenon?

Ms Burges: As you say, Chair, it is wide and varied. In our submission, we do refer to just a small capture of those that have a large interest in this area. In particular, you will see information from the City of Busselton. I do hope that they may present to you; I know that they have popped through a submission for you. It is everything between especially those in the tourist areas of the state where they are needing that guidance and wanting to put in place regulation. I cite the City of Busselton, in particular, and the City of Fremantle. Do you have others?

Ms Jackson: Yes. There are currently three local laws that are provided for local governments to regulate it, but that is more for the environmental health and ongoing management issues. Through the planning system, we just did a snapshot of about 13 local governments in our report to try and find out what everybody was doing in the situation. When we did have a discussion paper that we sent out to our members, we were asking them some key questions about: What do you do; How do you work it; What are the issues coming through? From that discussion paper, we found that there were some key themes that were occurring: that some local governments did want to provide some really clear guidance to their local members on what they should or should not be doing. Then we had the total opposite, where they were saying that it is just a residential use; we do not need

to regulate it unless there is an issue, and we will send the ranger around or the environmental health officer around if there are lots of issues going on.

So, we have quite a different approach where we have people from both spectrums: ones who want to regulate it very heavily and ones who do not really want to have us sitting in that market and providing detailed regulation. Hence why we have a one-size-does-not-fit-all approach in our submission.

The CHAIR: The drivers for their response—what is happening in these communities that is causing councils to react differently? What is different between the metro and the region and then between the regions?

Ms Jackson: I do not think that we asked that question.

Ms Burges: No.

Ms Jackson: A lot of the changes to planning framework came from community angst or community concerns. So, obviously, is there a better mechanism to create a level playing field in this land use? Others, though, have quite a few council resolutions—the City of Mandurah is a really great example to look through—where they have gone through it in quite a lot of detail to say that this is not a market that we want to regulate; our community does not want us to regulate it; therefore, we are not going to regulate it. So, there are totally different approaches depending on how the community is actually seeing the land use being provided in the town.

The CHAIR: Sure.

Ms Burges: If I may add something further to that, I think that that shows that real variance between high-access tourist areas, as we know the City of Mandurah would definitely fit into this category, as does the City of Busselton. So, it very much showcases that we might have similar requirements but very different approaches. As Vanessa has outlined, the City of Mandurah accepts that this is a part of it—they have a “responsive approach”. If I can read from the submission: “The City’s Local Planning Scheme does not currently provide for a definition of ‘holiday house’ and as such, ‘holiday house’ is treated as a ‘use not listed’ under the Clause 3.2.2 of the Scheme. As an interim measure, the City has determined that all holiday houses shall be treated in the same manner as a single, grouped or multiple dwelling in any zone where such uses are a discretionary or permitted land use.” So, it is a very different approach to, say, the City of Fremantle and the City of Busselton.

Ms Jackson: Probably to provide a little bit more clarity, the local planning scheme has very different land use definitions, so if they are included in it, then, yes, you will start to regulate it, but in the City of Mandurah’s case they do not have that land use category; therefore they just deal with it as a residential use. If the local planning scheme is very clear that they do want to regulate it, so they have gone through the process of including that definition in their scheme, then they do set up either a local planning policy off the back of it and maybe even a local law, depending on how they want to manage it on site.

Mr D.T. REDMAN: One of the issues that has been identified with me in my electorate is the difference in rating for a residential site versus a commercial site. I would have thought local government would have had some interest in that and, therefore, is that a concern and is it something that they are pursuing, even though they hold a view that they do not want to have a level of regulation because the community broadly supports what is happening?

Ms Burges: We certainly cover that in the submission, and it is not a view held by all of local government. I think that is that lack of guidance: what is it that we actually desire and what is it that we need to regulate? Certainly, some local governments are looking at various ways of utilising rating and utilising other matters, but even within that rating, it might just be a higher differential,

where it is a higher rate in the dollar, through to, “We’re actually going to place it as a rating of a commercial venture.”

Ms Jackson: There are mechanisms for it to be undertaken but, again, it depends on the level of enthusiasm of each local government to decide that that is the measure that they want to take, and that is the process they want to implement to then provide a different rating base.

Mr D.T. REDMAN: You mentioned that there is a range of regulatory tools that local governments have at their disposal in order to put compliance in place. What is their scope to be able to ensure compliance? I get a sense that there is a gap between a desire to have a level of compliance, which includes risks that I would have thought would have flowed back to local government in terms of disability services, fire-risk issues and a range of those sorts of matters. What is their scope to ensure compliance and, in your view, is a level of compliance happening on the back of their request to improve the regulatory environment for this behaviour?

Ms Jackson: Compliance is a very interesting one. There are some local governments who see compliance as a really good way to make sure that every rule and regulation is adhered to. There are some local governments that have compliance teams of up to 15 or 20 officers. I will not name which local government that is. They are very proactive in actually going out there and making sure that everything is adhered to. Some of the local governments will actually set schedules up so they have three, six, 12-month checks on all the planning applications that have come through to make sure that things are actually happening, and if the person has a problem with their application that they can work through any of those issues with them.

The compliance always comes down to time and money and also the requirement. If the local government does not see that compliance is a major—it is the stick and the carrot kind of one: do you actually want to go out there and continually hound people for things? A lot of local governments will actually just be doing compliance on complaints that are received. If a complaint is received, they will go out there and check, investigate and see whether there is an issue that needs to be brought to attention. One of our local governments said, “We currently know how many we’ve got on our register for short-term stay accommodation; however, we know of at least 400 or 500 other properties that haven’t actually been put on that register.” They have to have the time and the resources to be able to go and chase up all of those extra people to bring them onto a register.

Mr D.T. REDMAN: What would be your assessment about the level of noncompliance to local government responsibilities and regulations?

Ms Burges: I think, in fairness, we would have to take that question on notice because we have not actually asked that. Leading on from what my colleague has said, you can only enforce compliance where you know. I think part of this discussion is about the unknowns about compliance. Those can sometimes only come forward where there may well be a complaint. I think there is an underlying issue there before we can tackle compliance is actually knowing the quantum of what our local governments need to enforce that compliance around.

Ms Jackson: In our submission we talked about the data. There are data requirements from other platforms providing it to local government to say, “This is where all of yours are in your locality.” That would help a local government because they could say, “Okay, does your schedule of who is on board align with our schedule of who has actually got their approvals?” There is a bit of a data gap between the platform providers giving that information to local governments, if they are requiring a regulatory response to it.

The CHAIR: Can I just ask on the rating question: in those local government authorities where they have made a decision to rate these properties differentially, have you noticed that they have then earmarked any incremental revenue specifically to manage short-stay accommodation, or does it just go into the black box that is consolidated revenue and then they fund separately? I am thinking there are a number of applications that the revenue could be put—destination marketing being one of them; like short-stay. I wonder if you have any views on what the revenue is then used for.

Ms Jackson: I am pretty sure in our submission we gave you two examples of where the funding actually goes back into a consolidated account just for tourism marketing. I am pretty sure that was Busselton and Fremantle, from memory.

Ms Burges: We have actually cited the City of Fremantle and, as Vanessa said, the City of Busselton. These are very new ratings as well. If I may refer to this —

The City of Fremantle has resolved to include a rating category titled: ‘Residential Short Term Accommodation’ for the 2018–19 financial year.

We go into what that rate is defined as —

The rationale for the category is ‘to ensure the owners of residential land wholly or partly used for the commercial purpose of short term accommodation ...

That is set at a certain rate and it is equivalent to the commercial and industrial general rate.

The City of Busselton does a very similar thing and that is for that 2018–19 year as well. They have determined that the revenue derived from this rate will be hypothecated for the purposes of promoting the city’s events and tourism marketing program.

The CHAIR: How did the imposition of those differential rates go down with the good people of Fremantle and Busselton?

Ms Jackson: We have not asked that question.

Ms Burges: We would have to take that on notice because we have not asked them the question.

The CHAIR: No worries. Another question I have is: were these rates applied to homeshare properties or homestay properties, where there is just a single dwelling that is rented out or a room within someone’s house that is just made available for Airbnb?

Ms Burges: I am glad you have brought up that differentiation. Firstly, it is worthwhile acknowledging that from our early investigations from our 2017 discussion paper there does not appear to be much of an appetite from local governments to do anything further with single rental rooms within owned premises; so where the actual home owner is present. We separate that out.

The CHAIR: Why is there no appetite in that regard, do you think?

Ms Burges: In our submission we do refer to anecdotal evidence that there does not appear to be the issues that concern residents when there is a room within a residence where the owner is actually present.

The CHAIR: What sorts of concerns would people have? What sort of behaviours do people using short-term accommodation manifest when they are staying in someone’s home as opposed to when they are in a standalone house with their mates?

Ms Burges: I think that once again that would be anecdotal. It may well be that the Department of Planning, Lands and Heritage may well receive exceptional amounts of requests or concerns around what those might be. We are aware of parking—that has been a big one that has come up—noise; many things that can actually be handled within the current planning system and other regulatory arms. It could be said that when we did our piece for the 2017 discussion paper there was the issues

on the eastern seaboard around party houses et cetera. There was this anecdotal evidence that if you have whole houses rented out; and we also have that anecdotal evidence from some of the western suburbs where there were concerns about homestays rented out and their impact on residents. However, I think that we would note that these were in the media. From our own investigations, I do not believe that we have had many complaints ourselves from our local governments that they have received.

Mr S.K. L'ESTRANGE: Ms Burges, do you think an owner—occupier—single, couple or family—who reside in the home as their principal place of residence should be permitted to put their home up for short-term Airbnb-type rental use while they are not at their home, maybe using the rent proceeds to help fund their own overseas holiday while they are away?

Ms Burges: I think I would need to put that to our members, to glean across the board, because it is actually quite a specific nature about whether the homeowner is in residence or not at that home. I think we have to take that on notice, unless you had some further information.

Ms Jackson: Just to clarify, so you would say that it is the house. You are living in the house, you are going overseas, but you are just doing a month rental, so it would still be on the platform and you would still be getting an income from it?

Mr S.K. L'ESTRANGE: Yes.

Ms Jackson: For us, if it is a short-term nature arrangement and if you are not doing that consistently, maybe that is a different set of circumstances, because it is just a one-off; you might not be doing that for six or 12 months of the year, unless you were having a really great holiday! There might be a slight differentiation with that one. We would have to go back to our members and have a chat to see whether that changes the requirement, because you are not doing it all the time; you are just doing it for a set portion.

Mr S.K. L'ESTRANGE: Correct. It is the early stages of this committee hearing, but some of the information we are already receiving is from people who may save up for five years for a big family holiday to Europe, for example. They may like to put their family home up on Airbnb for rent for, say, six weeks, and then a family comes into their home and they go into somebody else's home in Europe or do whatever. That is a different category of people to a lot of other material we are looking at, so I just wanted to know where your position was on that type of Airbnb user. You are saying you might need to go back to your members for that.

Ms Burges: Certainly, because our current scenario would be around the commercial nature of that arrangement. I think some other options that would be open to the committee would be around registration, perhaps, so you would be able to glean information from the data of Airbnb of whether such an arrangement was in place. That would actually showcase whether it was a commercial entity or not, and I think you are still referring to commercial entities.

Mr S.K. L'ESTRANGE: Just following on from your comment, then, if your members were to say yes to my example that I gave, my following question to that would be: what are the types of local government regulations you think should apply to the home or principal place of residence while it is rented out on Airbnb and the owner or owners are away on their holiday?

Ms Burges: I really do think that given that it is quite detailed, it would be worth us going back to the members, particularly given that the current messages that we are getting from our members around rental of hosted premises are that there is not an appetite to highly regulate that. Given your scenario, I think we would have to go back and speak with the members.

Mr S.K. L'ESTRANGE: I am specifically talking about un-hosted family homes.

Ms Jackson: From the discussions we had with our members, we were more talking about the full house being let all the time. That was the scenario that a lot of local governments are more concerned about, because some of the situations where these homes are located are just in your general suburban areas, so they are not normally designed for lots of people to be coming and going from them every week in, week out. But that would be a little bit of a different variation than we probably have run past our members in any of the discussions we have had with them.

Mr S.K. L'ESTRANGE: I just assume, then, that it is on notice that you will get back to us on those two.

Ms Burges: Yes.

Mr D.T. REDMAN: Further to Sean's question about scope to be able to put regulations in place to ensure that certain outcomes exist in local government areas, you pretty much led with a strong argument asking the committee to respect the variability that sits out there within local governments and their desire to pursue light-touch or heavier regulatory arrangements. You give us the impression in your submission that there are other regulatory tools there. The issue becomes a compliance one; I understand that. Again, we have a fair bit of work to do as a committee to get a sense of what happens in other jurisdictions, but I believe that in other jurisdictions there are rules.

In some cases, the state, in our case, has an overriding rule, if you like, that says that anyone that is listing on online platforms needs to show a registration number, for example, so they can be identified up-front, as distinct from local government having to pursue it, find out and have a bunch of compliance officers tracking it down. Is that a discussion that has happened within local government circles? Would you view that, from the point of view of local governments, as the tool that would give local governments scope to have the variability that you are seeking in your submission, and those that want to have a heavier touch are able to do so?

Ms Burges: I think that definitely having that ability, led by the State, to request that data reveal through a registration process would definitely assist in the identification of the buildings and places that are being rented out, and then comes the compliance. The State would have a role as to, "Here is the registration", and for any of those that list—whether it is with Airbnb, Stayz or any of those—the state holds that, and the open data is then down to the person who is actually providing the service, as in the homestay et cetera. I think it would definitely be a platform that we would like to explore with the members through a consultation process. Certainly in our submission we do suggest that that would be a way, particularly around identification, because we are really stuck between a rock and a hard place.

Mr D.T. REDMAN: The compliance costs would appear to be something that balks local governments from perhaps pursuing an agenda that they would like to pursue. Would that be a fair comment?

Ms Jackson: Part of it, I suppose. Obviously, every local government has a distinct budget that they have to work within, so if they want to spend a full officer's time going round just looking for Airbnbs, what do they drop off that is other compliance that they could be dealing with? We always look at it as a risk rating. What is the higher risk? What is the risk of that one compared with some of the other things they could be doing in a compliance-enforcement role, which usually covers across planning, building and health? So they might be spending more time in other aspects of compliance and this one is only if it is a consistent problem—a problematic house that they get complaints about. They then will talk to the owner about, "You are probably doing some things that you might need a management plan for to make sure that people who are coming into a residence are not adversely affecting the residential nature of the area."

The CHAIR: Just on that very specific issue, one of the things I am very conscious of is not imposing administrative burden and red tape. There is a planning system and there are compliance mechanisms in place already. Are you proposing that we put something else on top of that, or should the powers that are available to local government at the moment be sufficient for it to ensure that noise limits are not being breached or that parking restraints are being complied with? I mean, the last thing we want to do is create another level of complexity for either householders or homeowners to jump through or for local government to then have to institute. Why can this not be adequately governed by the existing powers and mechanisms available to local government?

Ms Burges: I think you are quite correct that there is an opportunity to do it. I think there is also an opportunity to come in at that, depending on the appetite, of course, of government, with perhaps a registration system. Certainly, we are led to understand that the department is perhaps looking at consolidating some of their guidance in this area, and we would really welcome that. There are those mechanisms; they just need to be updated. So you are quite correct that there are currently those mechanisms available. It is just that probably a little bit of extra guidance and ability, whether it be through registration or access to data, which currently cannot occur in a transparent manner, would be very useful.

Mr D.T. REDMAN: The argument put to me in my electorate is that those that have got registered accommodation, guesthouses, chalets and the like are not on a level playing field to those unregistered players that use these online platforms. Does the Western Australian Local Government Association and your membership accept that there is a differential there or do they believe that that is not the case?

Ms Burges: I know certainly that our members have said that it is not a level playing field.

Ms Jackson: That is why in December 2017, when we presented the information back to our full state council, they said there are gaps in the current platform of information that we are using, which does not provide the clarity of how you deal with the new home-sharing kind of arrangements. We were talking through with the department of planning at the beginning of last year, saying there are things that would be beneficial to actually tighten up your current planning framework to be able to provide a much greater clarity on whether home sharing is in or out and how you look at regulating these different land uses so there is a better playing field for all.

Again, it depends on the local government though. Some are obviously very entrenched in their tourism market, but then we have always got to be mindful of the local governments that may be further out that do not have as many, and they are actually encouraging as many of these as possible because there is not a set market of the other accommodation providers.

Mr D.T. REDMAN: Taking that level playing field argument a step further, there is a whole range of rules that people need to comply with that fall under the responsibility of local government. Your earlier comment suggests that if you do not know about them, it is not such an issue. Has local government done some sort of assessment of the risk to them as the compliance party in that environment compared to what I am sure we are going to find out—that is, that hosted accommodation or un-hosted accommodation is likely to present risks to those that own that accommodation. We have not had hearings on that yet, but that is something that may well emerge. Has that risk assessment-type exercise been done within your organisation?

Ms Burges: No. I think the easiest answer would be no.

Mr S.J. PRICE: Following on from both of those lines of questioning from Sean and Terry, your point that you keep referring back to in regards to data sharing is a very good point. If there was that ability for the platform providers to share that data, it would go a long way to identifying the

different types of accommodation that is out there and the forms that they take. In your submission you talk about New South Wales and how they are looking at a code of conduct over there. Do you know any other aspects of that code of conduct that would be worthy of us paying attention to?

Ms Jackson: In the New South Wales example, what we tried to do in here is provide you with our current policy position to say this is where we are currently standing with our members, saying we need a bit more assistance and we would like to discuss it further. Since that has been a year in the transit, we have just provided additional information. Since we wrote the report, obviously New South Wales, Tasmania and quite a few other people have started actively regulating these land uses. Because it is early days, it would be really interesting to find out from those operators over there how is the rollout happening there. Are they are finding these loopholes in it as well? But we have not looked specifically into what else is in the code of conduct, because it is fairly new legislation.

Ms Burges: I think it actually showcases the rapid rise. Even when we refer to a couple of our local governments that are out there pursuing perhaps a higher level of compliance, as we note in the submission, those have only been actively put in place in the 2018–19 financial year. The New South Wales information is very new, so, as we say, it would be interesting to speak with them to see where that is at. I think it would be remiss of me to say that I or our organisation know the exact status of their legislative state now, so, yes, I think it would be really worthwhile speaking with them.

The CHAIR: Speaking of other jurisdictions, one of the things that I am very concerned about is the impact that this short-stay accommodation phenomenon would have on local communities, and particularly housing affordability for local people that otherwise would be renting and potentially are being pushed out of the market. Have your members given you any feedback that they are seeing a transition of accommodation forms pushing out people who would otherwise live locally; and is it having a differential impacting in particular areas? Obviously, ensuring access to affordable housing has to be a priority of any government.

Ms Burges: Absolutely. We currently have not had any, anecdotal or otherwise, links between the short-stay accommodation and rental affordability. It is certainly not what has been seen on the eastern seaboard and in Tasmania. We have not had that to date. I think it might be a reflection of the current economy, maybe. I think that would just be an opinion piece from myself. But we have not had any evidence similar to that on the eastern seaboard.

The CHAIR: Are there any views that WALGA has—I am thinking particularly in the North West of the State where there are a lot of accommodation forms and it is used for FIFO, maybe it is used for short-stay—are there any sort of subtle differences in the North West of the State that we should potentially be sensitive to?

Ms Burges: We have not broached that, and I am certainly not aware of anything. That has levelled out over the past—any kind of rental affordability in the North West— housing affordability and rental affordability has evened out somewhat. Whether there are any special considerations in the North West that might marry up in particular with lower air fees et cetera, I am not particularly aware of. If you would like us to take that on notice, we could certainly do that as part of some consultation. It would take a period of time, but we could certainly seek that out for you.

The CHAIR: Thank you. There is some evidence potentially out there to the committee suggesting that in strata complexes local government rules are used by investors to bypass body corporates, and the implication is that applications for planning approvals are being used to circumvent strata agreements. I just wondered whether you had had any feedback from your members about that and also about the use of local government authorities to enforce strata laws. I just wondered what the feedback from your members was on that.

Ms Jackson: No feedback from members, but in issuing a planning approval, you have to have the strata company's signature on the application, so from a local government perspective about whether or not an application is valid, you have to have an approval from the strata company to say that it is okay. Local government does not then step into the strata management world to then say, "Have you checked with all 180 owners that this is okay?" It is part of their strata act requirements to make sure that they have got the approval through an appropriate meeting of some sort to make sure that they have brokered that arrangement.

We have heard from over East that there are quite a few different approaches over east, but different legislation, so there is a different set of scenarios there. Some people may just be operating without a planning approval in their complex. Whenever that is brought to the attention of a local government, they will follow that up with the strata company to say, "This is a complaint we have received and you, as the strata company, need to provide us with evidence that the owners of that complex are happy with that being offered as a short-term rental accommodation."

So there are current checks and balances in our legislation that make sure that the strata company does sign off on it. Over East, they do not have that level of connection, so there are quite a few variations in what happens over East. Sometimes over east they might actually say, "Look, you know, we've got a 12-storey building; we'll only do short-term accommodation for levels 5, 6 and 7, and then the rest are for permanent residents." So they are trying to manage it in a bit of a better way on the site to make sure that the constant comings and goings of patrons are minimised on certain floors and also that there is some evidence to say there is a little bit more damage because of suitcases and things coming in and out of the lifts all the time, so they are trying to manage it to certain floors. But over here we have much tighter requirements through the planning approval process to say that if you do get a planning approval, there is a clear requirement that the strata company and the owners have actually signed off on the use of that accommodation.

The CHAIR: Have your members given you a view on how important the short-stay accommodation sector, if you like, is to things like encouraging their local government area as a tourism destination?

Ms Burges: Certainly. We probably have a vocal elected member in our Deputy President. For instance, the City of Wanneroo has been quite open in their desire with regard to short-term accommodation and the varying platforms, because they do not have a current offering and they see the economic development opportunities of having other people in the area spending their money and utilising the area. The City of Wanneroo is not the only one; there are certainly others out there that see some of these platforms as quite secure to be able to utilise in bringing in economic development opportunities and raising income in their local communities.

The CHAIR: It is such an interesting question, because the contrary view has also been put to the committee through submissions —

Ms Burges: Of course.

The CHAIR — that these short-stay accommodation providers are killing tourism and undermining local businesses. It is always so interesting to hear the different perspectives and the justifications for both.

Mr D.T. REDMAN: Just to take a slightly different path—I am back on the compliance question again—you did talk about having a range of regulatory tools in place. For those who want to take a slightly heavy hand and ensure that there is compliance with the rules that are in existence, are you aware of any prosecutions or pursuit of noncompliance of those who are in breach of the rules? I guess the question that comes after that is: if not, why not, and is the burden of proof required to secure a successful breach an issue?

Ms Jackson: The one example we do know of is in the City of Busselton, where it did go to a prosecution stage. With any enforcement action, some local governments have a very different approach to enforcement. They use it as, “You’re doing the wrong thing. Come in and talk to us, get a planning approval, and then you can operate under the rules of the planning scheme.” Others may take it down an enforcement line. But any enforcement actions are really expensive, so for a local government to take that action it would have to be a very serious case, and they would have to look at their entire budget to say, “If we’re going to prosecute someone for a short-term-stay accommodation breach, is it more important to do that or should we be doing a prosecution on the food handler down the corner who is causing some problems with the food Health Act?”

They do have to manage their budgets, because most of them have a very limited enforcement regime. So there is probably a balancing act of what is the level of risk for those and how far do we need to take it. Sometimes just the threat of enforcement is enough for people to then come on board and say, “Yes, okay; I’ll comply and I’ll come in and get my planning approval”, rather than taking it to a full court proceeding. There is only one case that we know has gone to a court.

Mr D.T. REDMAN: So it is fair to say it is rare and unlikely that it would be pursued to a legal end?

Ms Jackson: Yes. A lot of local governments do not like to use the big stick, because the threat of it is quite handy, but to actually follow it through to the very end of a court case can be—I think one of our local governments recently gave us a quote where they did follow it all the way through to the very end and it cost them \$20,000, not on short-stay accommodation but on another issue, so that was their whole budget gone for the entire year. So how many times do you want to take it to that extreme, unless it is just such a major issue and they are causing a problem as in it is going to affect the health and safety of an area. But most of the time they are probably spending their time on other enforcement actions that may be a little bit more higher risk.

Mr D.T. REDMAN: You talked earlier about complaints’ response being one of the tools that is used to get compliance. Is compliance pursued after those complaints or is it simply desist and go away?

Ms Jackson: Yes, certainly.

Mr D.T. REDMAN: So compliance is pursued?

Ms Burges: Just following on from that example of the City of Busselton, we do draw attention to that in our submission and suggested that their submission should be looked at, in particular about enforcement regimes as a deterrent and the effectiveness of that. They actually cover that in there, so that would be very useful for the committee.

Ms Jackson: Because they have got probably the biggest register and they obviously are very active in that space of regulating through a local planning policy and a local law. So the mechanisms to find out whether or not the compliance is appropriate has been detailed in their submission quite well.

Ms Burges: To follow on with regard to complaints, something that we believe our members are very good at is that if the complaints process starts, there is follow through no matter the size or scale of the local government.

Ms Jackson: And you do need to provide evidence. You have to give the person the opportunity to respond. You then have to let them give you the evidence of whether they are or are not operating as short-term-stay accommodation. It might just be that they have lots of friends coming over all the time, or they might be just house swapping. There might be no commercial aspect to it; they might just be house swapping a lot. You have to give them the opportunity to provide you with the evidence to say they are or are not operating as a short-term accommodation, and then you follow the process through.

Mr D.T. REDMAN: By extension, are you aware of any examples where—I think there is a case in the eastern states where a very tragic accident happened in an un-hosted, I think—no doubt there will be hearings on this in more detail. Are you aware of any issues where legal action has been taken on owners of houses in respect to these sorts of platforms being used for accommodation where there is a lack of compliance with the requirements that local governments would normally have and ask for?

Ms Burges: I do not have any awareness of that. Once again, we could put that question, but I certainly think that if there had been, we would be aware of it.

The CHAIR: In your submission, you run through “Planning Bulletin 99”, which was undertaken back in 2009, and you comment on, I guess, the enforceability or the applicability of that document and the degree to which local government areas comply with it, and refer to an exercise that the Department of Planning, Lands and Heritage is undertaking to develop a tourism position statement. Have you been engaged or consulted as part of that? What are your views on whether “Planning Bulletin 99” is wrapped up into that exercise? What would you suggest it needs to contain, and what sort of teeth does it need to have?

Ms Jackson: We have been involved with the department. They have been very good at consulting with us on that project, and we saw quite a few of the draft versions before it got to Tourism WA, and then we have not heard anything from mid-last year, I think, but we did know that it was being worked on. Our members came back to us and said there is no broad agreement to actually elevate that planning bulletin to anything higher, so that it does not have more statutory weight and we need to put it up into a much higher level as a state planning policy. Our members, and also the Department of Planning, Lands and Heritage, and Tourism WA, said no, we probably do not need to have it at a state level as a really high-level, due-regard document and it is probably easier if it is just something that is in guidelines.

The new version did provide us with a bit more clarity over some of the issues that we have been raising, and we were quite happy that it was progressing. There was a bit more clarity about the definitions and the terminology. There were a few things, minor details, that we were obviously going back and forward about, but generally they were quite happy that there would be some update to the 2009 version and that would provide us with some more contemporary legislation and guidance.

The CHAIR: Thank you for your evidence before the committee today. A transcript of this hearing will be emailed to you for 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. Thanks for coming in; we really appreciate it.

Hearing concluded at 10.28 am
