

Private short-term letting and the Law



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The concept of DIY Letting

- The "sharing economy"
- Owners rent out part of their lot (or, commonly, all of it) to others
- Online services like 'AirBnB' and 'Stayz' facilitate rentals for owners
- Owners don't need any special licence to rent out their lot
- If the lot is in a CTS, owners don't need the body corporate's consent
- There's potential for owners (and others) to make money
- A recent decision of Victorian Civil and Administration Tribunal said tenants who let out their entire house were not technically subletting and were consequently not in breach of their lease
- Regulations are failing to keep pace

Airbnb by the numbers

- Started by 2 Californian hipsters renting out an air mattress on their lounge room floor
- More rooms available than most of the largest hotel groups in the world such as Hilton, Intercontinental and Marriott
- Over 1 Million listings in more than 34,000 cities in over 190 countries
- In 2015 the business was valued at \$24 billion US dollars
- No capital infrastructure - don't own any real estate

What's the big deal?

Scenario One

- Holiday resort in Surfers Paradise
- No permanent residents
- Accommodation Module
- Sinking and Admin fund budgets reflect the actual expenditure
- Onsite manager
- Letting Agreement says short-term ok
- Class 3 building
- Zoned for short-term accommodation

Short-term letting = No Problem!

What's the big deal?

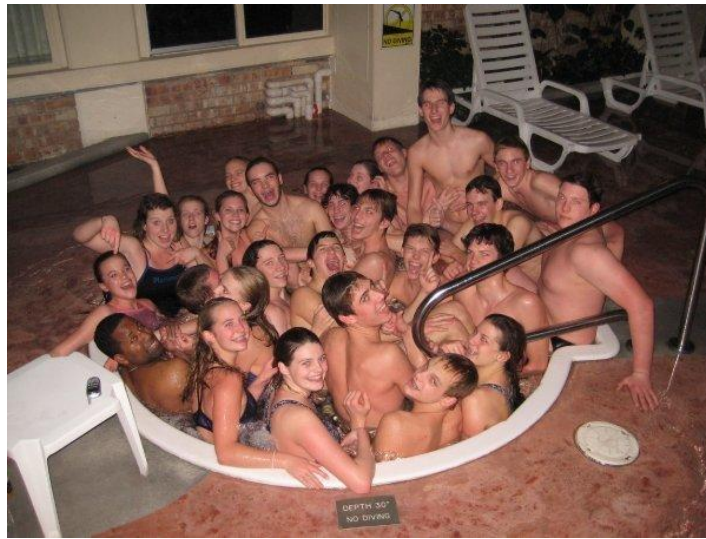
Scenario Two

- Small exclusive complex in Bulimba
- Majority of residents are permanent
- Standard Module
- No onsite management
- Sinking and Admin funds relatively low
- Class 2 building
- Not zoned for short-term accommodation

Short-term letting = Problemo!

What's the big deal?

Possible higher use of common facilities
by guests



= greater (unaccounted) **cost to body corporate**

What's the big deal?

Possible less sense of responsibility by
guests



= nuisance to others

What's the big deal?
Guests unfamiliar with property



= safety issues

Body Corporate Laws

If the Body Corporate doesn't want short-term letting, what can it do?

- Change it's by-laws to prevent it?

NO CAN DO!

Body Corporate Laws

Section 180(3) of the BCCMA:

If a lot may lawfully be used for residential purposes, the by-laws cannot restrict the type of residential use.



Body Corporate Laws

Can we amend the by-laws so short-term renters are banned from having parties and from using the pool and other facilities?

NO CAN DO!

Body Corporate Laws

Section 180(5) of the BCCMA:

A by-law must not discriminate between types of occupiers.



Body Corporate Laws

Can we impose a bond on an owner who wants to operate short-term letting in their lot and fines for renters who misbehave?

NO CAN DO!

Body Corporate Laws

Section 180(6) of the BCCMA:

A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.



Body Corporate Laws

What can a body corporate do under the BCCMA to deal with problems arising from short-term letting?

- Review by-laws
 - Noise
 - behaviour
 - Parking
 - Use of common facilities
- Nuisance provisions
- Dispute resolution (but timing issues!)

Docklands and the Building Code

*Genco & Anor v Slater & Anor [2013]
VSCA 365 (12 December 2013) - the
"Docklands decision"*

- An owner was conducting short-term letting from 3 lots
- Council said you can't conduct short-term letting in a class 2 building (lot = dwelling)
- Court didn't agree and said short-term letting in a class 2 building was ok (because "dwelling" did not import any long-term or permanency requirements)
- Also said there may be a requirement to convert to class 3 if it looked and smelt like a hotel



Oak Shores Decision

Body Corporate was sick of the extra costs and disruption caused by short-term tenants so it banned short-term letting and imposed a fee on landlords to offset the additional expenses they created



Oak Shores Decision

A disgruntled owner sued the body corporate and lost

Twice

It cost him \$1.2M

But not relevant to us without
statutory reform

Other Considerations

Planning Laws - Zoning, DA, Party Houses

Work Health and Safety - PCBU

Residential Services (Accreditation) Act

Residential Tenancies and Rooming

Accommodation Act 2008



Concluding remarks

- Bodies corporate in Queensland are not currently empowered to prevent owners from renting out their lots (or part of them) to short-term guests
- By-laws can regulate but not prohibit short-term letting
- Building classification is (mostly) irrelevant to short-term letting
- Oaks Shores decision gives us some ideas about the type of reform we might need to better regulate short-term letting

Any Questions?

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