



JS MUELLER & CO
LAWYERS



BY-LAW REVIEWS - HOW TO AVOID THE BIG MISTAKES

Adrian Mueller
Partner | Senior Lawyer
B.Com LLB FACCAL
[Email](#) | [LinkedIn](#)

BY-LAW REVIEWS: HOW TO AVOID THE BIG MISTAKES

The deadline for owners corporations to review their by-laws has passed and most owners corporations have now completed their by-law reviews. So what lessons can be learned from the by-law review process? And, more importantly, what mistakes have been made during that process and how can they be fixed?

Introduction

The *Strata Schemes Management Act 2015* commenced on 30 November 2016. The Act required every owners corporation in New South Wales to review their by-laws within 12 months. The deadline for owners corporations to undertake their by-law reviews has now passed and most owners corporations have completed that task. However, many owners corporations have made some mistakes when reviewing their by-laws. What are these mistakes and how can you fix them?

Mistake 1: Changing the Model By-laws

The regulations that were made under the *Strata Schemes Management Act 2015* contain a set of 18 model by-laws for new residential strata schemes. These new model by-laws only apply to new strata schemes or existing schemes that choose to adopt them. Many owners corporations of old strata schemes have chosen to adopt the new model by-laws. They have done so thinking that the new model by-laws reflect best practice in this area. But have they got it wrong?

There are some subtle but important differences between the model by-laws that apply to most existing strata schemes and the new model by-laws. Many of these subtle differences are not picked up by owners corporations when they decide to replace their existing model by-laws with the new ones. So what are the big mistakes that are being made by owners corporations that are repealing their existing model by-laws and adopting the new ones?

By-Law 13 – Moving in and Out

The model by-laws for existing schemes contain a by-law dealing with moving in and out by residents and the transportation of furniture and large objects through common property (By-law 13). This by-law requires residents to notify the strata committee before they transport any furniture or large objects through or on common property to give the strata committee sufficient time to arrange for its nominee to be present at the time when they do so. However, the new model by-laws do not contain any by-laws dealing with this topic. This means that the owners corporations that have replaced their existing model



by-laws with the new model by-laws no longer have a by-law dealing with moving in and out by residents or the transportation of furniture and large objects through common property. In many cases this will prove to be a glaring omission from the by-laws.

By-Law 14 – Floor Coverings

The model by-laws for existing schemes contain a by-law dealing with floor coverings (By-law 14). This by-law requires owners to ensure that the floor coverings in their lots are covered or otherwise treated to an extent sufficient to prevent the transmission of noise likely to disturb the peaceful enjoyment of other residents. The new model by-laws do not contain any by-law dealing with floor coverings. This is presumably because the new model by-laws are intended to be used by more modern buildings that have better sound insulation between different areas of the building. But this means that many owners corporations of older strata buildings which have chosen to adopt the new model by-laws no longer have a by-law dealing with noisy floor coverings. This may end up proving to be a big mistake for many owners corporations particularly in older buildings which are plagued by noise transmission problems from floor coverings.

By-Law 18 - Noticeboard

The model by-laws for existing schemes have a by-law that requires a noticeboard to be maintained on the common property (By-law 18). The new model by-laws do not contain any noticeboard by-law. A noticeboard by-law can prove helpful. Not only does a noticeboard provide a source of information for residents but it can be used to serve tenants with notice of tenants' meetings that must be held for the purpose of appointing a tenant representative. Further, a noticeboard by-law allows an owners corporation to display notices it receives from NCAT on the noticeboard including any orders that are made by NCAT instead of having to serve a copy of any orders it receives from NCAT on all of the owners. Additionally, notice of an adjourned meeting of a strata committee is able to be given by displaying a notice on the noticeboard rather than by serving the notice on every owner. Therefore, a noticeboard by-law is still useful and should not be dispensed with by every owners corporation.

So Why Adopt the New Model By-Laws?

This is not to say that adopting the new model by-laws is a bad idea for an owners corporation. The new model by-laws contain many useful by-laws including some that are not included in the model by-laws for older schemes. For example, the new model by-laws dealing with smoke penetration (By-law 9) and fire safety (By-law 10) are very useful by-laws that should be adopted by most owners corporations and some of the new model by-laws are improved versions of the model by-laws for older strata schemes such as the new model by-law dealing with the change in use of a lot (By-law 17).



However, the point to make is that it is often a bad idea to simply repeal all of the existing model by-laws and replace them with the new model by-laws without carefully considering what will be lost by doing so. In some cases, it may be more appropriate to repeal some (but not all) of the existing by-laws and to adopt the new model by-laws (or some of them).

Mistake 2: Repealing Renovations By-laws

Many owners corporations, particularly of older strata buildings, have, over time, made multiple by-laws authorising individual owners to carry out renovations in a number of lots in the scheme. This results in the common property title becoming cluttered with numerous, lengthy renovations by-laws. During the by-law review process, some owners corporations have expressed a desire to remove those renovations by-laws to declutter the common property title and have therefore repealed them.

The problem with this approach is that it results in the by-laws that regulate renovations that have been undertaken by various owners in the building coming to an end. This means that there are no longer any by-laws which regulate those existing renovations. So, for instance, where the existing renovations by-laws are repealed, the provisions in those by-laws which make the owners responsible for the renovations liable for the ongoing maintenance and repair of their renovations are no longer effective. This means that the owners corporation will often become responsible for the maintenance and repair of those renovations which is often not what the owners corporation intended.

Mistake 3: Adding New Renovations By-laws

The *Strata Schemes Management Act 2015* identifies three categories of work owners are able to carry out to the common property in connection with their lots. These are: cosmetic work, minor renovations and major renovations. Many strata buildings already have a by-law that regulates renovations undertaken by owners. These are often called “blanket” or “generic” renovations by-laws.

During the by-law review process, many owners corporations have made new by-laws dealing with cosmetic work or minor and major renovations. There is nothing wrong with doing so. Indeed it is a sensible practice. However, the problem arises when an owners corporation makes a new by-law dealing with minor and major renovations but does not repeal or amend its existing renovations by-law. This results in the scheme being governed by two (often inconsistent) by-laws governing renovations. In those circumstances, it is often not clear which by-law prevails and will apply to a particular renovation.



For example, an existing renovations by-law may permit owners to undertake renovations between 8.00 am – 4.00 pm on weekdays. However, a new by-law for minor and major renovations may authorise owners to undertake renovations between different times, say between 7.30 am – 3.30 pm on weekdays (excluding public holidays) and between 9.00am – 1.00pm on Saturdays. So when an owner begins a major renovation at 9.00 am on a Saturday, are other owners entitled to complain?

Conclusion

There is merit in every owners corporation reviewing its by-laws. However that is a task that must be undertaken carefully in order to avoid unintended and undesirable consequences. Unfortunately, some owners corporations have made mistakes when reviewing their by-laws which will have a detrimental impact on the management of their strata schemes. However, the good news is that, normally, any mistakes that have been made can be fixed through further amendments being made to the by-laws. The important thing is for an owners corporation to realise that it has made a mistake when reviewing its by-laws and to correct that mistake.

Adrian Mueller

Partner | BCOM LLB FACCAL

adrianmueller@muellers.com.au

About JS Mueller & Co

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for over 30 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

02 9562 1266

enquiries@muellers.com.au

www.muellers.com.au



Disclaimer: The information contained in this newsletter is provided for your personal information only. It is not meant to be legal or professional advice nor should it be used as a substitute for such advice. You should seek legal advice for your specific circumstances before relying on any information herein. Contact JS Mueller & Co for any required legal assistance.
