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IT'S TIME TO REVIEW YOUR BY-LAWS AGAIN

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IT'S TIME TO REVIEW YOUR BY-LAWS AGAIN

Recent Court and NCAT decisions and changes to strata laws have impacted on the validity of many by-laws. This means that it is now essential to again review your strata scheme's by-laws. In this article we take a look at the types of by-laws that need to be reviewed due to these recent cases and changes to the law.

1. **No Pets By-laws**

On 12 October 2020, the NSW Court of Appeal ruled that a by-law prohibiting the keeping of pets in the Horizon building in Sydney is unenforceable because it is harsh, unconscionable or oppressive: see *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250. This means that “no pets” by-laws are unenforceable. There are many strata buildings that have “no pets” by-laws. The Court's decision effectively means that these buildings do not have a valid by-law covering pets. This means that those buildings will need to change their pets by-laws. Careful consideration will need to be given as to the way in which those pets by-laws will be re-worded. Those buildings will need to decide if they will permit animals subject to conditions or require owners and occupiers to apply for permission to keep animals and, if so, what the criteria for approving pet applications will be.

2. **Short Term Letting By-Laws**

On 10 April 2020, section 137A of the *Strata Schemes Management Act 2015* commenced. This section permits a by-law to be made to prohibit a lot being used for the purposes of a short-term rental accommodation arrangement in certain circumstances. However, section 137A also says that a by-law is not enforceable to the extent that it purports to prevent a lot being used for the purposes of a short term rental accommodation arrangement if the lot is



the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot. Prior to the introduction of section 137A, many owners corporations introduced by-laws banning short term accommodation in their buildings. Many of those by-laws will no longer be enforceable or will only have limited enforceability because they will purport to prevent a person whose lot is his or her principal place of residence using the lot, or allowing the lot to be used, for the purposes of a short term rental accommodation arrangement. These types of by-laws will need to be adjusted to ensure they comply with section 137A.

3. Abandoned Goods and Illegally Parked Vehicles By-Laws

On 1 July 2020, the provisions in the *Strata Schemes Management Regulation 2016* which allowed an owners corporation to dispose of goods left on common property or to remove an illegally parked vehicle from the common property were repealed. Now, an owners corporation's rights to dispose of abandoned goods left on common property or to remove illegally parked vehicles from common property are contained in the *Uncollected Goods Act 1995*. Those rights are different to the rights which owners corporations enjoyed under the strata regulations. Many owners corporations have made by-laws which permit them to dispose of abandoned goods or remove illegally parked vehicles from common property. Those by-laws are likely to be inconsistent with the new rules found in the *Uncollected Goods Act 1995* and therefore be unenforceable. For that reason, these by-laws need to be amended to ensure they are consistent with the *Uncollected Goods Act 1995* and are able to be enforced otherwise an owners corporation which relies on such a by-law may be liable for disposing of abandoned goods or removing an illegally parked vehicle from the common property.



4. Building Works By-Laws

On 30 September 2020, the Appeal Panel of NCAT ruled that neither a developer by-law nor a common property rights by-law could lawfully authorise an owner to carry out alterations and additions to the common property such as major renovations: see *The Owners – Strata Plan No 63731 v B & G Trading Pty Ltd* [2020] NSWCATAP 202. There are many strata buildings which have developer by-laws or common property rights by-laws (previously known as exclusive use or special privileges by-laws) which purport to authorise owners to carry out building works to the common property. The decision of the Appeal Panel creates real doubt concerning the enforceability of those by-laws. This may have a number of consequences. For example, an owners corporation may still be responsible for the maintenance and repair of common property which has been affected by building works done by an owner under a developer by-law or common property rights by-law even though the by-law includes a condition which imposes that responsibility on the owner. Further, conditions in those types of by-laws which, for instance, make owners responsible for ensuring that their building works are carried out in a proper and workmanlike manner, comply with the Building Code of Australia and have an appearance that is consistent with the appearance of the building may not be enforceable. These types of by-laws should now be reviewed to gauge whether they are valid and enforceable and in order to determine what steps should be taken if they are not.

5. No Smoking By-Laws – No Hard Floor Coverings By-Laws – Prohibiting Business Activities in Lots

The recent Court of Appeal decision in the *Cooper* case casts doubt over the enforceability of by-laws that impose blanket bans on various activities. This includes by-laws which prohibit smoking. It also includes by-laws which prohibit specific types of building works, for example, by-laws that ban hard floor coverings and even by-laws that prohibit certain types of activities



being carried out in lots such as various business activities. These types of by-laws, and any other by-laws that ban activities, should be reviewed to determine whether they are still valid and enforceable and, if not, what steps should be taken to amend them.

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About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collection.

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