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AN OVERVIEW OF RECENT KEY CHANGES TO STRATA LAW

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There have been a number of important changes made to strata laws over the last 6 months. This includes changes to legislation and recent court and NCAT decisions. In this article we provide an overview of those key changes to help you get across them and make recommendations as to what you should do get the most out of them and to ensure you comply with them.

Builders now owe a duty of care to avoid defects

On 10 June 2020, new legislation commenced which imposes on designers, builders, subcontractors and others a duty to exercise reasonable care to avoid financial loss caused by defects. The new legislation is retrospective and covers buildings constructed within the last 10 years. The legislation also applies to all types of strata buildings including commercial and industrial buildings. The legislation entitles claims to be made for up to 6 years after an owners corporation suffers loss arising from defects and gives owners corporations new rights to make defect claims against designers, builders, subcontractors and others.

Recommendation: Any owners corporation whose building contains defects should consider obtaining legal advice as to whether it has a right to make a claim under the new legislation because some owners corporations previously had run out of time or had no right to make such a claim. (*Design and Building Practitioners Act 2020*)

New rules for removing abandoned goods and illegally parked vehicles

On 1 July 2020, changes were made to the laws regulating the power of an owners corporation to remove abandoned goods and illegally parked vehicles from common property. Under these changes, the right of an owners corporation to remove goods from common property now only applies to abandoned goods rather than any goods which have been left on common property. The changes also introduce new time periods for notices that must be given before an owners corporation is able to dispose of abandoned goods left on common property.

Recommendation: There are many owners corporations that have in place by-laws relating to the removal of goods and vehicles left on common property. Most of those by-laws will now require an update to ensure they are consistent with the changes to the law regulating this area. (*Uncollected Goods Act 1995*)

Developer by-laws and common property rights by-laws cannot approve building works done by owners

On 30 September 2020, the Appeal Panel of NCAT held that a developer by-law and a common property rights by-law cannot authorise an owner to carry out alterations or additions to common property. The Appeal Panel concluded that the only way in which an owner can obtain authority to alter or add to the common property, or do major building work on common property, is by a special resolution and by-law passed by an owners corporation under section 108 of the *Strata Schemes Management Act 2015*. This decision means that there are many developer by-laws and common property rights by-laws which wrongfully permit owners to carry out building works on common property. Any such by-laws which are unenforceable will not impose on owners the responsibility for the maintenance and upkeep of any works they do on common property.

Recommendation: This decision provides an important reason for owners corporations to (once again) review their by-laws (albeit with a different focus) to ensure that any by-laws that authorise building works done by owners are valid and enforceable. (*The Owners-Strata Plan No. 63731 v B&G Trading Pty Ltd* [2020] NSWCATAP 202)

No Pets By-laws are invalid

On 12 October 2020, the NSW Court of Appeal held that a by-law prohibiting the keeping of animals in a strata building is invalid. The Court concluded that a “no pets” by-law is harsh, unconscionable or oppressive and therefore unenforceable.

Recommendation: This case presents a further reason for every owners corporation to (once again) review its by-laws. The Court’s decision means that every owners corporation should review its pets by-law to ensure it is valid and enforceable. Any owners corporation that has in place a “no pets” by-law will need to replace that by-law with a by-law that either restricts (but does not prohibit) the keeping of pets or allows pets and imposes reasonable conditions that regulate any pets that are kept in the building. (*Cooper v The Owners-Strata Plan No. 58068* [2020] NSWCA 250)

NCAT can award damages

On 11 November 2020, the NSW Court of Appeal held that NCAT is able to award damages or compensation to a lot owner who suffers financial loss as a result of defects in the common property that an owners corporation does not repair in breach of its statutory duty to repair common property under section 106 of the *Strata Schemes Management Act 2015*. This decision will make it easier for owners to make compensation claims against owners corporations to cover losses they suffer when, for example, water leaks into and damages a lot as a result of common property defects that an owners corporation does not repair. The decision will expose more owners corporations to the risk of having to



pay compensation to owners to cover rental loss, the cost to repair lot property, experts' fees and legal costs.

Recommendation: Every owners corporation should now review its policy with respect to common property maintenance and repairs, consider whether it is possible to pass a special resolution to relive itself from the obligation to repair certain common property, and also get in touch with its insurer or insurance broker to find out if it holds insurance cover against compensation claims by owners whose lots are damaged as a result of common property defects. (*Vickery v The Owners-Strata Plan No. 80412* [2020] NSWCA 284)

COVID-19 re strata regulations extended

On 13 November 2020, the NSW Government extended the operation of new strata regulations it introduced in June 2020 in response to the COVID-19 pandemic. Those rules will continue to allow strata committee meetings and general meetings to be held by video link or teleconference and permit owners and strata committee members to cast votes in relation to those meetings by pre meeting electronic votes or by other electronic means even if the committee or owners corporation has not approved voting by those means. The rules that allow an owners corporation to execute a document, such as a consolidated set of by-laws or strata management agency agreement, without use of the common seal, will continue to apply. The new rules will continue to operate until 13 May 2021. (*Strata Schemes Management Amendment (COVID-19) Regulation (No.2) (2020)*)

Introduction of mandatory code of conduct for short term rental accommodation

From 18 December 2020, a mandatory Code of Conduct for the short-term rental accommodation industry will apply. The Code of Conduct will impose standards of behaviour on short term stay guests such as prohibitions on making excessive noise and damaging common property and making guests responsible for the actions of their visitors. The Code of Conduct will also impose obligations on short term stay hosts such as requiring them to hold public liability insurance, provide contact details to neighbours, take reasonable steps to ensure their guests comply with their behaviour obligations in the Code and prohibit them renting their premises to a guest who is black listed in the exclusion register that is expected to commence in 2021. The Code also imposes rules on short term accommodation platforms such as Air B&B and Stayz which require them to provide information to their hosts and guests about the Code and precludes them advertising short term accommodation for hosts or premises that are black listed on the exclusion register.

Recommendation: The introduction of the Code of Conduct will supplement the changes to strata laws that commenced on 10 April 2020 which permit an owners corporation to adopt a by-law that prohibits a lot that is not the host's principal place of residence being used for short term rental accommodation.

These changes present another reason for owners corporations to review their by-laws to ensure they are compliant with the new laws. Any by-law regulating short term rental accommodation should now require owners and occupiers of lots to comply with the Code of Conduct. (*Fair Trading Amendment (Code of Conduct for Short Term Rental Accommodation Industry) Regulation (No. 2) 2020*)

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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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