



JS MUELLER & CO
LAWYERS



REVIEW OF COMMUNITY MANAGEMENT STATEMENTS: THE LEASONS THAT HAVE BEEN LEARNED

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

REVIEW OF COMMUNITY MANAGEMENT STATEMENTS: THE LESSONS THAT HAVE BEEN LEARNED

The Community Land Management Act 2021 (CLMA 2021) commenced on 1 December 2021. That Act made a number of changes to the laws regulating community schemes in New South Wales. Some of those changes have had an impact on the validity of by-laws that are contained in the Management Statements of community schemes and neighbourhood schemes. We have reviewed dozens of Management Statements for community and neighbourhood schemes. In this article, we share some of the lessons that have been learned from those by-law reviews following the commencement of the Community Land Management Act 1989 2021.

Harsh By-Laws

The CLMA 2021 introduced new restrictions on by-laws for community and neighbourhood schemes. Section 130(1) says that a by-law for an association must not be harsh, unconscionable or oppressive. Any by-law that is harsh is unenforceable. An identical section is contained in the Strata Schemes Management Act 2015 and has already been interpreted by NCAT and the NSW Court of Appeal in several cases. The effect of those cases is that a by-law will be considered harsh and unenforceable if it prohibits an owner or occupier of a lot from carrying out an activity if it is possible for that activity (at least in some cases) to be carried out in a way that does not have a detrimental impact on the use and enjoyment of the lots and common property by other owners and occupiers. This has greatly reduced the scope for by-laws that impose blanket bans on activities such as the keeping of animals and parking on common property. There are a number of by-laws in Management Statements that prohibit various activities which are now likely to be unenforceable. This can leave a gaping hole in the by-laws and mean that certain topics that are meant to be covered by the by-laws are not dealt with at all.

Pets

Section 130(6) of the CLMA 2021 says that a by-law of an association cannot prohibit or restrict the keeping on a lot of an assistance animal used by an owner or occupier of the lot as an assistance animal or the use of an assistance animal for that purpose by a person on a lot or association property. This is a new restriction that was not contained in the Community Land Management Act 1989. It means that many by-laws dealing with the keeping of animals in Management Statements are not enforceable to the extent that they prohibit the keeping of assistance animals. For this reason, it would be wise for any association to review its by-law concerning the keeping of animals to ensure it does not offend this new restriction.

Leasing

Section 130(2) of the CLMA 2021 introduces another new restriction on the by-laws in a Management Statement. This restriction prevents a by-law prohibiting or restricting the sale, transfer or leasing of a lot. This same restriction on strata by-laws is found in section 139(2) of the Strata Schemes Management Act 2015. A similar restriction has applied to strata by-laws for over 25 years. There are some Management Statements that contain by-laws that purport to restrict the sale or leasing of lots. These include by-laws that prohibit short term lettings or the sale or leasing of lots to certain people. Those by-laws are not likely to be enforceable any longer and require review.

Association Committee and Insurance

The Community Land Management Act 1989 did not contain many provisions dealing with the association committee (or executive committee as it was previously known) or the insurance policies that an association needed to or could take out. This explains why most community and neighbourhood Management Statements contain detailed by-laws dealing with the executive committee and insurances. Many of those by-laws are now redundant. This is because the CLMA 2021 contains detailed provisions regarding the association committee and insurances.

Part 3 and Schedule 2 of the CLMA 2021 contain comprehensive provisions dealing with meetings of the committee. The insurance obligations of an association are now contained in Part 9 of the CLMA 2021. Many of the provisions that are contained in the by-laws in a Management Statement dealing with the committee and insurances are inconsistent with those in the CLMA 2021. For that reason, many of those by-laws should now be repealed or amended.

Old Terminology

Most Management Statements were prepared before the commencement of the CLMA 2021. the CLMA 2021 has updated terminology used throughout the community titles legislation. For example, an “executive committee” is now known as an “association committee” and a “proprietor” is now known as an “owner”. Most Management Statements still refer to the old terminology and contain references to legislation which no longer exists such as the Community Land Management Act 1989. That issue can be dealt with in two ways.

First, the by-laws in a Management Statement can be amended to replace all of the references to outdated terminology and legislation. Second, a by-law can be added to simply state that any references to outdated terminology or legislation which no longer exists are taken to be references to equivalent expressions in the CLMA 2021 and current, equivalent legislation. The second approach is simpler,

quicker and cheaper. The first approach is more thorough and expensive but ensures that the Management Statement is truly up to date.

Changes to By-Laws

Most Management Statements contain by-laws dealing with the preservation of the essence or theme of the community scheme. These by-laws typically refer to architectural and landscaping standards that must be adhered to by the Association and the owners and occupiers of the lots. These by-laws are often found in Part 1 of the Management Statement. Previously, those by-laws could only be amended or repealed with the authority of a unanimous resolution passed by the Association. This often made it impossible to make any changes to those key by-laws. Section 131 of the CLMA 2021 now allows all by-laws to be amended or repealed in accordance with a special resolution. However, many Management Statements still contain a statement to the effect that the by-laws in Part 1 of the Management Statement cannot be changed except with the authority of a unanimous resolution. Those statements are no longer correct and should be amended or removed from the Management Statement.

Conclusion

The commencement of the CLMA 2021 on 1 December 2021 has introduced a number of important changes to the laws regulating by-laws in Community Management Statements and Neighbourhood Management Statements. Those laws mean that many by-laws in Management Statements are outdated and some are no longer enforceable. It is therefore important for any Community Association, Precinct Association or Neighbourhood Association to undertake a review of its Management Statement to ensure it is compliant with the CLMA 2021.

We have reviewed many Management Statements since the commencement of the CLMA 2021. If you would like to find out more about our Management Statement review services, please get in touch with us.

Adrian Mueller

Partner | B.Com LLB FACCAL

adrianmueller@muellers.com.au

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 collections.

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 Lawyers for any required legal assistance.