

By-Law Review – Are You Ready?

Owners corporations should regularly consider their by-laws. Additionally, as of 30 November 2016 all owners corporations are **required by law** to:

- Review their by-laws before 30 November 2017, if they are a scheme registered before 30 November 2016; and
- When registering any further changes to their by-laws, lodge a consolidated version of the by-laws (including the model by-laws). There is an exception to this obligation, but this is likely to rarely apply.

Some things for owners corporations to consider in a review include:

1. **Unauthorised works:**

Many lot owners in schemes have conducted works without the appropriate by-law, for works such as bathroom and kitchen refits, awnings, air conditioning etc. These owners corporations should consider putting in place a by-law to properly authorise the keeping of these works and to transfer the obligations of repair and maintenance to the lot owner and successive lot owners.

2. **Problems with standard by-laws:**

Many owners corporations have adopted standard by-laws and their inherent problems which can be improved, such as:

- (a) By-law 2 regarding parking on common property: Enforcement is difficult as it requires evidence of the offender being caught in the act of parking their vehicle on the common property without consent, not just evidence that the owner or occupier's car is parked on the common property.
- (b) By-law 5 regarding damage to common property. This by-law inadvertently gives the impression that an owner or person authorised by the owner can install locks which do not satisfy fire safety compliance measures causing problems when obtaining annual fire safety statements. Further, in some regards it conflicts with new rights granted to owners under sections 109 and 110 of the Act that commenced on 30 November 2016.
- (c) Many existing by-laws use outdated concepts and positions that are no longer appropriate in today's society and more complex and substantial developments. These outdated concepts include how current by-laws deal with (or fail to deal with) matters such as renovations, pets, smoking, fire safety requirements and alarm, drying laundry, disposal of waste.

3. Invalid by-laws:

As by-laws are not vetted by the Department of Land and Property Information, many owners corporations have invalid by-laws and should consider obtaining advice as to whether they should be repealed.

Further, as all strata legislation was repealed and replaced effective on 30 November 2016, many by-laws contain reference to legislative provisions and requirements that no longer exist. In some cases, this may invalidate the by-laws.

4. Tailored standard by-laws:

Many owners corporations have untailored standard by-laws and should consider tailoring or amending their by-laws to suit the scheme.

5. Consolidation of by-laws

As part of the reform package a consolidated set of all by-laws is to be held by the Department of Land and Property Information (LPI) and shall be recorded on the common property certificate of title each time a new by-law is registered. There is an exception to this, but this is likely to rarely apply.

6. Steps moving forward

Owners corporations should prepare to commence a review and:

- a. consider what works are unauthorised and require approval by way of an appropriate by-law;
- b. consider making, amending and updating their by-laws to suit their scheme;
- c. consider repealing, amending or replacing invalid or defective by-laws; and
- d. where any changes are required, at the same time prepare a consolidated version of the by-laws for registration.

Key takeaways

- Owners corporations must review their by-laws by 30 November 2017 if registered before 30 November 2016.
- Many existing by-laws may be invalid due to outdated references to repealed legislation.
- Tailoring by-laws to suit specific schemes can help address common issues.
- Consolidated by-laws must be lodged with the Department of Land and Property Information.
- Regular reviews of by-laws can prevent legal complications and ensure compliance.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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