New Pet Reform Laws Commenced on 24 August 2021: Why You May Need a New By-Law

Amendments to the Strata Management Schemes Act 2015 (NSW) (**SSMA**) and its regulations came into effect on 24 August 2021. The changes mirror the recent Supreme Court decision of Cooper.

The newly included Section 137B in the SSMA provides that a by-law that unreasonably prohibits the keeping of an animal on a lot has no force or effect, which effectively means that it cannot be enforced. The new section does not stop owners corporations from making a pets by-law that places conditions on the keeping of animals as long as the conditions reasonably prohibit the keeping of an animal.

If an owners corporation which has an invalid pets by-law wishes to regulate the keeping of animals moving forward, the invalid pets by-law should be repealed and replaced by an updated pets by-law that reasonably prohibits the keeping of animals.

When will a pets by-law reasonably prohibit the keeping of animals?

Along with the addition of Section 137B into the SSMA, clause 36A has been added into the Strata Scheme Management Regulation 2016 (NSW) and also came into effect on 24 August 2021. It lists the circumstances in which the keeping of an animal unreasonably interferes with an occupant's use and enjoyment of their lot and the common property. Such circumstances are:

- the animal makes a noise that persistently occurs to the degree that the noise unreasonably interferes with the peace, comfort or convenience of another occupant.
- the animal repeatedly runs at or chases another occupant, a visitor of another occupant or an animal kept by another occupant.
- the animal attacks or otherwise menaces another occupant, a visitor of another occupant or an animal kept by another occupant.
- the animal repeatedly causes damage to the common property or another lot.
- the animal endangers the health of another occupant through infection or infestation.
- the animal causes a persistent offensive odour that penetrates another lot or the common property.
- for a cat kept on a lot—the owner of the animal fails to comply with an order that is in force under the Companion Animals Act 1998, section 31.
- for a dog kept on a lot—

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- the owner of the animal fails to comply with an order that is in force under the Companion Animals Act 1998, section 32A, or

- the animal is declared to be a menacing dog or a dangerous dog under the Companion Animals Act 1998, section 34, or

- the animal is a restricted dog within the meaning of the Companion Animals Act 1998, section 55(1).

Pet Applications

Owners corporations that make a valid pets by-law which requires occupants to make an application to keep an animal before the pet is allowed on the strata scheme must take note that Section 137B(5) of the SSMA states that an owners corporation is taken to have given permission for keeping of an animal on a lot if:

- it made a decision about the keeping of the animal that unreasonably prohibits the keeping of an animal, or

- a decision of the owners corporation is required before the animal may be kept on the lot and the owners corporation failed to make a decision within a reasonable time.

Accordingly, decisions made by an owners corporation in relation to a pet application must be based on a reason which reasonably prohibits the keeping of an animal and therefore must not be based on a reason that goes beyond protecting the occupants' use and enjoyment of their lots from unreasonable interference caused by the keeping of an animal.

If you believe your strata scheme has an invalid pets by-law, we can assist you with the process of reviewing your current pets by-law and, if required, advising you on how to make a valid pets by-law that complies with the new legislation.

Key takeaways

- The new Section 137B in the SSMA prohibits unreasonable restrictions on pet ownership in strata schemes.
- Owners corporations must replace invalid pets by-laws with updated ones that reasonably regulate pet ownership.
- Specific circumstances are outlined under which keeping an animal may unreasonably interfere with other occupants.
- Decisions regarding pet applications must be made based on reasonable grounds to protect occupants' enjoyment of their lots.
- Bannermans Lawyers can assist in reviewing and creating valid pets by-laws in compliance with the new legislation.

****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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