Every Dog has it's Day – Further Amendments to the Legislation on Pets By-Laws in Strata & Community Associations

Following the landmark Court of Appeal decision in *Cooper v The Owners – Strata Plan No. 58068 [2020] NSWCA 250* (**"Cooper**") that held that by-laws containing blanket bans on pets were harsh, unconscionable or oppressive, the Strata Schemes Management Act 2015 ("**SSMA**") was amended.

This amendment introduced section 137B of the SSMA and clause 36A of the Strata Schemes Management Regulations 2016 enshrining into legislation that by-laws cannot prohibit the keeping of animals (except in very limited circumstances).

Now, the Community Land Management Act 2021 ("**CLMA**") is being amended to include section 129A that also enshrines into legislation that by-laws cannot prohibit the keeping of animals in communities (except in very limited circumstances).

New amendments coming to the SSMA and CLMA

The SSMA is now being further amended to fix up several areas of contention under the SSMA as outlined below.

Additionally, these amendments are partly being replicated in CLMA so that community associations, neighbourhood associations and precinct associations will also be subject to these changes.

Restrictions on bonds or fees

The amendments provide an express restriction in section 105A of the SSMA and section 108A of the CLMA that owners corporations and communities **cannot** charge bonds or fees relating to the keeping of animals.

Assistance animals

Section 139A is being inserted into the SSMA and section 130A is being inserted into the CLMA to give greater clarity in regards to assistance animals. In particular, this expressly provides that a by-law can require a person who keeps an assistance animal to provide:

(a) Evidence the animal holds an accreditation referred to in the Disability Discrimination Act 1992 ("**DDA**") *of the Commonwealth;* and

(b) A statutory declaration verifying the animal has received the training referred to in the DDA.

Changes relating to older pets by-laws in the SSMA

Interestingly, there is a new provision with regards to by-laws contained in the amendments.

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Clause 4(2) of Schedule 3 of the SSMA will be amended to state:

> *"2. A by-law continued in force by this Act is taken to be a valid by-law if –*
>
> *(a) the by-law was a valid by-law immediately before section 128 commenced, and*
>
> *(b) the by-law does not contravene this Act."*

This has the effect of solidifying that any by-laws that were valid prior to the commencement of the SSMA now must not contravene the SSMA.

So when do the amendments come into law?

The amendments to the SSMA will come into force on 11 December 2023.

The amendments to the CLMA will come into force following proclamation.

So what does this mean for your owners corporation or community?

The amendments provide additional elements that pets by-laws have to comply with. The days of blanket by-laws restricting pets are certainly a thing of the past is strata and community living.

So is strata going to the dogs?

The amendments are a reflection of the fact there are more people living in strata and community schemes than ever before and that people want the option of being able to have pets.

But don't worry, your neighbour won't be able to get a dragon, tyrannosaurus or a shark on a leash. There are express restrictions on certain breeds and there are provisions in both the SSMA and CLMA to seek the removal of animals that make excessive noise, that attack or menace, that cause a persistent odour or that endanger the health of another occupant through infestation.

Does my owners corporation or community need to consider updating its pets by-law?

Owners have historically fought tooth and claw over the question of pets in strata and community living. Following the decision of Cooper and the incoming amendments, it may be time for your owners corporation or community to have a look at its pets by-law and consider whether it needs to change.

If you have questions about your pets by-law or concerns about pets in your strata scheme or community, we have considerable experience and expertise in this area and can help.

Key takeaways

- The SSMA and CLMA amendments prohibit blanket bans on pets in strata and community living.
- Owners corporations cannot charge bonds or fees related to pet ownership.
- New provisions clarify the requirements for assistance animals under the DDA.
- Existing by-laws must comply with the new amendments to remain valid.
- The amendments reflect the growing demand for pet ownership in strata living.

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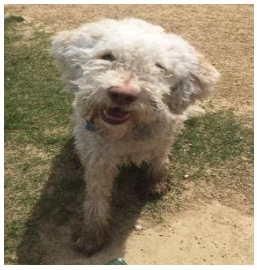

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