

# Every Dog has it's Day – the Massive Amendment to the Legislation on Pets By-Laws in Strata

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 (“**Act**”) is now being amended to enshrine these provisions into legislation.

The ambiguously titled Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2021 (“**Amendment**”) is designed to fix up several miscellaneous problems under the Act.

However, one of the big changes is that the Amendment incorporates some of the findings in the Cooper decision by directly amending the Act to ensure that a by-law cannot unreasonably prohibit the keeping of a pet.

In particular, subsections (1) - (4) of the Amendment state:

- (1) Each of the following has no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot –
  - (a) a by-law,*
  - (b) a decision by an owners corporation under a by-law.**
- (2) It is taken to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.*
- (3) The regulations may specify circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.*
- (4) A by-law that prohibits the keeping of an animal on a lot is not harsh, unconscionable or oppressive if it does not unreasonably prohibit the keeping of an animal on a lot.*

## **So when does the Amendment come into law?**

The Amendment has now been passed by both houses of Parliament and will come into law on an unspecified date later this year.

### **So what does this mean for your owners corporation?**

The Amendment has wide reaching effects as it directly prohibits:

- (a) by-laws that unreasonably prohibit the keeping of pets; and
- (b) decisions by an owners corporation under a by-law that unreasonably prohibit the keeping of an animal on the lot.

So basically, even owners corporation's decisions to refuse a pet under an existing by-law is subject to challenge.

### **So is strata going to the dogs?**

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

However, the Amendment is drafted in a manner that revolves around the subjective concept of what is 'unreasonable' and there still remains the possibility of restricting pets in certain circumstances.

So don't worry, your neighbour won't be able to get a dragon, tyrannosaurus or a shark on a leash. Questions of species, size, breed, temperament, training and suitability for living in strata will all be able to be considered by owners corporations and the Courts in interpreting this legislation.

### **Does my owners corporation need to consider updating its pets by-law?**

Owners have historically fought tooth and claw over the question of pets in strata. But now, following the decision of Cooper and the incoming Amendment, it may be time for your owners corporation 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, we have considerable experience and expertise in this area and can help.



**Prepared by Bannermans Lawyers  
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