By-laws and Renovations

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Introduction

1. Commencement
2. Which by-law apply
3. By-law reforms
4. Common property rights by-laws
5. By-law enforcement
6. Dispute resolution
7. Orders regarding by-laws and property
When does it commence?

• 30 November 2016.

• Part 11 – Building Defects will only apply to contracts for building works entered into after 1 July 2017.

• Dependent upon the Strata Schemes (Freehold Development) Regulations not yet released.

• Common property memorandum released but doesn’t commence until 30 November 2016:
Which by-laws apply?

- New strata schemes registered on and after 30 November 2016 – By-laws registered with the plan.

- Strata schemes registered between 1 July 1997 and 29 November 2016 – By-laws registered with the plan including any changes to those by-laws (no change in wording).

- Strata schemes registered prior to 1 July 1997 – By-laws set out in Schedule 2 of SSMR 2016 including any changes to those by-law (effectively no wording changes)
Schemes registered on an from 30 November 2016

New model by-laws apply for residential strata schemes if registered with the plan.

- Smoking penetration by-law:
  - Prohibits smoking on common property and penetration of smoke to lot or common property.
  - Has option for designated smoking area.
  - Section 153 SSMA 2015 now refers to smoke drift in the notes.

- By-law 2 (previous by-law 5 regarding damage to common property):
  - No reference to damaging common property.
  - Common law position – cannot damage or improve without permission.
Schemes registered on an from 30 November 2016

• By-law for hanging washing:
  ➢ Can now hang washing anywhere on lot except on balcony railings
  ➢ Can only be hung for a reasonable period

• By-law for change in use or occupation to be notified:
  ➢ Now includes reference to short term or holiday letting (not defined)
  ➢ Requirement to notify in writing at least 21 days before change
Schemes registered on an from 30 November 2016

• Disposal of Waste:
  ➢ Now has two options – bins for individual lots and shared bins
  ➢ Prohibition of disposing of inappropriate items in toilet (such as disposable nappy).

• Compliance with planning and other requirements:
  ➢ Must ensure lot is not used for any purpose prohibited by law.
  ➢ Must ensure that lot is not occupied by more persons than are allowed by law to occupy lot.
Schemes registered prior to 1 July 1997

By-laws in Schedule 2 of the Strata Schemes Management Regulation 2016 apply

• No change in wording but legal affect behind the by-laws has changed.
• Guide or hearing dog – now assistance animal
   Wider definition found in Disability Discrimination Act 1992(Cth).
   Requires person keeping animal to provide evidence
   Has ramifications for all pets by-laws
• By-law 5 – damage to common property
   Inconsistent with the provisions for cosmetic and minor renovations
Other changes to by-laws

• By-laws must not be harsh, unconscionable or oppressive
  ➢ Cruel, severe, not right or reasonable, unjust, unfair, undemocratic, inflicting harsh and authoritarian treatment.

• Occupancy limit by-law (section 137 SSMA 2015)
  ➢ Allows a by-law to restrict number of occupants if not inconsistent with planning approval or other law.
  ➢ Exceptions for related persons and Aboriginal and Torres Strait Islanders – wider definition in cl 36 SSMR 2016
Other changes to by-laws

• By-law to adopt common property memorandum (section 107 SSMA 2015)
  ➢ Maybe useful in regards to air conditioning and hot water units.
  ➢ Otherwise really used as a guide

• By-law has no force or effect to the extent it is inconsistent with this or any other Act or law (section 136 SSMA 2015)
  ➢ Onus on defendant to prove.
  ➢ Statutory limit arguments
Other changes to by-laws

- Transitional provision (cl 4(2) Sch 3 SSMA 2015):
  
  Despite any other provision of this Act, a by-law continued in force by this Act is taken to be a valid by-law if it was a valid by-law immediately before the commencement of this clause.

- Secretary to maintain a set of consolidated by-laws for the scheme (section 141(3) SSMA 2015).

- The Development Regulations are expected to prescribe when a consolidated set of by-laws is required for registration purposes.

- Existing schemes to review their by-laws within 12 months of the commencement of the Act (clause 4(1) Sch 3 SSMA 2015).

- By-laws must be lodged for registration within 6 months after the meeting making the by-law (section 141(4) SSMA 2015)
Renovations

- New by-laws can be made to expand cosmetic works and minor renovations.

- Similar to section 52 exclusive use or special privilege by-laws, however have removed ‘owner concerned’ and now the written consent is required from ‘each owner on whom the by-law confers rights or special privileges’.

- Section 108 by-laws – same as by-laws under the previous section 65A.
Cosmetic Works

109 Cosmetic work by owners

(1) The owner of a lot in a strata scheme may carry out cosmetic work to common property in connection with the owner’s lot without the approval of the owners corporation.

(2) **Cosmetic work** includes but is not limited to work for the following purposes:

(a) installing or replacing hooks, nails or screws for hanging paintings and other things on walls,

(b) installing or replacing handrails,

(c) painting,
Cosmetic Works

(c) painting,

(d) filling minor holes and cracks in internal walls,

(e) laying carpet,

(f) installing or replacing built-in wardrobes,

(g) installing or replacing internal blinds and curtains,

(h) any other work prescribed by the regulations for the purposes of this subsection.

(4) The by-laws of a strata scheme may specify additional work that is to be cosmetic work for the purposes of this section.
Minor Renovations

110 Minor renovations by owners

(1) The owner of a lot in a strata scheme may carry out work for the purposes of minor renovations to common property in connection with the owner’s lot with the approval of the owners corporation given by resolution at a general meeting. A special resolution authorising the work is not required.

(2) The approval may be subject to reasonable conditions imposed by the owners corporation and cannot be unreasonably withheld by the owners corporation.
Minor Renovations

(3) **Minor renovations** include but are not limited to work for the purposes of the following:

(a) renovating a kitchen,

(b) changing recessed light fittings,

(c) installing or replacing wood or other hard floors,

(d) installing or replacing wiring or cabling or power or access points,

(e) work involving reconfiguring walls,

(f) any other work prescribed by the regulations for the purposes of this subsection.
108 Changes to common property

(1) **Procedure for authorising changes to common property**

An owners corporation or an owner of a lot in a strata scheme may add to the common property, alter the common property or erect a new structure on common property for the purpose of improving or enhancing the common property.

(2) Any such action may be taken by the owners corporation or owner only if a special resolution has first been passed by the owners corporation that specifically authorises the taking of the particular action proposed.
Major Works

111 Work by owners of lots affecting common property

An owner of a lot in a strata scheme must not carry out work on the common property unless the owner is authorised to do so:

(a) under this Part, or

(b) under a by-law made under this Part or a common property rights by-law, or

(c) by an approval of the owners corporation given by special resolution or in any other manner authorised by the by-laws.
By-law enforcement

Some significant changes to the by-law enforcement process are:

• Penalties are payable to the owners corporation.

• Penalties have been increased and can be doubled for a repeat offence within 12 months of a penalty being issued.

• Penalties for breach of new occupancy limit by-laws increased five fold and same principle for repeat offence in 12 months apply.

• No provision to award costs. Must look to section 60 of the Civil and Administrative Tribunal Act 2013 – ‘special circumstances’.
Dispute resolution

Some significant changes to the dispute resolution mechanisms:

• If a representative is to attend instead of a party at mediation the other party to the dispute must approve.

• If a representative is attending mediation with a party, it must be approved by the mediator.

• No adjudication process – so more advocacy.

• New process of the Department of Finance, Services and Innovation to issue penalties for offences under the Act, e.g. against managing agents, owners, developers, etc.

• New powers to award damages for breach of section 106 (old s62).

• No substantial reform to give Tribunal broader declaratory making powers.
Tribunal orders regarding by-laws

- Sections 148 – Order revoking amendment of by-law or reviving repealed by-law – no material change (former s157)

- Section 149 – Order with respect to common property rights by-laws – no material change (former s158)

- Section 150 – Order invalidating by-law – Order can now be made if the Tribunal considers that the by-law is harsh, unconscionable or oppressive (former s159)
Tribunal orders regarding property

- Sections 126 – Order relating to alterations and repairs to common property and other property – inclusion of minor renovations and ‘work approval order’ but still no material change (former s140)

- Section 127 – Order relating to cosmetic work or minor renovations – New section giving the Tribunal power to make an order declaring that specified work is cosmetic work or minor renovations (new)

- Section 128 – Order consequent on alteration of building – No material change (former s141)
Tribunal orders regarding property

- Sections 129 – Orders relating to window safety – no material change (consolidated sections 140A and 140B)

- Section 130 – Orders relating to personal property – no material change (consolidated sections 142 and 143)

- Section 131 – Order granting certain licences – No material change (former s144)

- Section 132 – Rectification where work done by owner – New section granting the Tribunal power to make orders against owners or occupiers regarding damage to common property. Rectification order or payment for damage and associated costs including insurance and legal costs.
Disclaimer

- This is not a legal advice and you should seek legal advice regarding any of the issues referred to.

- This area of law is regularly amended and new cases decided, requiring updated information.

- This presentation does not include all possible steps, remedies and time limitations.

THANK YOU