

**Publication Date: 26 August 2021**  
**YSP Podcast Transcript: Episode 276. New law for NSW: does your "pet" by-law stack up?**

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**Intro:** Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source.

**Amanda Farmer:** Hello and welcome to this week's podcast episode. I'm your host, Amanda Farmer, and I'm here each week, helping you to demystify the legal complexities of apartment living. I'm recording this episode on Wednesday, the 25th of August, 2021. This is an important day in the history of our New South Wales strata legislation.

Today, we have some new legislation commencing. This new law directly addresses the often controversial issue of the keeping of animals or pets in our strata buildings. Today, I am going to share with you what that new legislation is. We have a new section in our Strata Schemes Management Act and also a new regulation. I'll tell you what I believe it means and how I see it working in practice. I'll also let you know where I think this new legislation leaves existing by-laws that ban the keeping of pets, either completely or certain types of pets, where it leaves by-laws that impose weight limits on pets. And what about by-laws that restrict the number of pets a resident can have. I'll be getting into all of that.

But first up a reminder for you that you can get the transcript to this episode as you can for all of our podcast episodes. Just head over to our website, [yourstrataproperty.com.au/podcasts](http://yourstrataproperty.com.au/podcasts), and that's where you'll see all 276 of our podcast episodes. This one will be up the top if you are accessing it close to the 25th of August, 21. Click through to have a listen and you will see a link to access the transcript. That might be an easy way to share this information with your strata committee, with your strata manager, particularly if pets has been or is an issue, which is the subject of some discussion in your New South Wales building.

It certainly has been a hot issue for us for some time now. I'll start with a little background just in case you have missed some of the controversy. If you have other things going on, you wouldn't be blamed for missing it. On the 12th of October, 2020, the Court of Appeal, which is the highest court in New South Wales handed down its decision in the Cooper case. Now, in that case, the court ruled that a by-law enforced at the Horizon building that imposed a blanket ban on the keeping of animals was an oppressive by-law.

Under New South Wales strata law, we cannot have by-laws that are oppressive or by-laws that are harsh or unconscionable. If they are any of these things, then they are of no force or effect. That's set out in Section 139 of our Strata Schemes Management Act. Now, in addition to finding that the pet ban in the Horizon building was of no force or effect, the Court of Appeal's decision in Cooper gives us some general rules about the circumstances in which a by-law may be harsh, unconscionable, or oppressive, with the result that by-laws imposing blanket bans on pets in communities like the Horizon are very likely to fall into this category.

Fast forward to February 2021, amendments to our strata law were introduced to get some clarity on the principles established by the Cooper case. Those amendments were made back in February but did not commence until today, the 25th of August. The amendments introduce a new section to our Strata Schemes Management Act, and that is Section 137(B). This new section tells us that a by-law or a decision by an owners corporation under a by-law has no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot. The section also tells us that 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.

Now that's the wording in the opening sub-sections of Section 137(B). I do have a link to that section in the show notes so you can go and check it out for yourself. The amendments also provided that regulations may be made specifying the types of circumstances in which the keeping of an animal may unreasonably interfere with another occupant's use and enjoyment of their lot or the common property. Because of course when we were all reading this new Section 137(B), the obvious question was, what constitutes unreasonable interference? If that's the basis on which we can exclude animals from our strata property and prevent residents from keeping a pet, we need to understand what is meant by the term unreasonable interference. Well, as of today, we have that new regulation that clarifies this term. It is regulation 36 (A) in our Strata Schemes Management Regulation. I'm going to tell you a little bit more about what's in that regulation in just a moment. It is a really important piece to the puzzle.

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But before I do that, I want to draw your attention to a report that has been tabled in parliament this month. Now the new legislation that I have been talking about foreshadowed that a report would be drafted and tabled in parliament about this issue of the keeping of pets in strata and that the minister when making the regulation would have to take the report into account. So we now have the pets in the strata report. Again, I have a link to that for you. I recommend you read it. It's about 30 odd pages and a fairly easy read. It has some really interesting findings which have informed the content of the regulation. It was largely drawn by responses to the pets in the strata survey. This survey was opened in New South Wales earlier this year, 2021, for a period of six weeks. And the report tells us it received 1,601 responses. That is among the highest rates of response to a New South Wales government public policy consultation.

You will read in the report that Australia has one of the highest rates of pet ownership in the world. 61% of Australian households currently own a pet and 91% of households have had a pet at some point in their lives. And of course the keeping of animals in strata is becoming an increasingly important topic. As more people choose to live in apartments. More than 15% of New South Wales' total residents and 22% of the state's total households live in apartments. And these figures continue to grow as we have around a thousand new strata schemes established each year.

Now the pets in strata survey, the results of which are recorded in the pets in strata report, identified that the most popular animals kept in strata schemes in descending order, can you guess them? Are dogs, then cats, then birds, then fish, then reptiles. Now you'll read in the report a comment that the results of the public consultation show that the issue of the regulation of pets in strata attracts strong views from people who wish to keep animals on their lot, but equally strong views expressed by people who would like the right to decide whether their owners corporation allows any animals to reside in the scheme.

The conclusion drawn from that is that the regulation of animals in strata schemes involves balancing the rights of strata occupants to use their property as they like including to keep an animal, with the right of other occupants not to suffer unreasonable interference as a result of the keeping of that animal. The report makes 15 findings. You'll see those summarised at the beginning of the report. I'm just going to highlight a few of them for you now. It was found that there are particular circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of their lot or the common property. 10 circumstances, in fact, and I am going to list all 10 of them. Why? Because this is what has been put into our new regulation.

An animal unreasonably interferes with another occupant's use and enjoyment of their lot or the common property if the animal persistently makes a noise 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, or another animal kept by another occupant. If the animal attacks or otherwise menaces another occupant or visitor. If the animal repeatedly causes damage to the common property or another lot. If the animal endangers the health of another occupant through infection or infestation. If the animal unreasonably interferes. If it causes a persistent offensive odor that penetrates another lot or the common property. If the animal is a cat or a dog, it unreasonably interferes if its owner fails to comply with an order under the Companion Animals Act. If the animal is a restricted dog within the meaning of the Companion Animals Act, that's Section 55 in that Act, it unreasonably interferes with another occupant's use and enjoyment of their lot or the common property.

And finally, if the animal is declared to be a menacing dog or a dangerous dog under the Companion Animals Act, that's Section 34 in that Act, then it is an animal that unreasonably interferes with another occupant's use and enjoyment of their lot or the common property. Now, the report ultimately recommends that these circumstances that I have just listed should be included in the regulation made under Section 137(B) of the Act. And that is indeed precisely what has happened when you do head over and check out our new regulation 36(A), you will see that it has those 10 different circumstances of unreasonable interference, and I'll come back to how I see that being applied in practice in our communities.

A further finding in the pets in strata report was that an owners corporation should be allowed to impose reasonable conditions on the keeping of an animal in their by-laws. It was also found that barriers to the keeping of an animal in a strata scheme can create negative outcomes, in particular, affecting people who want to leave a situation of family or domestic violence with their pet and people experiencing homelessness with a companion animal. A further finding, there is no evidence to support assertions that it is harmful to an animal's welfare to allow them to live in strata schemes and the strata

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legislation is not the appropriate legislative mechanism to set requirements for the consideration of animal welfare. Owners corporations and strata committees do not have expertise in assessing animal welfare and should not be required to make such assessments.

So that's a flying summary of the pets in strata report. Do go and check it out. I think it's going to help with gaining an all-round understanding of this new legislation and how it's intended to operate in our communities. The upshot of all of this, well, if we head back to our new Section 137(B), that section tells us that 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. We then read new Regulation 36(A) which sets out these circumstances of unreasonable interference.

They are those 10 circumstances I listed earlier that are in the pets in strata report, including the animal making a noise that persistently occurs, interfering with the peace, comfort, or convenience of another occupant. The animal repeatedly running out or chasing another occupant. The animal attacking or otherwise menacing another occupant. The animal repeatedly causing damage to the common property or another lot. Endangering the health of another occupant through infection or infestation. Causing a persistent offensive odor that penetrates another lot or the common property. The owner failing to comply with obligations under the Companion Animals Act if we're dealing with cats or dogs. And the animal being a restricted dog, a menacing dog, or a dangerous dog within the meaning of the Companion Animals Act.

If any of those circumstances exist, then the animal may be said to be unreasonably interfering with another occupant's use and enjoyment of their lot or the common property and it is not going to be unreasonable to prohibit the keeping of that animal. Now how is all this going to play out in practice? Well, in my view, a by-law that attempts to regulate circumstances other than those that are listed in Regulation 36(A) is at risk of being declared to be of no force or effect. That includes by-laws that impose a blanket ban on the keeping of any animal or certain types of animals.

We do see by-laws that say you can have cats but not dogs. I think those by-laws in the face of this new law are clearly illegal by-laws. By-laws that impose weight limits. We see by-laws that say no dogs over 15 kilos allowed in the building, that I believe is an unreasonable prohibition. By-laws that restrict the number of animals a resident can have. For example, by-laws that say one dog but not two. These are, in my view, all unreasonable prohibitions on the keeping of an animal and by-laws that have these terms are very likely to be unenforceable. They simply do not engage with any of those circumstances that we now see listed in Regulation 36(A). It is now more important than ever to review your pet by-laws. If you're a committee member, a strata manager advising a committee, it is really important to make sure that the by-law you have about the keeping of animals is valid, is enforceable, and it stands up against this new law.

If you are reviewing your by-law and considering re-drafting it, it's a step in the right direction, I think, to incorporate into your drafting the circumstances that are now set out in the regulation. The Cooper case was decided by our Court of Appeal almost a year ago now, and it is surprising to me that some buildings are still, here in New South Wales, attempting to enforce their pet bans. I have a couple of these cases on my books at the moment. I'm acting for owners seeking to get rid of these types of by-laws and be allowed to keep their furry friend. This new legislation certainly gives weight, I think, to the arguments that we're running in those cases and all owners corporations, whether you're involved in a dispute with a resident about a pet at the moment, or even if you're not, you'd all be very well advised to review your by-laws so far as they relate to pets.

I do want to say a quick word about tenants. I'm often asked if this means that a tenant can keep a pet in their apartment even if their landlord doesn't want them to. The Residential Tenancies Act in New South Wales gives a landlord discretion to refuse a tenant keeping an animal on the property, including if that property is a strata lot. So a tenant will not be able to keep an animal on their lot even if the by-laws of the strata scheme allow the keeping of pets.

It's a different situation in Victoria, as I understand it, that that remains the law in the Residential Tenancies Act in New South Wales. We strata lawyers will be watching the application, the interpretation of this law very closely. As always, I will continue to keep you updated on what I see happening out there in the strata world, in buildings, with my clients, before our courts and our Tribunal. And as you know, I love to hear from you. Please do pop a comment under this episode on the website. Let me know

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what you think of the new law. Is it fair? Does it strike the right balance? Does it sufficiently protect both our apartment residents wishing to keep a pet and our owners and owners corporations who want to ensure that there is no unreasonable interference as a result. That's all for me this week. I look forward to catching you next time.

**Outro:** Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode by the show notes at [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au). You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?