

STATEMENT

Latest NCAT decision on by-laws affecting the keeping of animals

On 1 March 2021, NCAT senior member R C Titterton OAM handed down a decision in the matter of *McGregor v The Owners – Strata Plan N^o 74896*.

The building in which Mr McGregor and his partner live is part of a complex in Camperdown where each of the individual stratas is required to comply with the by-laws of the Community Management Statement for the complex. By-Law 22.3 of the Community Management Statement allows owners to keep:

- a cat,
- a goldfish,
- canaries or other similar birds and
- a guide dog or hearing dog if the owner is visually or hearing impaired.

In the reasons for decision it was noted that Mr McGregor and his partner moved into the building knowing of the by-law but determining not to abide by it.


The decision, in which the senior member addressed both s157 and s150 of the Strata Schemes Management Act 2015 (**SSMA**), led to the conclusion that the application should fail for technical reasons. However, senior member Titterton made several important comments about the circumstances of the dispute.

Firstly, he noted, at paragraph 57, that the “Applicants as lot owners are under an obligation, an obligation that they knew about when they purchased their lot, not to keep a dog on their lot”. This reinforces the importance for purchasers to thoroughly check the by-laws of a strata in which they seek to purchase a lot as it is not sufficient to rely on the actions or statements of others about what may or may not be permitted. Nor can owners assume that their breaches of by-laws will not be enforced.

Secondly, he noted that the by-law complained of was not a blanket ban on pets and accordingly it was not necessary to consider the effect of the *Cooper* case.

On 24 February 2021 the *Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2021* (the Amendment Act) was assented to. From later this year, there will be a new section to the SSMA as follows:

- a by-law, or an owners corporation’s decision under a by-law, has no force or effect if it unreasonably prohibits the keeping of an animal on a lot.
- keeping an animal on a lot is reasonable, unless it interferes with another occupant’s use or enjoyment of their lot, or the common property

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- regulations may be developed outlining the circumstances where the keeping of an animal interferes with another occupant's use or enjoyment of their lot, or the common property.
 - 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.

NSW Fair Trading has now included a new survey in the discussion for review of the SSMA, specifically calling for input on the form of the regulations which will be developed to assist owners to formulate appropriate by-laws in relation to the keeping of animals www.haveyoursay.nsw.gov.au/strata-statutory-review-2020?tool=survey_tool#tool_tab

OCN has consistently supported the right of owners corporations to decide their own living conditions, so it is important to have your say.