

Dear Owners,

On Friday, the final announcements were made regarding some changes to the Body Corporate and Community Management Act. The amendments to the Act and other Legislation come into effect today and apply to all schemes in Queensland.

Although the changes are quite detailed in parts, we hope to summarize the main points herein so that you and your fellow owners can consider if a review of your scheme By-Laws is needed.

Keeping or Bringing an Animal on a Lot or Common Property

A By-Law that requires an occupier, or their invitee, to obtain written permission from the Body Corporate before keeping or bringing an animal onto the complex is still acceptable. However, By-Laws that limit the number of pets, size of a pet or type of a pet are unlawful. Similarly, any By-Law that prohibit all pets in general are now unlawful.

A Body Corporate (or Committee) cannot reasonably withhold approval to keep a pet and, if written approval is required, must consider each request on a case-by-case basis. The approval must be considered within 21 days of the request, instead of the usual 6 weeks. If voting does not occur in this time, a 'deemed approval' is to be given.

Conditions to the approval that are reasonable can be placed on the approval, such as the animal being on a leash on common areas. If a health and safety risk is posed, or the approval would be contrary to Council law (eg dangerous dog), then refusal can still occur.

Towing of Vehicles on Common Property

It is now valid to have a By-Law to regulate parking and a process for enforcement (towing).

The amendments allow for a Towing Vehicles By-Law to apply to owners or occupiers of vehicles causing a nuisance or obstructing access, where previously a Body Corporate could only tow away a trespassers vehicle that was unlawfully parked on the common property.

The amendments also allow for a Towing Vehicles By-Law to be enforced without following the usual processes for By-Law breaches (ie written contravention notice). This provides the Committee to take action in a more effective time frame.

It would still be appropriate to have tow-away warning signs in appropriate places, and a written agreement between the Body Corporate and a towing contractor. The owner of the vehicle must be able to be identified.

Smoking By-Laws

By-Laws can now prohibit or restrict smoking on common property. This can apply to Exclusive Use Areas and areas of lots that are outside (balconies, private yards).

Regularly using a smoking product can cause a nuisance by exposing others to smoke drift or vapour. Smoking Products include tobacco, herbal cigarette or vaping.

Under the new amendments, a smoking By-Law is not unreasonable or oppressive and can be lawfully added to the By-Laws of a scheme.

Scheme Termination

The amendments provide an additional method for initiating termination of a scheme with 75% or more majority vote, however, only in circumstances where maintenance obligations can be proven to not be economically viable, and a termination plan can be considered by majority vote.

The new method is likely to be expensive and lengthy and potential land value is not considered in the assessment of viability.

Other avenues to initiate termination of a scheme, such as a Resolution without Dissent (all owners in agreement) or a Court decision still remain as options to owners.

Administrative Amendments

Various other changes involve inspection of records in layered schemes, common seals no longer being kept, and authorisation processes for alternative insurance cover. These are generally procedural in their application.

Many of the changes effected by the Amendment Act will help Bodies Corporate to better manage issues that commonly occur, especially around pets, towing and smoking.

We encourage you to consider your current By-Laws and whether they need to be updated to be valid. This is a relatively simple process of putting forth proposed new By-Laws to a General Meeting and to consent to record a new CMS (Community Management Statement). We are experienced in these requirements and can provide guidance.

In the meantime, please give thought to how these changes will affect your particular scheme.