Part 7 By-laws for strata schemes

Division 1 Interpretation

133 Definitions

In this Part:

change the by-laws for a strata scheme means amend or repeal the by-laws or add to the by-laws.

previous law means:

(a) Division 3 of Part 5 of Chapter 2 of the Strata Schemes Management Act 1996, as in force immediately before its repeal, or

(b) Division 1 of Part 2 of the Strata Schemes (Freehold Development) Act 1973, as in force immediately before its repeal, or

(c) Division 1 of Part 2 of the Strata Schemes (Leasehold Development) Act 1986, as in force immediately before its repeal.

Division 2 Establishment and effect of by-laws

134 By-laws that apply to strata schemes

(1) New strata schemes

The by-laws in force for a strata scheme that came into existence after the commencement of this section are the by-laws adopted by or lodged with the strata plan registered by the Registrar-General for the strata scheme, as changed in accordance with this Act.

(2) Strata schemes 1997 to commencement of section

The by-laws in force for a strata scheme that came into existence after the commencement of the Strata Schemes Management Act 1996 and before the commencement of this section are the by-laws adopted by or lodged with the strata plan registered by the Registrar-General for the strata scheme, including any changes to the by-laws made in accordance with that Act or in accordance with this Act.


(3) Strata schemes before 1996

The by-laws in force for a strata scheme that was in existence before the commencement of the Strata Schemes Management Act 1996 are the by-laws set out in the regulations for the purposes of this section, including any changes to the by-laws made in accordance with a previous law or in accordance with this Act.
135 Requirement to comply with by-laws

(1) The by-laws for a strata scheme bind the owners corporation and the owners of lots in the strata scheme and any mortgagee or covenant chargee in possession, or tenant or occupier, of a lot to the same extent as if the by-laws:

(a) had been signed and sealed by the owners corporation and each owner and each such mortgagee, covenant chargee, tenant and occupier, and

(b) contained mutual covenants to observe and perform all the provisions of the by-laws.

(2) There is an implied covenant by the tenant of a lot or common property to comply with the by-laws for the strata scheme.

Note. The effect of having been taken to have signed and sealed a by-law is that the person is always taken to have known about it.

136 Matters by-laws can provide for

(1) By-laws may be made in relation to the management, administration, control, use or enjoyment of the lots or the common property and lots of a strata scheme.

(2) A by-law has no force or effect to the extent that it is inconsistent with this or any other Act or law.

137 Occupancy limits

(1) A by-law may limit the number of adults who may reside in a lot by reference to the number of bedrooms of the residence.

(2) The limit may not be fewer than 2 adults per bedroom.

(3) The by-law has no effect:

(a) to the extent to which it is inconsistent with any planning approval or other law applicable to the lot, or

(b) in any other circumstances prescribed by the regulations for the purposes of this section.

(4) To avoid doubt, the Tribunal may make an order under Division 5 about a by-law made under this section.

(5) The regulations may provide for the circumstances when a person is a resident of a lot for the purposes of a by-law made under this section.

(6) For the purposes of this section, a bedroom is a room approved for use as a bedroom under, or indicated as a bedroom in any plans the subject of, a planning approval and includes any other room prescribed by the regulations as a bedroom for the purposes of this section.

138 Model by-laws

The regulations may prescribe model by-laws that may be adopted as the by-laws for a strata scheme.
139 Restrictions on by-laws

(1) **By-law cannot be unjust**
A by-law must not be harsh, unconscionable or oppressive.

*Note.* Any such by-law may be invalidated by the Tribunal (see section 150).

(2) **By-law cannot prevent dealing relating to lot**
No by-law is capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing relating to a lot.

(3) **By-law resulting from order cannot be changed**
If an order made by the Tribunal under this Act has effect as if its terms were a by-law, that by-law is not capable of being amended or repealed except by a by-law made in accordance with a unanimous resolution of the owners corporation and, in the case of a leasehold strata scheme, with the consent of the lessor of the scheme.

(4) **By-law cannot restrict children**
A by-law for a residential strata scheme has no force or effect to the extent to which it purports to prohibit or restrict persons under 18 years of age occupying a lot. This subsection does not apply to a by-law for a strata scheme for a retirement village or housing exclusively for aged persons.

(5) **By-law cannot prevent keeping of assistance animal**
A by-law has no force or effect to the extent to which it purports to prohibit or restrict the keeping on a lot of an assistance animal (as referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth) used by an owner or occupier of the lot as an assistance animal or the use of an assistance animal for that purpose by a person on a lot or common property.

(6) A by-law may require a person who keeps an assistance animal on a lot to produce evidence to the owners corporation that the animal is an assistance animal as referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth.

(7) **Community management and precinct management statements prevail over by-laws**
A community management statement or a precinct management statement prevails to the extent of any inconsistency with a by-law for a strata scheme that is also part of a community scheme or precinct scheme.

140 Restrictions on by-laws during initial period

(1) An owners corporation for a strata scheme must not, during the initial period, change the by-laws so that a right is conferred or an obligation is imposed on one or more, but not all, owners or in respect of one or more, but not all, lots in the scheme.

(2) An owners corporation may recover from the original owner of the strata scheme, as damages for breach of statutory duty, any loss suffered by the owners corporation as a result of a contravention of this section.

(3) An owner of a lot in a strata scheme may recover, as damages for breach of statutory duty, any loss suffered by the owner as a result of a contravention of this section.
(4) It is a defence to an action under this section for damages if it is proved that the original owner:

(a) did not know of the contravention on which the action is based, or

(b) was not in a position to influence the conduct of the owners corporation in relation to the contravention, or

(c) used due diligence to prevent the contravention.

(5) A remedy available under this section does not affect any other remedy.

141 Procedure for changes to by-laws

(1) An owners corporation may, in accordance with a special resolution of the owners corporation, change the by-laws of the strata scheme.

(2) A change to the by-laws of a strata scheme has no effect until:

(a) the owners corporation has lodged a notification with the Registrar-General in the manner approved by the Registrar-General, and

(b) the Registrar-General has made an appropriate recording of the notification in the folio of the Register for the common property.

(3) The secretary of the owners corporation must keep a consolidated up to date copy of the by-laws for the strata scheme.

(4) A notification cannot be lodged in the Registrar-General’s office more than 6 months after the passing of the resolution to make the by-law.

Division 3 By-laws conferring rights or privileges over common property

142 Common property rights by-law

For the purposes of this Act, a common property rights by-law is a by-law that confers on the owner or owners of a specified lot or lots in the strata scheme:

(a) a right of exclusive use and enjoyment of the whole or any specified part of the common property, or

(b) special privileges in respect of the whole or any specified part of the common property (including, for example, a licence to use the whole or any specified part of the common property in a particular manner or for particular purposes),

or that changes such a by-law.

143 Requirements and effect of common property rights by-laws

(1) An owners corporation may make a common property rights by-law only with the written consent of each owner on whom the by-law confers rights or special privileges.

Note. Any addition to the by-laws will require a special resolution (see section 141).
(2) A common property rights by-law may confer rights or special privileges subject to conditions specified in the by-law (such as a condition requiring the payment of money by the owner or owners concerned, at specified times or as determined by the owners corporation).

(3) A common property rights by-law may be made even though the person on whom the right of exclusive use and enjoyment or the special privileges are to be conferred had that exclusive use or enjoyment or enjoyed those special privileges before the making of the by-law.

(4) After 2 years from the making, or purported making, of a common property rights by-law, it is conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law were complied with and performed.

144 Common property rights by-law must provide for maintenance of property

(1) A common property rights by-law must:

(a) provide that the owners corporation is to continue to be responsible for the proper maintenance of, and keeping in a state of good and serviceable repair, the common property or the relevant part of it, or

(b) impose on the owner or owners of the lots the responsibility for that maintenance and upkeep.

(2) Any money payable under a common property rights by-law by more than one owner to the owners corporation or to any person for or towards the maintenance or upkeep of any common property is payable by those owners proportionately according to the relative proportions of their respective unit entitlements of their lots unless the by-law otherwise provides.

(3) To the extent to which a common property rights by-law makes a person directly responsible for the proper maintenance of, and keeping in a state of good and serviceable repair, any common property, it discharges the owners corporation from its obligations to maintain and repair the property under this Act.

145 Common property rights by-law binding on owners for time being

(1) A common property rights by-law, while it remains in force, continues to operate for the benefit of, and is binding on, the owner or owners for the time being of the lot or lots specified in the by-law.

(2) If a person becomes the owner of a lot when, under a by-law or under this subsection, a former owner is liable to pay money to the owners corporation, the person who becomes the owner is jointly and severally liable with the former owner to pay the money to the owners corporation.

(3) Any money payable by an owner to the owners corporation under a common property rights by-law or under subsection (2) may be recovered, as a debt in a court of competent jurisdiction, by the owners corporation.

Division 4 Enforcement of by-laws

146 Notice by owners corporation to owner or occupier

(1) An owners corporation for a strata scheme may give a notice, in a form approved by the Secretary, to the owner or occupier of a lot in the scheme requiring the owner or occupier to
comply with a specified by-law if the owners corporation is satisfied that the owner or occupier has contravened that by-law.

(2) The notice must contain a copy of the specified by-law.

(3) A notice must not be given unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners corporation at a general meeting or by the strata committee of the owners corporation.

(4) Subsection (3) does not apply to the giving of a notice by a strata managing agent if that function has been delegated to the strata managing agent in accordance with this Act.

147 Civil penalty for breach of by-laws

(1) The Tribunal may, on application by an owners corporation, order a person to pay a monetary penalty of up to 10 penalty units if the Tribunal is satisfied that:

(a) the owners corporation gave a notice under this Division to the person requiring the person to comply with a by-law, and

(b) the person has since contravened the by-law.

(2) The Tribunal may, on application by an owners corporation, order a person to pay a monetary penalty of up to 20 penalty units if the Tribunal is satisfied that the person has contravened a by-law within 12 months after the Tribunal had imposed a monetary penalty on the person for a previous breach of the by-law.

(3) Despite subsections (1) and (2), the Tribunal may, in dealing with a contravention of a by-law made under section 137, impose a monetary penalty of up to 50 penalty units under subsection (1) and a monetary penalty of up to 100 penalty units under subsection (2).

(4) An application for an order under subsection (1) must be made not later than 12 months after the notice was given.

(5) An owners corporation is not required to give notice under this Division before applying for an order under subsection (2).

(6) A monetary penalty is payable to the owners corporation, unless the Tribunal otherwise orders.

Note. The penalty may be registered as a judgment debt and will be enforceable accordingly (see section 78 of the Civil and Administrative Tribunal Act 2013).

Division 5 Orders about by-laws

148 Order revoking amendment of by-law or reviving repealed by-law

(1) The Tribunal may, on application by a person entitled to vote on the amendment or repeal of a by-law or addition of a new by-law or the lessor of a leasehold strata scheme, make one of the following orders:

(a) an order that the amendment be revoked,

(b) an order that the repealed by-law be revived,
(c) an order that the additional by-law be repealed.

(2) The Tribunal may make an order only if the Tribunal considers that, having regard to the interest of all owners of lots in a strata scheme in the use and enjoyment of their lots or the common property, the change to the by-laws should not have been made by the owners corporation.

(3) An order under this section, when recorded under section 246, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).

(4) When making an order under this section in relation to a common property rights by-law, the Tribunal may direct the payment by the owners corporation of compensation to the owner of the lot, or owners of the lots, referred to in the by-law.

Note. Section 78 of the Civil and Administrative Tribunal Act 2013 provides for the recovery as a judgment debt of amounts ordered to be paid by the Tribunal.

(5) An order under this section operates on and from the date on which it is so recorded or from an earlier date specified in the order.

149 Order with respect to common property rights by-laws

(1) The Tribunal may make an order prescribing a change to a by-law if the Tribunal finds:

(a) on application made by an owner of a lot in a strata scheme, that the owners corporation has unreasonably refused to make a common property rights by-law, or

(b) on application made by an owner or owners corporation, that an owner of a lot, or the lessor of a leasehold strata scheme, has unreasonably refused to consent to the terms of a proposed common property rights by-law, or to the proposed amendment or repeal of a common property rights by-law, or

(c) on application made by any interested person, that the conditions of a common property rights by-law relating to the maintenance or upkeep of any common property are unjust.

(2) In considering whether to make an order, the Tribunal must have regard to:

(a) the interests of all owners in the use and enjoyment of their lots and common property, and

(b) the rights and reasonable expectations of any owner deriving or anticipating a benefit under a common property rights by-law.

(3) The Tribunal must not determine an application by an owner on the ground that the owners corporation has unreasonably refused to make a common property rights by-law by an order prescribing the making of a by-law in terms to which the applicant or, in the case of a leasehold strata scheme, the lessor of the scheme is not prepared to consent.

(4) The Tribunal may determine that an owner has unreasonably refused consent even though the owner already has the exclusive use or privileges that are the subject of the proposed by-law.

(5) An order under this section, when recorded under section 246, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).

(6) An order under this section operates on and from the date on which it is so recorded or from an earlier date specified in the order.
150 Order invalidating by-law

(1) The Tribunal may, on the application of a person entitled to vote on the motion to make a by-law or the lessor of a leasehold strata scheme, make an order declaring a by-law to be invalid if the Tribunal considers that an owners corporation did not have the power to make the by-law or that the by-law is harsh, unconscionable or oppressive.

(2) The order, when recorded under section 246, has effect as if its terms were a by-law repealing the by-law declared invalid by the order (but subject to any relevant order made by a superior court).

(3) An order under this section operates on and from the date on which it is so recorded or from an earlier date specified in the order.