

7th April 2021

Strata Schemes Statutory Review
Policy and Strategy
Better Regulation Division
Department of Customer Service

RE: Statutory Review of the NSW Strata schemes Laws – Animal keeping

Animal Care Australia Inc. (ACA) is a national animal welfare organisation representing the interests of all hobbyist and pet animal keepers. Our members are comprised of most major animal keeping representative bodies including all species commonly kept in lots governed by strata schemes, such as, dogs, cats, birds, small mammals, reptiles and fish. As an animal-based organisation ACA has only responded to the sections and questions dealing with pets in strata.

ACA recommends the review accepts three overriding principles that are outlined within our attached submission. We are seeking they be acknowledged via our 4 recommendations below.

Recommendation 1 –

Delete Part 8, Division 3 (Sections 156-159) of the Management Act.

Recommendation 2 –

By-laws should encourage the keeping of pets on mental health grounds.

Recommendation 3 –

Replace Section 139(5) and Section 139(6) with

(5) By-law cannot prevent the keeping of animals. 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 animal by an owner or occupier of the lot or by a person on a lot or common property.

Recommendation 4 -

Replace Model By-law clause 5 Keeping of animals with the following

(1) An owner or occupier of a lot may keep animals on the lot.

(2) If an owner or occupier of a lot keeps animals on the lot, the owner or occupier must--

(a) keep the animals within the lot, and

(b) supervise the animals when on the common property, and

(c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.

ACA looks forward to further consultation as this important reform to pet keeping in strata schemes progresses.

Kind regards,



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President, Animal Care Australia.
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Statutory Review of the NSW Strata Schemes Laws

November 2020



Animal Care Australia

APRIL 8 2021

ANIMAL CARE AUSTRALIA
STAKEHOLDER SUBMISSION



Statutory Review of the NSW Strata Schemes Laws November 2020

Animal Care Australia Inc. (ACA) represents the interests of all hobbyist and pet animal keepers nationally. Our members are comprised of most major animal keeping representative bodies including all species commonly kept in lots governed by strata schemes such as, dogs, cats, birds, small mammals, reptiles and fish.

As an animal-based organisation ACA has only responded to the sections and questions dealing with pets in strata.

Research has shown that there are health benefits, both mental and physical when owning a pet. Such benefits can help promote a more harmonist environment within a strata environment (lot) as caring for an animal can decrease the severity of depression and anxiety, as well as relieve stress.

Many of the arguments against pets being kept in strata could equally be applied to the impacts that children can have on a property. In many cases children are arguably as destructive and more of a nuisance than pets could be. To discriminate against animals is simply pandering to the bias of individuals.

Rationale in support of pets in strata complexes

1. Owners/tenants should be able to keep animals without having to inform anyone, as this a basic right. A right that should exist without the need for cumbersome 'red tape' which some owners' corporations rely on and seem to relish!
2. Pet ownership is popular in Australia. It provides comfort and prevents loneliness, and as we have seen during the recent months of the pandemic, pets have become more essential than ever to daily family life. Small animals are well suited to living indoors with their owners. They brighten our lives, and give us routine and structure. The majority of households in Australia have pets, and this amendment catches up to current sentiments in the community.

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3. With the rapid increase in high density housing in Australian centres, increased urbanisation, reduced human interaction and more time spent in front of screens, pet ownership has become essential for our mental wellbeing and emotional health. Children learn from pets to be responsible, about obligations, about how to cope with grief, and how to develop routines.
 4. Responsible pet ownership involves spending time with our animals, training them, caring for them, and growing emotionally with them. Animals teach adults and children about empathy, which makes them better community members. **This should be supported by legislation.**
 5. Many people escaping domestic violence are limited in their options to find accommodation that allows pets, and remain in unsafe situations longer than they should.
 6. The default position that animals should be permitted (unless they are problematic) would assist our most high risk and vulnerable community members to be safe. As a community, we need to support their animals to support them. **This should be supported by legislation.**
 7. Vulnerable community members such as the elderly, disabled and those struggling with mental health issues also frequently have pets, for support and comfort and to give their daily lives meaning and purpose. This is not insignificant. Pet owners have been shown to live longer, happier and healthier lives. Having someone relying on you to get out of bed every day and take care of them is incredibly meaningful, and comforting. **This should be supported by legislation.**
 8. Allowing pets in strata is about supporting our community, being reasonable and empathetic to the needs of our most vulnerable while ensuring children develop the emotional range to live in a crowded world.
 9. As Australians move into more high rises and the ¼ acre block becomes an icon of the past, we need more support from government to ensure that our communities are able to have the well-rounded, diverse lifestyles that are necessary to develop healthy communities that care about each other.

ACA recommends the review accepts the following three overriding principles are acknowledged and their consequences implemented via our 4 recommendations below.

Principles & Recommendations:

Principle 1 -

The large majority of NSW residents would like to keep pets, or are already keeping pets.

All research, including the Animal Medicines Australia report quoted on page 46 of the Discussion Paper, supports this principle. Indeed, given the current difficulties keeping pets due to By-laws and to many council's numbers-based regulation, ACA suspects the percentage of residents wishing to keep pets to be substantially higher than statistics indicate.

Given the overwhelming support for pet keeping, ACA recommends the Management Act is edited to remove all restrictions on pet keeping.

Recommendation 1 –

Delete Part 8, Division 3 (Sections 156-159) of the Management Act.

Principle 2 -

Pets greatly enhance the mental health of the community.

There is an enormous body of evidence supporting the therapeutic value of pets to the mental (and also physical) health of the community. Beyond Blue's, "[Pets and their impact on mental health](#)", is an excellent introduction to such research.

Laws and By-laws that attempt to restrict the ability to keep pets will impact on the mental health of residents. Such regulation, as the recent NSW Court of

Appeal case found are oppressive, and in ACA view are also harsh and unconscionable.

ACA agrees that restrictions on pet keeping are in contravention of [Section 139\(1\)](#).

Recommendation 2 - By-laws should encourage the keeping of pets on mental health grounds.

Principle 3 - Pet keeping should be encouraged, with the caveat that it does not adversely affect others.

Currently there are sufficient safeguards within the Management Act to ensure the caveat in Principle 3 is observed. [Section 153\(1\)](#) ensures owners, occupiers and other persons do not create nuisance to other occupiers. This section ensures pets do not adversely affect others.

There are four options discussed in the Discussion Paper (p47-49), ACA's recommendation essentially supports Option 4, to enshrine the Court of Appeal decision in the Management Act. In our view regulating whether or not pets can be kept is unacceptable, rather it is the effect on the amenity of neighbours that is regulated. Such regulation is not restricted to pets but rather applies to a broad range of issues regulated by [Section 153\(1\)](#).

To reinforce that [Section 153\(1\)](#) applies to animals, ACA would agree to an additional clause, such as Section 153(3), requiring pets to be under the direct control of their owner when on common property. Such a clause maybe useful if our Recommendation 1 to delete existing Part 8 Division 3 - Keeping of animals on lots (Sections 156-59) is implemented.

The following recommendation replaces the current [Sections 139\(5\) and \(6\)](#) which restricts by-laws preventing assistance animals with a more general Section 139(5) restricting by-laws preventing the keeping of animals in general.

Recommendation 3 –

Replace Section 139(5) and Section 139(6) with:

(5) By-law cannot prevent the keeping of animals. 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 animal by an owner or occupier of the lot or by a person on a lot or common property.

The Model By-laws should also be amended to make it clear to all owners and tenants that pets are permitted, however they must be kept under control when on common property and they must not cause a nuisance to other lots.

Recommendation 4 is our proposed amended version of clause 5 Keeping of animals within the Model By-laws which form [Schedule 3](#) of the current [Strata Schemes Management Regulation 2016](#).

Recommendation 4 -

Replace Model By-law clause 5 Keeping of animals with the following

(1) An owner or occupier of a lot may keep animals on the lot.

(2) If an owner or occupier of a lot keeps animals on the lot, the owner or occupier must--

(a) keep the animals within the lot, and

(b) supervise the animals when on the common property, and

(c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.

Assistance Animals

ACA's Recommendation 3 is intended to replace [Sections 139\(5\) and \(6\)](#) which restricts by-laws preventing assistance animals, however, should this not be considered as a viable option ACA strongly suggests the definition of an Assistance Animal NOT be restricted to the *Disability Discrimination Act 1992*, that being:

"... a dog or other animal that:

- is accredited by a prescribed animal training organisation or under a State or Territory law, or*
- is trained to assist a person with disability to alleviate the effects of the disability and meet the standards of hygiene and behaviour appropriate for an animal in a public place."*

Many people keep animals for emotional support - Emotional Support Animals. These animals provide support for people with special physical or mental needs, providing comfort, companionship, they relieve loneliness as well as help with depression, anxiety and motivating their owners to get out and about. These animals do not receive any specialised training to qualify them as assistance animals by law, however they do play a major positive role when it comes to mental health. The Assistance Animals definition does not apply to non-certified 'facility animals' or 'therapy animals' who are partnered with health care, educational or other professionals to support people in various facilities (such as schools, learning or rehabilitation centres, care homes, therapy clinics, psychiatric facilities or courts) and who live either at the facility or with their handlers. These animals are an integral part of our society and people living within strata lots should not be penalised or discriminated against simply because their particular animal and/or needs do not fit within an existing definition.

There should be no burden of proof that an animal is either an Assistance Animal or an Emotional Support Animal. Requirements should be based similar to the Option 4 – that being they are not related to any impact on other lot owners.