

10th October 2022

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Dear Cassie

Re: Draft Strata Legislation Amendment Bill 2022 (Draft Bill)

ACA’s comments are restricted to recommendations within the “Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015” (Report) and related Sections of the Draft Bill of relevance to the keeping of animals within lots under strata schemes or community land schemes.

The Draft Bill was provided in confidence and the Report was accessed here...

<https://www.parliament.nsw.gov.au/tp/files/81193/DCS%20-%20Statutory%20Review%20on%20Strata%20Scheme%20Legislation.pdf>

The Strata Schemes Management Act 2015 No 50 (Act) is here...

<https://legislation.nsw.gov.au/view/html/inforce/current/act-2015-050>

The Strata Schemes Management Regulation 2016 (Regulations) is here...

<https://legislation.nsw.gov.au/view/html/inforce/current/sl-2016-0501>

Tribunal case Roden v The Owners – Strata Plan No. 55773 [2021] NSWCATCD 61 (Roden) is here...

<https://www.lookupstrata.com.au/wp-content/uploads/Roden-2021-NSWCATCD-61.docx>

There are six recommendations in the Report of relevance to the keeping of animals, namely recommendations 76, 81, 83, 84, 85 and 86.

For recommendations 83, 84, 85 and 86, ACA supports the related amendments within the Draft Bill.

Our comments that follow address recommendation 76 and 81.

1. Recommendation 76 considers amending the Act in response to fees charged for an application to keep animals by the Owners Corporation in the Roden case.
2. Recommendation 81 recommends updates to the model by-laws in Schedule 3 of the Regulations to better reflect the intent of the Act including the keeping of animals.
3. ACA notes the applicant in the Roden case (and hence the decision passed down) does not appear to have considered Section 137B.
4. ACA is unclear why Section 137B was not addressed in the Roden case. This calls into question the relevance of Roden to the efficacy of Section 137B as currently written.

5. In ACA's assessment Section 137B intends to prevent and should prevent By-laws such as By-law 14.1-14.9 in Strata Plan No. 55773 central to the Roden case.
6. Given the decision to dismiss handed down by the Tribunal in the Roden case ACA recommends the legislation is tightened to ensure the wording of Section 137B requires a default position in favour of keeping animals with no application by lot owners necessary.
7. Nuisance caused by animals is encompassed within existing sections of the Act, in particular Section 153. Therefore, concerns inherent in By-laws such as By-law 14.1-14.9 in Strata Plan No. 55773 are already addressed.
8. In ACA's assessment the Roden case by-laws are an attempt to discourage animal keeping with fees and red tape. They are pre-empting nuisance will be caused by animals. ACA is not aware of any evidence supporting such a stance.
9. ACA opposes attempts by Owners Corporations to restrict animal keeping via applications, applications fees, red tape and/or annual charges.
10. ACA recommends Section 137B (and related sections) of the Act are amended to prevent By-laws which require any advance formal application (including application and annual fees) to keep animals on a lot.
11. Currently model by-law "5 Keeping of Animals" in Schedule 3 of the Regulations provides two options. Option A provides that the owners corporation is to be given notice an animal is being kept on a lot. Option B requires approval before an animal can be kept on a lot.
12. In ACA's assessment, neither Option A or Option B of model by-law 5 mirrors the intent of Section 137B of the Act.
13. In ACA's assessment Option B of model by-law 5 conflicts with the intention of Section 137B of the Act and should be removed.
14. In ACA's assessment a new Option is required within the model by-laws which specifically permits the keeping of an animal on a lot without any notification but subject to the usual rules regarding nuisance and use of common property.
15. ACA is not opposed to existing model by-law 5 Option A in Schedule 3 of the Regulations requiring notification an animal is being kept on a lot. Such notification is not subject to approval nor does or should notification attract any fee.

ACA Recommendations

To implement 10 above ACA recommends the addition of Section 137B (1) (c) to the Act so Section 137 (1) reads as follows...

(1) Each of the following has no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot—

(a) a by-law,

(b) a decision by an owners corporation under a by-law.

(c) a by-law requiring an application, application fee or annual fee to keep an animal.

To implement 13, 14 and 15 above ACA recommends model by-law 5 in Schedule 3 of the Regulations is amended, such that current Option A becomes Option B and new Option A added as follows...

5 Keeping of animals

Note—

Select option A or B. If no option is selected, option A will apply.

Option A

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

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

(a) keep the animal within the lot, and

(b) supervise the animal when it is 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.

Option B

(1) An owner or occupier of a lot may keep an animal on the lot, if the owner or occupier gives the owners corporation written notice that it is being kept on the lot.

(2) The notice must be given not later than 14 days after the animal commences to be kept on the lot.

(3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—

(a) keep the animal within the lot, and

(b) supervise the animal when it is 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.

Thank you for the opportunity to contribute to the Draft Bill.

Happy to discuss further should that be desired.

Kind regards,



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