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# WORKS BY-LAWS AND NCAT

UNDER THE STRATA SCHEMES MANAGEMENT BILL 2015

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## WORKS BY-LAWS AND NCAT

This paper is split into 5 sections

- A. Summary of new legislation affecting works by-laws
- B. Summary of changes to works – old to new
- C. Blanket or generic by-laws
- D. Individual works/renovation by-laws
- E. Summary of NCAT changes

### A. SUMMARY OF RELEVANT LEGISLATION

New section	Old section	Description	Comment
134(3) and Reg 35	New	By-laws for pre-1996 schemes are those in Schedule 2	This will repeal any existing ones, except special by-laws
Sched 3	New	New model residential by-laws, applying to newly registered schemes	<ul style="list-style-type: none"> <li>Pet option A – any animal can be kept (not only small dogs) on notice being given</li> <li>Smoking – 3 options now               <ul style="list-style-type: none"> <li>A – smoke must not penetrate CP or another lot</li> <li>B – smoking only allowed with consent of OC or in a designated area, plus smoke must not penetrate CP or another lot</li> </ul> </li> <li>Massive by-law re 15 re disposal of waste</li> <li>By-law 17 – compliance with planning – much more basic than the Muellers short-term letting one</li> </ul>
106(1)	62(1)	Maintain CP and keep it in good and serviceable repair	No change, same wording used
106(3)	62(3)	Can decide by special res not to	Same



		maintain certain CP	
106(4)	New	If an OC takes action against an owner for damage, it can defer compliance (obligation to maintain) until that action is determined, assuming no safety issues	New – previously there was no exemption
106(5)	New	Owner can sue for breach of statutory obligation (losses resulting from failure to maintain) for up to 2 years of becoming aware of the loss	Clarifies the case law which has gone back and forth on this issue. As the case law currently stands, this is a significant change.
106(7)	54(3) partly	Obligation to maintain is subject to any CP memorandum, any s108 by-law and any excl. use by-law	Probably the same position as current, but sets it out more clearly. S54(3) only applies to excl. use by-laws
108(1)	65A(1)	Can by special res add to, alter or erect a new structure on CP	No change, though we think s110(6) means this work can be deemed a minor renovation (and can be approved by the EC) unless it is a 110(7) exclusion
108(5)	65A(4)	If owner is to be responsible for maintenance, need by-law and owner's written consent	No change
109(1)	New	<b>Cosmetic work</b> can be done without needing approval, but subject to owner rectifying damage to CP and carrying out work properly.  By-law may specify additional work that is cosmetic, but can't be one of the exclusions in s109(5).	Some of these items involve alterations to CP and would previously have required a written approval under by-law 5 or a special res and by-law. For example inserting hooks, nails and screws, installing built-ins and installing internal blinds/curtains.
109(5)	New	Exclusions – this cannot be deemed cosmetic work: <ul style="list-style-type: none"> <li>• minor renos (s110)</li> <li>• structural work</li> <li>• work changing the external appearance</li> <li>• waterproofing or work affecting plumbing or exhaust system</li> <li>• work affecting safety, like fire systems</li> <li>• reconfiguring walls</li> <li>• work needing a DA</li> </ul>	A by-law can deem other work to be cosmetic so no approval is needed, as long as that work is not excluded from the section. For that work (eg structural work or a bathroom reno), you still need the usual blanket by-law specifically authorising that work.
110(1)	New	<b>Minor renovations</b> can be done with the approval of OC by ordinary	Re the walls – this means altering non-



		resolution, no by-law needed. Minor renos include: <ul style="list-style-type: none"> <li>• kitchen renos</li> <li>• recessed light fittings</li> <li>• hard flooring</li> <li>• wiring or electrical work</li> <li>• reconfiguring walls</li> </ul>	structural walls can be done as a minor reno.  The OC can pass a by-law saying the strata committee (EC) can determine these applications.
110(6)	New	Can provide that additional work is a minor reno, subject to 110(7)	The OC can pass a by-law saying all work that is not excluded can be approved by the strata committee. This is likely to become a popular new blanket by-law
110(7)	New	Exclusions – this cannot be deemed a minor renovation: <ul style="list-style-type: none"> <li>• Cosmetic work (s109)</li> <li>• structural work</li> <li>• work changing the external appearance</li> <li>• waterproofing</li> <li>• work needing a DA</li> </ul>	The following works can be minor renos, as they are not excluded under 110(7) like they were under 109(5): <ul style="list-style-type: none"> <li>• work affecting safety, like fire systems. Not excluded like it was for cosmetic work</li> <li>• work affecting plumbing or exhaust system</li> </ul>
111	New	An owner must not do work on CP unless authorised or under a by-law or by a special res	This sort of summarises the other sections.
143(1)	52(1)(a)	Common property rights by-laws (like exclusive use ones) can be made with the consent of each owner on whom rights are conferred	Currently says with the consent of the <i>owner of the lot(s) concerned</i> . This clarifies the legal position and means the <i>James</i> case position will continue to apply, and <i>Young's</i> case is history

## B. SUMMARY OF CHANGES TO HOW WORKS ARE DEALT WITH

<u>Type of work</u>	<u>Position under current Act</u>	<u>Position under new Act</u>
Installing hooks, nails and screws	Under standard by-law 5, written approval required, maintenance and repair not clear	Can be done without approval
Installation of built-ins	Special resolution and by-law needed if being bolted into a common property wall	No approval needed unless work involves structural changes





Installing blinds or curtains	Special resolution and by-law needed if work constitutes an alteration to common property (which is likely)	No approval needed. Some argument that approval is needed if there is a change to the external appearance of a lot, but probably won't be interpreted that way
Kitchen renovation with appliances staying in same position	Special resolution and by-law needed if any change to common property	Only an ordinary resolution required and no by-law (and can be decided by SC meeting if power delegated)
Kitchen renovation with exhaust or plumbing changing	Special resolution and by-law needed if plumbing or exhaust penetrates common property, which is most likely	Only an ordinary resolution required and no by-law
Bathroom renovation with no change to waterproofing, (eg just changing vanity and shower screen)	Special resolution and by-law needed if changes to common property. Otherwise no approval needed.	Ordinary resolution only. Special res and by-law needed if change to waterproofing.
Installing or changing recessed light fittings i.e. within ceilings	Special resolution and by-law needed, as these are going above the paint on the ceiling (ie into common property)	Ordinary resolution only
Changes to wiring, cabling or power or access points	Most likely involves an alteration to common property, so special resolution and by-law required	Ordinary resolution only
Other work involving change to external appearance of lot	If no change to common property, then no special resolution needed. Possible approval needed under by-law 17 (if not in keeping with the rest of the building)	Special resolution and probably by-law required
Installation of bathroom exhaust fan	Special resolution and by-law needed, as this will penetrate a common property external wall	Ordinary resolution only
Solar panels	Special resolution and by-law needed as these are alterations to common property and exclusive use of it	Does it change the external appearance of the building, if the change can only be seen from the sky? If not, then not excluded under s110(7), so can deem that only ordinary res required
Air conditioners	Special resolution and by-law needed – through a wall, bolted to balcony, on an external wall etc	If it doesn't change the external appearance of the building, then OC can deem that only ordinary res required (and strata committee can deal with it)
Double glazing windows	Windows are usually common property, so by-law and special res needed	Not excluded under s110(7), so if new blanket by-law is passed, can be done with approval by SC
Ceiling insulation	Above the paint on the ceiling, so by-law and special res needed	Not excluded under s110(7), so if new blanket by-law is passed, can be done



		with approval by SC
Pergolas	Connected to CP, so by-law and special res needed	Probably approval needed as external appearance changed
Whirlybirds	Through CP, so by-law and special res needed	If hard or impossible to see from the street, can argue no change to external appearance, so can be one of the works which can be approved under a new blanket by-law

### C. GENERIC OR BLANKET BY-LAWS

Once the new Act comes into effect, there will be two types of generic or blanket by-laws which will become very useful:

Type 1 The same one currently used, whereby specified works involving alterations or additions to CP are approved, subject to the conditions in the by-law. These will remain an option for the types of works they previously dealt with. They will become very useful for those which are exclusions under s110(7) and cannot be deemed minor renovations, being:

- (a) Structural work (internal walls)
- (b) Work changing the external appearance (pergolas, awnings, and possibly solar panels and skylights)
- (c) Work involving waterproofing (most bathroom renos)

Again, in section 108(2), the work has to be *specifically authorised* by a special resolution. This is the same wording as is in s65A, so the *Stolfa* comments will continue to apply. A general approval of renovations will not be enough: it will have to be specific.

Type 2 A new type of generic/blanket by-law, whereby:

- (a) All work not excluded under s110(7) is deemed to be a minor renovations for the purposes of s110 and specifically 110(6)(a). Despite ss108(1) & (2), this can include work changing or adding to CP as long as it is not excluded under s110(7) (ie structural, changing external appearance and waterproofing);
- (b) The OC delegates its functions under s110 to the strata committee (EC). This is what we are commonly asked, for the EC to be able to approve works. Currently it cannot approve any work which involves an alteration or additional to CP, but after the new Act comes in, if this by-law is passed, it will be able to.



- (c) The conditions set out in this by-law will apply if such work is carried out. We would set out the usual pre-work, during work and post-work conditions. Section 110 only includes that any damage to CP is repaired and the work must be done in a competent and proper manner.

#### **D. INDIVIDUAL WORKS BY-LAWS**

All works for individual lots will continue to require their own individual special resolution and by-law, if they are an alteration or addition to common property, *unless*:

- they are cosmetic work (eg nails, screws, built-ins); or
- they are one of the listed minor renovations (in s110(3)), such as kitchen renos, recessed light fittings or electrical work. In this case they will have to be approved by ordinary resolution, unless the Type 2 by-law has been passed; or
- the work has been deemed to be cosmetic work (s109(4)) or a minor renovation (Type

2). If cosmetic work then no approval needed, and if a minor renovation, then once the Type 2 by-law is passed, the SC can approve it.

Any works by an owner which constitute structural work, a change to the external appearance or a change to the waterproofing, must be passed by special resolution and by-law. If a Type 1 blanket by-law has been passed in respect of that specific work, this is enough.



## E. SUMMARY OF NCAT CHANGES

Item	1996 Act	2015 Act	Comments
<b>No more adjudication</b>	N/A	N/A	All powers given to interested persons to go to the Tribunal now only relate to orders made by the Tribunal. There are no powers for Adjudicators to make orders. Any Adjudications lodged before 30 November 2016 will continue as if the 1996 Act was still in force (Clause 7 of Schedule 3 of the 2015 Act)
<b>Changing unit entitlements</b>	s.182	s.236	Same
Orders about <b>by-laws</b> , varying them, repealing them or ordering that owners unreasonably refuse to consent	ss.157-159	ss.148-150	Old s.159 gave an Adjudicator the power to invalidate a by-law if the owners corporation did not have the power to make the by-law. New s.159 is the same except that the Tribunal also has that power if the by-law is harsh, unconscionable or oppressive as well
<b>Pets</b>	ss.150-151	ss.156-158	Slightly different wording, but the effect is the same.





<b>Interim orders</b>	s.170	s.231	The same – urgent considerations need to justify the making of the order.
<b>General power</b>	s.138	s.232	Currently general power relates to the exercise/failure to exercise a function conferred or imposed by the Act or by-laws, or the operation, administration or management of a scheme. New Act adds the power to settle a complaint/dispute about:
			(b) Any agreement authorised/required under the Act;
			(d) An agreement appointing a strata managing agent/building manager;
			(d) An agreement between the OC and an owner;
			(f) An exercise/failure to exercise a function conferred or imposed under another Act
			It was previously not clear whether the Tribunal could make orders about agreements with strata managing agents, for example.
<b>Costs</b>	s.176	s.60 NCAT Act	Currently costs cannot be awarded for adjudications. As all matters will be hearings, costs will be able to be awarded in special circumstances, normally where an applicant seeks an order outside the Tribunal's jurisdiction, but there can be other circumstances justifying costs orders.



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JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for over 30 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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