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DO NOT LET SLEEPING DOGS LIE!

WHY PLAYING THE WAITING GAME COULD BE YOUR UNDOING?

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WHY PLAYING THE WAITING GAME COULD BE YOUR UNDOING?

How will you respond to the recent decision of the Court of Appeal in the *Cooper* case which says that a by-law prohibiting pets is invalid? Will you wait for the dust to settle before deciding what you will do? Or will you act now and change any by-law that prohibits pets? In this article we take a closer look at each of these approaches and recommend why playing the waiting game could be your undoing.

INTRODUCTION

On 12 October 2020, the NSW Court of Appeal concluded that a by-law prohibiting the keeping of pets in the Horizon building in Sydney is invalid. This decision means that any "no pets" by-law is invalid. So where does this leave an owners corporation which has a "no pets" by-law? And what should an owners corporation with a "no pets" by-law do?

THE WAIT AND SEE APPROACH

There are many owners corporations that intend to wait for the dust to settle following the decision in the *Cooper* case before deciding on what they will do about their "no pets" by-law. Indeed, some of these owners corporations take the view that their "no pets" by-law is valid until it is overturned by NCAT or a Court. So, the "no pets" by-laws in these buildings will remain for the time being.

THE PROACTIVE APPROACH

There are other owners corporations that are getting on the front foot. These owners corporations are replacing their "no pets" by-law with a new by-law that restricts the keeping of pets and imposes conditions on owners and occupiers who are allowed to keep pets under the new by-law. Most of the new by-laws introduced by these owners corporations will require owners and occupiers to apply to the owners corporation for permission to keep pets, prevent the owners corporation unreasonably withholding that approval and contain conditions (sometimes extensive) which pet owners will need to comply with.

WHAT TO DO?

So which approach is to be preferred? The wait and see approach or the proactive approach? In our view, the owners corporations that are doing nothing about the their "no pets" by-law are making a big mistake. This is because a "no pets" by-law is not enforceable. This invites trouble. Why? Because if an owner or occupier brings a pet into a "no pets" building there will be virtually nothing the owners corporation can do about it. If the owners corporation decides to belatedly replace the "no pets" by-law, after the owner or occupier brings the pet into the building, it will be too late to rely on the new by-law

to insist on the pet being removed from the building. An owners corporation in that position could end up getting stuck with pets that are brought into the building whilst the unenforceable “no pets” by-law remains.

CONCLUSION

The preferable approach is for any owners corporation that has a “no pets” by-law to replace that by-law as soon as possible with a new by-law that reflects the contemporary views of owners and, if appropriate, restricts (but does not prohibit) the keeping of pets in the building and requires owners and occupiers who want to keep pets to apply for approval of the owners corporation to do so and contains reasonable conditions that regulate the keeping of pets that are approved by the owners corporation. This is the approach that is to be preferred following the decision in the *Cooper* case. Any owners corporations that wait for the dust to settle following that decision before changing their pets by-law may well live to regret that decision.

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JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collection.

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