

# Submission on the draft *Strata Schemes Management Amendment (Pets) Regulation 2021*

**7 July 2021**

Strata Schemes Statutory Review  
Policy & Strategy, Better Regulation Division  
Department of Customer Service  
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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission in response to the draft *Strata Schemes Management Amendment (Pets) Regulation 2021 (Regulations)*.

## **NSW Young Lawyers**

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal protection laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to improve protections for animals.

The Committee welcomes the opportunity to make a submission on the Regulations.

## Summary of Recommendations

1. Sub-clause 36A(a) ought to be amended so that the standard imposed on noise from animals in a strata complex replicates the standard imposed in the new s 137B of the *Strata Schemes Management Act 2015 (Act)*.
2. Sub-clauses 36A(h)-(i) ought to be removed as they are unreasonable and go beyond the scope of s 137B of the Act.

### Sub-cl 36A(a) - noise

The Committee submits that sub-cl 36A(a) is unreasonable and inconsistent with the new s 137B of the Act.

The Act provides that the keeping of a pet must not “unreasonably interfere with another occupant’s use and enjoyment of the occupant’s lot or the common property”. However, sub-cl 36A(a) would go beyond this with respect to noise, requiring that any noise produced by an animal kept in a strata complex must not “(un)reasonably<sup>1</sup> interfere with the *peace, comfort or convenience* of another occupant”. The latter threshold is clearly one that is much more readily breached. It therefore goes beyond that standard introduced into the Act.

For example, a barking dog may not unreasonably interfere with the use and enjoyment by another occupant of their lot, but it may intrude into “peace, comfort or convenience”, taking the ordinary meaning of those words. It is unclear why a lower bar would be introduced with respect to noise, and by way of the regulations.

The Committee submits that the language adopted in the Act is more appropriate and should be replicated with respect to noise in the Regulations (if required at all in the Regulations). In addition to having already progressed through parliament, it is also language that arises in the context of other areas relating to noise management – see, for example, the *Bernstein v Skyviews and General Ltd* [1978] 1 QB 479, in which the noise generated by aircraft was considered against the “ordinary use and enjoyment of (an occupant’s) land and the structures upon it”. While this related to the heights to which the rights to use and enjoyment extend, it was a suitable yardstick in considering noise impacts.

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<sup>1</sup> The Committee notes an apparent typo in the draft Regulations text circulated, and has assumed that “reasonably” in the sub-cl 36A(a) is in fact intended to be “unreasonably”.

### **Sub-cl 36A(h) and (i) – additional conditions on the keeping of an animal**

The Committee sees no basis for the inclusion in the Regulations of sub-cl 36A(h) and (i). They go beyond s 137B of the Act and serve only to undermine that section.

Under s 137B, by-laws relating to the keeping of animals are only valid if they prevent the unreasonable interference with occupants' use and enjoyment of their lots and common property by virtue of an animal being kept in the complex. The ambit of animal-related by-laws is therefore clear. It is unnecessary, inappropriate and inconsistent to then include by way of Regulation, a further avenue through which by-laws can be used to restrict the keeping of animals. That is what sub-clauses 36A(h) and (i) propose to do.

The reasonability of by-laws that place conditions on the keeping of animals is already provided for in the Act. It is unclear why certain classes or types of animals would give rise to a new realm of reasonableness that is not already addressed in the Act. In the Committee's view, there is unnecessary ambiguity in the proposed sub-clauses, and those proposed sub-clauses should be removed altogether.

The Committee is also concerned that this new, different language could be interpreted in a manner that undermines s 137B and allows owners corporations to restrict the keeping of animals in a way that could make it unreasonably difficult for the keeper of an animal to comply, thereby giving rise to an opportunity for that owners corporation to prohibit that animal from the complex. It is a sidestep that undermines the Act and compromises the viability of the position of animal owners in strata complexes. Again, this ought to be removed entirely.

## Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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