



# Is it harsh to not allow pets in strata schemes?

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Australian College  
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A photograph of a dog, possibly a pit bull mix, lying on a beach. The dog is white with black markings on its head and ears. It is resting on a surface of driftwood and sand. The background is a blurred view of the ocean and sky.

## Is it harsh to not allow pets in strata schemes?

Many people are given a rude shock when they move into their newly purchased strata lot and are told that they cannot have pets, with the exception of assistance animals.

Under the Strata Schemes Management Act 1996 (NSW) it was possible to have by-laws which banned pets except in respect to assistance animals.

With the reforms to the strata legislation effective as of November 2016, the no pets by-law was removed from the standard default by-laws as well as the introduction of Section 139 (1), which states:

### **139 RESTRICTIONS ON BY-LAWS**

» By-law cannot be unjust  
A by-law must not be harsh, unconscionable or oppressive.

(Note: Any such by-law may be invalidated by the Tribunal see section 150)

With such an addition to the legislation, comes the tribunal cases to test if having a pet would be considered a right and the restriction of such a right would be considered to be harsh, unconscionable or oppressive. In some cases it was found that such a by-law would impinge on the rights of lot owners. This makes for a difficult position for a strata manager attempting



to guide their owner's corporation when addressing such by-laws.

If the position of the tribunal was one of allowing lot owners to have pets and to restrict would be against a "lot owner's basic right of habitation", Owners Corporations would have to be advised of such when having discussions with their strata manager about the most appropriate by-laws for their scheme.

There has been a change however, with the Appeals Panel of the NSW Civil and Administrative Tribunal publishing three recent decisions setting aside as wrong previous decisions striking down no pet by-laws in May 2020. In essence, what

this means is that in the three cases that had gone before the Tribunal, the decision was made that the no pets by-laws were harsh, unjust or oppressive and on appeal, this decision (in all three cases) was overturned.

Rather than adopting an approach that all no pets by-laws are a breach of s139 (1), the appeals considered more than simply if the by-law was oppressive to that owner but on a case by case basis what the terms of the by-law were, the history of the by-law, the circumstances in which the by-law came to operate on

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various lot owners and the particular circumstances of the applicant that might otherwise demonstrate the by-law is harsh, unconscionable or oppressive. Confused? Yes, so are many strata managers.

With these appeals heard and decided on the various facts, an Owner's Corporation may now have more of a chance to uphold their no pets by-laws, particularly where the by-law has been in place for a significant period of time and/or where the by-law was in place

prior to the pet owning lot owner purchasing their lot.

As always, it is recommended that the Strata Managing Agent refer the lot owners to specialised strata lawyers to gain a clearer understanding of their legal rights and obligations when interpreting the legislation and case law.

**'Til next time, wishing you every success in your business ventures,**

**Rosy Sullivan**  
**Director | College Principal**

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## UPCOMING WEBINARS

### 3 HOUR COMPULSORY CPD

<b>Sales &amp; Leasing</b>	TUE <b>7<sup>TH</sup></b> JULY
<b>Strata Management</b>	TUE <b>21<sup>ST</sup></b> JULY
<b>Sales &amp; Leasing</b>	TUE <b>4<sup>TH</sup></b> AUG

### 3 HOUR ELECTIVE CPD

<b>Property Sales</b>	TUE <b>30<sup>TH</sup></b> JUNE
<b>Strata Management</b>	TUE <b>7<sup>TH</sup></b> JULY
<b>Residential Property Management</b>	TUE <b>14<sup>TH</sup></b> JULY

### DIPLOMA OF LEADERSHIP & MANAGEMENT - EVENING WEBINARS

<b>Manage personal work priorities and professional development</b>	TUE <b>7<sup>TH</sup></b> JULY
<b>Lead and manage team effectiveness</b>	TUE <b>21<sup>ST</sup></b> JULY

<b>Manage operational plan</b>	TUE <b>18<sup>TH</sup></b> AUG
<b>Manage Meetings</b>	TUE <b>1<sup>ST</sup></b> SEP

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## UPCOMING FACE TO FACE COURSES

### 3 HOUR COMPULSORY CPD

Strata Management	FRI 10 <sup>TH</sup> JULY
Sales & Leasing	FRI 24 <sup>TH</sup> JULY
Strata Management	FRI 7 <sup>TH</sup> AUG

### 3 HOUR ELECTIVE CPD

Strata Management	FRI 10 <sup>TH</sup> JULY
Residential Property Management	FRI 24 <sup>TH</sup> JULY
Strata Management	FRI 7 <sup>TH</sup> AUG

### ASSISTANT AGENT - CERTIFICATE OF REGISTRATION

Real Estate and Stock & Station	6 <sup>TH</sup> - 9 <sup>TH</sup> JULY
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Units taken from nationally accredited training qualifications from the CPP41419 Certificate IV in Real Estate Practice.

Strata Management	20 <sup>TH</sup> - 23 <sup>RD</sup> JULY
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Units taken from nationally accredited training qualifications from the CPP40516 Certificate IV in Strata Community Management.

*Please note: All face to face courses will be held at our Town Hall premises in the Sydney CBD*



## From the office

This past fortnight has continued the slide into the end of the financial year and our reflection on the last few months and the changes it has brought to our business, to the work of our students and clients, and the many, many changes that we are witnesses to our community on a daily basis.

So the social distancing and the hygiene protocols continue for ACOP, with College life now commencing everyday for staff and students alike with temperature checks and questions about our wellbeing. We have continued to conduct small face-to-face classes over the past fortnight in our training rooms at Town Hall and the feedback from our students has been so positive about the physical changes we have made to safeguard everyone's health. It seems that people

are ready and keen to participate in face-to-face learning again, so long as the appropriate protocols are in place. In addition to our training at our head office, and the continued rolling of webinars happening from our media room as well as from our trainers' living rooms, we have conducted a trust accounting module for a team in Huskisson and some CPD for one of our favourite clients in their super-sized board room in Sydney Olympic Park. It's certainly been a fortnight of firsts in the return to some level of normality. The ACOP team are definitely enjoying being back together.

And yes, the cakes are back at ACOP. This fortnight we celebrated work anniversaries for three of our team. Elise has been with ACOP for 2 years, and Chanelle and Michael have both survived and thrived on their 3 year anniversary. And to celebrate, Kristin arrived at the College (and she usually works from home – which is a pre-COVID arrangement) with her own creation of the most amazing caramel slice styled cheesecake....DELICIOUS. And so the tradition continues here at the College.

## UPCOMING FACE TO FACE COURSES

### PROPERTY LICENSING

<b>Commercial Sales &amp; Leasing</b> SYDNEY CBD	30 <sup>TH</sup> - 31 <sup>ST</sup> JULY
<b>Property Sales</b> SYDNEY CBD	27 <sup>TH</sup> - 29 <sup>TH</sup> JULY
<b>Stock &amp; Station Agency Practices</b> SYDNEY CBD	24 <sup>TH</sup> - 26 <sup>TH</sup> AUG
<b>Strata Management Agency Practices</b> SYDNEY CBD	17 <sup>TH</sup> - 19 <sup>TH</sup> AUG
<b>Auctioneering</b> SYDNEY CBD	2 <sup>ND</sup> - 3 <sup>RD</sup> JULY
<b>Property Mgmt Business Development &amp; NCAT</b> SYDNEY CBD	27 <sup>TH</sup> - 28 <sup>TH</sup> AUG

### PROPERTY LICENSING

<b>Financial Management</b> SYDNEY CBD	31 <sup>ST</sup> AUG - 1 <sup>ST</sup> SEP
<b>Trust Accounting + Insurance</b> SYDNEY CBD	THU 20 <sup>TH</sup> AUG
<b>Trust Accounting</b> SYDNEY CBD	13 <sup>TH</sup> - 14 <sup>TH</sup> JULY
<b>Property Management</b> SYDNEY CBD	15 <sup>TH</sup> - 17 <sup>TH</sup> JULY
<b>Business Broking Agency Practices</b> SYDNEY CBD	3 <sup>RD</sup> - 4 <sup>TH</sup> SEP

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