

NEWSLETTER ISSUE 25 MARCH 2018

BYLAW ENFORCEMENT

Fortunately for us, a query as to enforcement of a breached bylaw does not come up very often. However, in case the frustrations under the old 1996 Act had dampened your enthusiasm to resolve an issue in your scheme, we thought we would lay out the process here.

To be clear bylaws are binding on both lot owners and occupiers alike – per S135 of the new legislation. If a lot owner or occupier breaches a strata scheme's by-laws, the owners corporation can take steps to enforce those by-laws.

In summary, the by-law enforcement process is as follows:

1. Send a letter to the lot owner or occupier advising of the breach and ask that it cease. A copy of the by-law should be included with the letter. If the breach is committed by a tenant, a copy of the letter to the tenant should be issued to the landlord as well, seeking their assistance resolving the matter.
2. 4 days must be allowed for the posted correspondence to be received. We would suggest a further 7 days be allowed where possible for the offender to check their mail and change their behaviour. If the breach continues the owners' corporation should serve on the lot owner or occupier a formal notice to comply ie a breach of bylaw notice as set out in S146 of the Strata Scheme's Management Act.
The Notice must require the lot owner or occupier to comply with by-law and must include a copy of the by-law in question. **The Notice should give the lot owner or occupier a reasonable time to comply with the by-law, for example, 28 days.** If more than one by-law has been breached, a separate Notice should be issued in respect of each offence. The Strata Committee will need to hold a meeting to authorise one of the industries strata specialist lawyers to prepare the notice (eg JS Mueller advise their approx. cost would be \$850 plus GST, with the cost of a process server being a disbursement). Further action cannot be taken against the lot owner or occupier at the NSW Civil & Administrative Tribunal ("NCAT") until this notice has been issued.
3. If the first two steps have been completed and the by-law has still not been complied with by the lot owner or occupier, the scheme can apply to NCAT for a penalty order under S147 of the Act. The good news is that the Breach of Bylaw notice is valid for a period of up to 12 months.

If NCAT is satisfied that the Notice was validly given and the lot owner or occupier has breached the by-law since that Notice, a monetary penalty of up to \$1,100.00 (at the time of writing this article) may be payable. The even better news is that this penalty is payable to the owners corporation.

Finally, if the lot owner or occupier breaches the same by-law again within 12 months of the first monetary penalty, the owners' corporation is entitled to apply to NCAT for a second fine, without issuing a further Notice. Also, if the lot owner or occupier is again found in breach of the same by-law, a monetary penalty of up to \$2,200.00 may be payable to the owners corporation.

In all cases the strata committee need to determine that a breached bylaw is something that the Owners Corporation want us to pursue – it is not up to the individual lot owner.

GST PAYABLE ON NEW RESIDENTIAL BUILDINGS

On 7 February 2018, the Commonwealth Government introduced the *Treasury Laws Amendment (2018 Measures No. 1) Bill 2018*, which contains new GST provisions that will apply to purchasers of new residential property.

For the full details on this and how it may affect your future purchase of a residential property please go to our website and view the soft version of this newsletter where we have uploaded the full article published by Sparke Helmore. Thanks to Peter Charteris and Jonathan Doy.

HIVELY

At Progressive Strata it is all about you – our client. We want to know if we are providing the information you need each time we interact and so we have introduced Hively – to the bottom of our emails. This is a set of three faces – satisfied, non-plussed or unhappy. If you have been in touch with us in the past 2 months you will have already seen these on our reply to you. It only takes one click – no further information need be given – unless you choose to provide a comment. We'd encourage you to provide this feedback as often as you can – not just if you are unhappy with our response, so we are aware of how well we are doing each time.

NEW RECOMMENDATIONS FOR FIRE SAFETY

The NSW Fire and Rescue (NSW) has released a study undertaken in collaboration with CSIRO – with two reports released on 17 January 2018. The main determination was the effectiveness of sprinklers in residential buildings up to 25m in height. For any class 2 building. Several tests were performed using household water supply and that from a hydrant – the sample construction was a replica of the unit in the Bankstown fire.

Class 2 buildings are apartment buildings. They are typically multi-unit residential buildings where people live above and below each other. Class 2 buildings may also be single storey attached dwellings where there is a common space below. For example, two dwellings above a common basement or carpark. **A 25m building would be one that is up to 8 stories high** (underground carparks are not used in the calculation).

“FRNSW (Fire and Rescue NSW) has made recommendations from its extensive research into sprinklers and smoke alarms and will be working closely with relevant stakeholders to realise these recommendations over the coming months.

“To that effect, FRNSW, along with FPAA (Fire Protection Association of Australia) and AFAC (Australasian Fire and Emergency Service Authorities Council) has submitted a Proposal for Change to the 2019 National Construction Code that seeks to mandate sprinklers in all new Class 2 and 3i shared residential accommodation buildings up to 25m in effective height.

There is also going to be a push towards urging NSW households to increase the number of working alarms in homes to one per bedroom and living space (including hallways and stairways) and to have them interconnected” Commissioner Baxter added.

Whilst these provisions will initially apply to new constructions – we at PSS anticipate that it is only a matter of time before these also form part of the provisions required to meet any fire orders issued by Council.

Whilst certainly this will add to the expense of complying with a fire order – there can be no figure placed on the value of a life. The parties involved in the study have indicated that their 3-year study does reflect that interconnected detectors and sprinklers, along with a home fire escape plan will save lives. Currently approx. 21 deaths are reported each year as a direct result of residential fires across NSW.

DID YOU KNOW – glass takes 100 years to break down if not recycled.

When recycled it can be used to create construction materials, fibreglass, and food and drink containers..