

PETS IN BODY CORPORATE SCHEMES

The issue of pets in Body Corporate schemes is one which has been attracting much attention from Body Corporates, Body Corporate managers and owners generally. In the decision of *Rhode Island CTS 20573* the Body Corporate Commissioner's Office firmly established the general position that any by-law in existence for schemes that provided a blanket prohibition against having pets will be invalid on the basis that it is unreasonable.

Furthermore, the Commissioner's Office has held that any by-law which attempts to impose restrictive provisions for the approval of application for pets will also be held to be invalid. There have been a number of decisions on this issue by both the Queensland Tribunal and the Body Corporate Commissioner's Office. The general position that has been put forward by those bodies is that any by-law which attempts to provide a blanket prohibition on, and the keeping of pets generally or prohibiting some pets to be kept, will be held to be invalid.

In the matter of *McKenzie v Body Corporate for Kings Row Centre CTS 11632* the Queensland Civil and Administrative Tribunal held that a by-law which specifically prohibited the keeping of a dog or cat of any kind, but allowed an owner to make requests to keep other pets, was invalid on the basis that it was oppressive and invalid.

This is particularly relevant for resident letting agents if there are owners in a complex who are wishing to let their lots on a pet free basis. Particularly, resident letting agents will no longer be able to rely on a by-law restricting the keeping of pets in this regard. One can imagine a scenario where a tenant enters into a tenancy agreement, say greater than 6 months on the understanding that the letting was on a pet free basis, and some 3 months into that lease making an application to the Body Corporate Commissioner's Office to keep a pet, which application would be successful. If an owner wishes for their apartment to be let on a pet free basis, it is important to ensure that this is included as a condition of their tenancy agreement in the original Forms 20A.

At this stage, we cannot see that there will be any change to this position unless either the politicians amend the BCCM Act, which at this stage we believe is highly unlikely, or a Body Corporate is willing to challenge the law by pursuing the matter through the appeals process. Our current view is that the first level of appeal where the Body Corporate may be successful in having the position challenged is to the Court of Appeal, which can only be reached by appeals through QCAT and the Appeals Division of QCAT.

Of course, proceedings brought in the Court of Appeal have considerable cost implications for the unsuccessful party and there is no guarantee that such an appeal would be successful.

If you would like more information regarding pet by-laws in Bodies Corporate, please do not hesitate to contact Nina George, Senior Associate, of our office.