



# Owners and Occupiers: Complying with the Scheme By Laws Best Practice Guideline

Reference: SCAWA300

This Practice Guideline has been developed for Owners and Occupiers by SCA (WA) and Lavan.

# Owners and Occupiers: Complying with the Scheme By-laws

## Chapter One: Guide for owners and occupiers: Complying with the Scheme By-laws

### Owners, tenants and occupiers must comply with the By-laws

- 1 An owner of a lot in a strata / survey-strata scheme (**Scheme**) must comply with the by-laws of their Scheme (**By-laws**): sections 45(1)(b) and 45(2) of the *Strata Titles Act 1985 (Act)*.
- 2 An occupier or tenant of a lot in a Scheme must comply with the By-laws: sections 45(1)(c) and 45(2) of the Act.
- 3 An occupier or tenant of the common property in a Scheme must comply with the By-laws: sections 45(1)(c) and 45(2) of the Act.
- 4 A lease of a lot in a Scheme is taken (or deemed) to contain an agreement by the tenant that they will comply with the By-laws: section 45(3) of the Act. This means that if a tenant breaches the By-laws, they are also breaching their lease.

### Owners and occupiers have a duty to ensure their invitees comply with the By-laws

- 5 The owner, occupier or tenant of a lot in the Scheme must take all reasonable steps to ensure that each person they invite into their lot or the common property complies with the By-laws: section 45(4) of the Act.

- 6 If an invitee breaches the By-laws, the owner or occupier who let that invitee into their lot or the common property could be in breach of section 45(4) of the Act.
- 7 If Schedule 2 By-law 2 as provided under the Act applies to your Scheme, an owner or occupier of a lot must take all reasonable steps to ensure their invitees do not behave in a manner likely to interfere with the peaceful enjoyment of an owner or occupier of another lot or of a person lawfully using the common property.
- 8 If an invitee behaves in a manner that interferes with another owner's peaceful enjoyment:
  - 8.1 the owner who let the invitee into the scheme:
    - 8.1.1 could be in breach of Schedule 2 By-law 2 if that default By-law applies to the Scheme; and
    - 8.1.2 could be subject to action to enforce the By-laws by the strata company, another owner or an occupier; and
  - 8.2 the invitee is not bound by the By-laws and so no action under the Act can be brought directly against the invitee to enforce the By-laws.

### Ignorance of the By-laws is no excuse

- 9 Owners, occupiers and tenants should take the time to familiarise themselves with the By-laws of their scheme.

### Strata company has a duty to enforce the By-laws

- 10 A strata company has a duty to enforce the By-laws: section 112 of the Act.

### Owners, tenants, occupiers and mortgagees can enforce the By-laws

- 11 Owners, tenants, occupiers and mortgagees of a lot in the Scheme can enforce the By-laws: section 47(3) of the Act.

### Enforcing the By-laws

- 12 The by-laws can be enforced by the strata company, an owner of a lot, an occupier of a lot or a mortgagee of a lot applying to the State Administrative Tribunal (**SAT**) for orders against an owner, occupier or tenant of a lot in the Scheme who breaches the By-laws (**Offender**), which could include:

- 12.1 an order that the Offender pay the strata company a penalty of up to \$2,000: section 47(5)(a) of the Act;
- 12.2 an order that the Offender do or not do something to remedy the breach of the By-law: sections 47(5)(b) and (c) of the Act; and
- 12.3 an order that the Offender pay damages as compensation for financial losses suffered by the strata company or another owner or occupier as a result of the breach of the By-law: sections 197 and 200(2)(o)(i) of the Act.

### Applying to SAT for orders to enforce the By-laws

- 13 The strata company, an owner, an occupier or a mortgagee can apply to the State Administrative Tribunal (**SAT**) for orders against an Offender:

- 13.1 if the Offender breaches a By-law on one occasion and that breach has serious adverse consequences for another person (**Serious Breach**); or
- 13.2 if the Offender:
- 13.2.1 breaches the By-law on one occasion (**First Breach**); and
- 13.2.2 the strata company serves a breach notice on the Offender (**Breach Notice**); and
- 13.2.3 the Offender commits another breach of the same By-law (**Second Breach**); or
- 13.3 if the Offender breaches the same By-law on three occasions (**Three Strikes**).

### Notice to all owners, occupiers and tenants about complying with the By-laws

- 14 The council of the strata company (**Council**) puts all owners, occupiers and tenants of lots in the strata titles scheme (**Scheme**) on notice that the strata company will fulfil its statutory duty to enforce the by-laws that apply to this Scheme (**By-laws**) in accordance with section 112 of the *Strata Titles Act 1985* (**Act**).
- 15 If an owner, occupier or tenant breaches one of the By-laws, the strata company may:
- 15.1 give that person a Breach Notice in accordance with section 47(2) of the Act; or
- 15.2 if the breach of the By-law is serious, apply directly to the State Administrative Tribunal (**SAT**) for orders against that person.
- 16 If a person continues to breach the By-laws after being given a Breach Notice, the strata company may apply to SAT for orders against that person.

## Chapter Two: Guide for the Council of the strata company: By-law enforcement

**[Lavan Note: This does not need to be circulated to all owners and occupiers]**

### Informing owners and occupiers of their duties under the By-laws

- 18 The strata company should:
- 18.1 consider circulating to all owners and occupiers a copy of the By-laws that apply to their Scheme;
  - 18.2 consider displaying a copy of the By-laws that apply to their Scheme in a prominent location on the common property; and
  - 18.3 send a copy to all owners and occupiers of the *Guide for Owners and Occupiers: Complying with the Scheme By-laws*.

### Issuing a Breach Notice

- 19 If a strata company issues a Breach Notice, the strata company should:
- 19.1 ensure the Breach Notice complies with section 47(2) of the Act and specify:
    - 19.1.1 the specific By-law that is alleged to have been breached / contravened;
    - 19.1.2 the particular facts relied on as evidence of the contravention; and
    - 19.1.3 the action that must be taken or refrained from being taken in order to avoid a continuing

or further contravention of the particular By-law.

- 19.2 ensure the Breach Notice contains a copy of Schedule 2 of the *Strata Titles (General) Regulations 2019 (Regulations)* which provides an explanation of section 47 of the Act, as required by section 47(2)(d) of the Act and regulation 57 of the Regulations; and
  - 19.3 ensure the Breach Notice is served in accordance with section 216 of the Act.
- 20 A strata company should seek specialist legal advice:
- 20.1 when preparing a Breach Notice to ensure it is properly drafted and contains all of the required and relevant information;
  - 20.2 when preparing an application to SAT for orders under section 47 of the Act to ensure it is properly drafted and contains all of the required and relevant information and documents; and
  - 20.3 if there are any concerns about whether the By-law being breached is invalid. Section 46 of the Act lists the grounds on which a By-law is invalid, including (and is not limited to) if the By-law:
    - 20.3.1 is inconsistent with the Act or any other written law; or
    - 20.3.2 is:
      - (a) unfairly prejudicial to or unfairly discriminatory against one or more owners; or
      - (b) oppressive or unreasonable.

## Template Breach Notice

- 21 A template Breach Notice is contained in Annexure A. Care should be taken when completing the template Breach Notice and specialist legal advice should be sought in completing a template Breach Notice.

## Annexure A: Template Breach Notice

### **SCA (WA) wish to acknowledge and thank Lavan for their contribution.**

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