



# Building covenants – “Ban the Banners”

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As you may be aware, the Government is taking steps to introduce restrictions on building covenants. This is what is being called the “ban the banners” policy, the aim of which is to render invalid **new** covenants in contracts and Body Corporate Statements/Bylaws which restrict owners or Body Corporates from using selected sustainable and affordable features.

There is now legislation called the *Building & Other Legislation Amendment Act 2009* which is to commence on 1 January 2010. The Act proposes to prohibit or render void instruments which restrict or require specified design options for certain buildings, such as houses, townhouses, duplexes, units and garages. It specifically invalidates provisions to the extent that they prohibit:

- o self-selection of light coloured roofs;
- o energy efficient windows or treatment of a window for energy efficiency;
- o a person from occupying a house or townhouse before landscaping, fencing, driveways and the like are completed;
- o the use of specific material or types of surface finish for the roof or external walls of a building to the extent that the prohibition applies merely for the purposes of preserving or enhancing the external appearance of the building. For example, a building covenant cannot prohibit buildings in a new residential estate from having face brick walls or metal roofs; and
- o the installation of a solar hot water system or photovoltaic cells on the roof of a building for the purpose of preserving the external appearance of the building.

Provisions requiring any of the following will also be invalid:

- o minimum floor areas;
- o minimum number of bedrooms and bathrooms;
- o the construction of a house / townhouse or any landscaping to be completed within a stated period, except if required to be done before a development approval lapses;
- o more than one garage;
- o minimum roof pitches for the purpose of preserving external appearance; and
- o a building to be oriented on a block in a certain way for the purpose of preserving the external appearance of the building.

Despite these provisions being introduced, they will not apply where a contract or other agreement, such as a lease or sublease, CMS or by-law, is either in effect or entered into and binding the owner of a building or lot prior to the commencement of the legislation, except in relation to solar hot water systems and photovoltaic cells. Further, it is intended that the Act will not affect existing or pre-Act contracts between an initial buyer and later buyers if the property is on-sold with the covenants passed on in the new contract.

We bring these matters to your attention so that you are up to date with the latest Government proposal as they may affect the way you deal with your future building covenants. Should you require any further information please contact us.

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