



© Adobe Stock - sbookadobe.com

Should a body corporate have an electric vehicle by-law?

In 2021, there were 20,000 electric vehicles sold in Australia (three times as many as in 2020). With some states looking to ban combustion vehicles in the next decade, there is no doubt that the number of electric vehicles in Queensland will rise.

These new electric vehicles will need to be stored, and charged, somewhere. Given the 50,000 plus bodies corporate in Queensland, it is an issue that will need to be carefully considered and addressed by committees.

As this article will show, the complex issues cannot be dealt with by a simple by-law.

Bodies corporate and electric vehicles

There are a number of specific issues for a body corporate



Todd Garsden,
Partner, Mahoneys

to consider in relation to electric vehicle charging, the most prevalent being:

- Where the charging devices will be installed and who is entitled to use them;
- the capacity of the existing infrastructure to cope with any increased load;
- what are the risks of installing and utilizing any charging devices;
- who is paying for any installation, upgrades, maintenance, electricity and other associated

costs (eg., any additional insurance); and

- what, if anything, should the by-laws provide for?

Supply of electricity

The supply of electricity and embedded networks is a complex and complicated issue, even before you throw the charging of electric vehicles into the mix.

The regulation modules set out a prescribed procedure and power for the Body Corporate to on-supply services to occupiers, including domestic services such as electricity.

When the body corporate does supply electricity to occupiers:

- It has an obligation under the regulation module to the greatest practicable extent, to ensure that the total cost, other than administrative costs, is recovered from the users of the service (ie., to charge the occupier for the electricity used to charge an electric car);

- the body corporate can only fulfil its obligation if it enters into a service agreement with the occupier – which cannot be reflected in a by-law; and

- the terms of the service agreement, and the conditions of supplying electricity may incidentally be captured within the ambit of various layers of regulatory bodies and legislation. This can then require consideration of the need for embedded network managers, authorisations or exemptions from the regulator and many other hoops that may need to be jumped through, effectively necessitating an additional service contractor to be engaged just to manage the compliance requirements of supplying electricity.

Installation

Just like any other works, an improvement by a lot owner to:

- Common property (which is what most car parks

are) requires general meeting approval if the cost is over \$3,000; and

- part of a lot, will only need approval by the committee depending on the by-laws for the scheme regulating improvements. However, even if a car park is part of a lot, the installation will presumably affect some part of the common property when it is connected to the electricity utility infrastructure, necessitating approval by the body corporate.

As the installation relates to utility infrastructure, lot owners may also have statutory easement rights placing positive obligations on the body corporate to approve the proposed works.

In considering any application for approval, the body corporate can impose reasonable conditions. This can extend to the standard and usual conditions about the quality of workmanship, compliance with specifications, compliance with building regulations, visual amenity concerns, insurance, and ongoing maintenance.

However, given the specific concerns related to electric vehicle charging, further conditions may be appropriate to consider such as:

- Requiring regular inspections to be carried out to ensure the infrastructure is in good working order and safe;
- conditioning the way in which the charger is used (if there are requirements for safe charging); and
- complying with any requirements from the body corporate's insurer.

Capacity concerns

For the first few installations, the above considerations of supply agreements and improvement approval may be all that is required.

However, given the infrastructure that was installed for any existing buildings pre-dated the prevalence of electric vehicles, the current infrastructure may not be sufficient to take the load of more than a few electric vehicles recharging

Imperative for a by-law to be imposed that regulates how the charging facility is used by occupiers



at once. There will come a point where the next electric vehicle installation will create an unacceptable load on the infrastructure without significant improvement works to the entire system being carried out.

An overloaded system can lead to brown outs, fire, interrupted supply, damage to infrastructure and damage to any device connected to that infrastructure. Charging during peak summer and winter months will increase the risk of the system being overloaded.

How each body corporate seeks to regulate this will be a future source of dispute. Will it be:

- Up to all owners to fund those expensive works – even if there is no appetite to have an electric vehicle;
- the owners that come after the capacity load limitation has been reached bear the cost – where those that came before, do not need to contribute and benefit on a first-in best-dressed basis;
- the earlier adopters who have to bear all the cost for which all other users benefit from (at no cost to them); or
- a more convoluted cost sharing scheme entered into whereby the service agreement and improvement approval conditions provide for an obligation on owners to contribute to the improvement costs (if and when they are required) – and any later owners who want to come online to the system then reimburse the existing owners. Any rights or obligations under these arrangements would also need to address those owners selling or buying their lots in the scheme.

We suspect the latter option is the most equitable but expect

that most bodies corporate will allow the first few installations on a first-in best-dressed basis and then descend into a dispute when the next owner wants to install their infrastructure, (rightly) does not want to pay for the entire system upgrade and then disputes this against the body corporate.

Common facilities

An alternative to owners needing to install their own charging infrastructure in their car park is for bodies corporate to install a common electric charging facility, available to occupiers on a booking system.

If bodies corporate were to take this path (and maintain control over the use of

the charging facilities and infrastructure requirements) it would be imperative for a by-law to be imposed that regulates how the charging facility is used by occupiers.

Even this path is not without its issues. Owners that do not have an electric car (who would be contributing to the common property costs) may object on the basis that the body corporate has an obligation to recover the costs of services that are provided to occupiers. If that then leads to a cost recovery process, the body corporate may then be caught up in the supply regulations and obligations.

Conclusion

Electric vehicles in a body corporate is a complicated issue that cannot be solved with a simple electric vehicle by-law.

It should be dealt with by proactive committees acting early to adopt a policy of how it is going to treat electric vehicles in the scheme and arranging for the necessary supply agreements, approval conditions and arrangements for capacity upgrades to be put in place. ■

❖ Structuring ❖ Income Verification ❖ Accounting/Taxation ❖ Superannuation ❖ Audit

Are you looking for a pre-purchase financial verification report, profit and loss for sale or just an accountant who really understands your management rights business?

We provide a comprehensive range of compliance and consulting services for all entity types operating within the industry.

Jonathan Grant Accountants operates within a wide referral network of other professional industry specialists and we are dedicated to ensuring you receive the right advice from the right people.



JONATHAN GRANT ACCOUNTANTS

PO Box 391 WEST BURLEIGH QLD 4219

Phone: (07) 5534 4333 | Fax: (07) 5534 2081

reception@jonathangrant.com.au | www.jonathangrant.com.au



PREFERRED SUPPLIER

