

## Topic 5 - Limitation of by-laws

The BCCM Act promotes self-management of community titles schemes. One example of this is by enabling the owners (the body corporate) to decide the by-laws that apply to their scheme.

However, by-laws must be consistent with the provisions set out under the BCCM Act.

### Limitations

While the body corporate may be able to make by-laws, the legislation places limitations on the content. Section 180 of the BCCM Act provides:

#### 180 Limitations for by-laws

- (1) If a by-law for a community titles scheme is inconsistent with this Act (including a regulation module applying to the scheme) or another Act, the by-law is invalid to the extent of the inconsistency.

*Example for subsection (1)—*

If a by-law for a community titles scheme purporting to give a body corporate manager, service contractor or letting agent exclusive use of common property is inconsistent with the regulation module applying to the scheme, the by-law is invalid to the extent of the inconsistency.

- (2) Subsection (1) does not apply to an inconsistency between a by-law and a local law or UDA by-law if the inconsistency is about keeping animals on scheme land.
- (3) If a lot may lawfully be used for residential purposes, the by-laws can not restrict the type of residential use.
- (4) A by-law can not prevent or restrict a transmission, transfer, mortgage or other dealing with a lot.

*Examples—*

1 A by-law can not prevent the owner of a lot from leasing or mortgaging a lot.

2 A by-law can not prevent the sale of a lot to a person under or over a particular age.

- (5) A by-law must not discriminate between types of occupiers.

*Example—*

A by-law can not prevent a tenant from using a pool on the common property.

- (6) A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.

Even though a by-law is recorded in the CMS for a scheme it does not mean the by-law is enforceable or valid. Section 115L(2)(b) of the *Land Titles Act 1994* states it must not be presumed the by-laws for the scheme included in the CMS are valid and enforceable just because it has been recorded with the Registrar.

Bodies corporate are ultimately responsible for ensuring the by-laws they adopt are consistent with the BCCM Act and other relevant legislation. Should a dispute arise regarding the validity of a by-law an aggrieved person may wish to lodge a dispute resolution application with the Commissioner's Office for the by-law to be ruled invalid by an adjudicator.