

Topic 4 - History of by-laws

As we have already seen the by-laws for a community titles scheme appear in the CMS under the heading of "BY-LAWS" (A. s168). It is often thought that if a scheme was established prior to the BCCM Act, then the by-laws in schedule 4 of the BCCM Act will apply and the scheme by-laws were changed when the BCCM Act came in.

This is not so.

Before the commencement of the BCCM Act in 1997 community management statements did not exist. Prior to 1997, bodies corporate were subject to the "statutory" by-laws in the applicable act and a body corporate could resolve to add to its by-laws and submit a document called a Notification of Change of By-Laws for registration with the Registrar of Titles.

The BCCM Act at its commencement on 13 July 1997 acknowledged that existing plans registered under the *Building Units and Group Titles Act 1980* would require a CMS to identify, among other things, their by-laws. The transitional provisions of the BCCM Act provide that "existing" plans became new plans under the BCCM Act and that an "interim" CMS would apply.

The transitional provisions further provide that if after three years the interim statement was still the CMS for a scheme the Registrar of Titles would record a "standard" CMS to replace the "interim" statement.

The standard CMS states at Item 5. By-Laws that the by-laws are "taken to be those in effect as at 13 July 2000...." meaning those by-laws that applied prior to that date.

Many bodies corporate still have a standard CMS and if that is the case a search at a Land Registry Office must be conducted to ascertain what by-laws apply. For example, the body corporate, at times, may have added or removed by-laws and recorded these as a Notification of Change of By-Laws. These will appear under "dealings" in a search of the common property title for the scheme.

If there is no Notification of Change of By-Laws recorded, the by-laws will be those that were contained in the legislation that applied to the scheme or plan when it was first registered, subject to the following sections. The Land Registry will be able to identify the registration date and the act under which the plan was registered.

The following sections provide information on the by-laws under those acts.

Building Units Titles Act 1965-1972

A body corporate established under the *Building Units Titles Act 1965-1972* (BUTA) was subject to the by-laws contained in the First and Second Schedule of BUTA. BUTA provided that a body corporate could, by unanimous resolution, add to, amend or repeal the First Schedule by-laws. BUTA further provided that no addition or amendment to the First Schedule by-laws would have effect until the body corporate lodged a notification of change of by-laws with the Registrar of Titles (Land Registry of the Department of Natural Resources and Water).

Similarly, the Second Schedule by-laws could be added to, amended or repealed. But unlike the First Schedule by-laws, these changes only required authorisation by special resolution and additionally the body corporate did not have to lodge any form of notification with the Registrar of Titles.

Building Units and Group Titles Act 1980

With the introduction of the *Building Units and Group Titles Act 1980* (BUGTA), the First Schedule by-laws under BUTA no longer applied. By-law 1 of the Second Schedule in BUTA was inconsistent with BUGTA and no longer had any effect. By-law 2 of the Second Schedule (animals) still applied. The transitional provisions of BUGTA provided at Section 5(10) that the former by-laws would still be the by-laws applying to the plan.

On 3 October 1988, BUGTA was amended. The amendments effectively meant that the former by-laws (Second Schedule by-laws and any additions, or amendments etc) plus the Third Schedule by-laws of BUGTA that were not inconsistent with the former by-laws were part of the by-laws. However, due to the provisions of Section 5 (10B) it would appear that a body corporate was required to lodge a notification with the Registrar of Titles within 6 months of the commencement date (3 October 1988) for the additions or amendments to be recognised. Accordingly, it seems that a body corporate that did not lodge a notification would simply retain the Second Schedule by-law (animals) under BUTA and the Third Schedule by-laws under BUGTA.

Body Corporate and Community Management Act 1997

By-laws should now be contained on the Community Management Statement (CMS) which is registered with the Department of Natural Resources and Water.

The BCCM Act provides “statutory” by-laws set out in Schedule 4.

For schemes established after 13 July 1997 a developer is required when registering a new community titles scheme to also register the first CMS. If the new CMS does not include provisions that “are or purport to be” by-laws then automatically, the “statutory by-laws at schedule 4 of the BCCM Act will apply. (A s168(2))

Where can I get copies of the CMS?

Information on obtaining copies of the CMS or “dealings” can be obtained from the Land Registry Office on phone: 13 13 04 or go to www.derm.qld.gov.au/contactus/property.html