



Body Corporate and Community Management

Online Training – Unit 5 – By-laws

Topic 05 – 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 PDA 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.
- (7) A by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers of lots included in the scheme and the use of the common property for the scheme.
- (8) A by-law must not include a provision that has no force or effect under the Building Act 1975, chapter 8A, part 2.

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 Title 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 to seek an adjudicator's ruling on the validity of the by-law.