Community Land Management Act 2021 and Regulations – Time to Review your Management Statement?

The long awaited update to the Community Schemes legislation is expected to commence on 1 December 2021 this year. The changes are significant and apply to almost all aspects of the community legislation.

This article is directed towards some of the more significant changes relevant to Community Association's Management Statements and by-laws:

Limited Savings Provision:

Schedule 3 Clause 4 of the Community Land Management Act 2021 (**CLMA 2021**) states:

> *4 Existing management statements and by-laws*
>
> *(1) The management statement of an existing scheme, as in force immediately before the commencement of section 127, continues in force and is taken to have been made in accordance with this Act.*
>
> *(2) Despite any other provision of this Act, a by-law continued in force by this Act is taken to be a valid by-law if it was a valid by-law immediately before the commencement of section 128.*

Schedule 3 Clause 4 continues in force a management statement and by-laws valid before commencement. There is an NCAT decision Gurram v Owners Corporation SP 36589 [2018] NSWCATCD 39, suggesting that this does not extend to by-laws specified by the new act to be of no force or effect. If correct (we think it is), this would mean that existing by-laws would continue, but only to the extent consistent with the CLMA. This indicates the need for schemes to review their management statements and by-laws.

More Restrictions on By-laws

Consistent with the Strata Legislation, there are new provisions, set out in section 130 of the CLMA 2021 restricting the effect of by-laws that are unjust (harsh, unconscionable or oppressive), restrict persons under 18, or restrict assistance animals.

It is likely that the NSW Civil and Administrative Tribunal will adopt a similar approach to its interpretation and application of these restrictions, particularly in relation to the requirement that a by-law not be harsh, unconscionable or oppressive.

BANNERMANS LAWYERS

T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

By way of example, it is likely, based on the findings of the Court of Appeal in *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250 that a blanket prohibition on pets in a community association will likely be subject to challenge.

Changes to resolution requirements for the making or amending of certain by-laws

Under the Community Land Management Act 1989 (**CLMA 1989**), there previously existed a subset of by-laws within a management statement relating to the essence or theme of a Community Association, which could only be amended by unanimous resolution.

Amendments to the by-laws of a Community Association, is now governed by section 131 (generally) and 135 (association property rights by-laws) of the new CLMA 2021, which places a general requirement for a special resolution to amend the management statement.

Further, in relation to sustainability infrastructure resolutions, including those that require an amendment to the management statement, a special resolution requires only a majority in favour.

A key difference is that the time to register an amendment is now extended to 6 months rather than the previous 2 months under the CLMA 1989.

There are additional rights under section 129 permitting an association's by-laws to impose occupancy limits on lots, but subject to the following limitations:

- The limit cannot be for fewer than 2 adults per bedroom.
- The limit is of no effect to extent inconsistent with laws and planning approvals.

In addition to the above the Community Land Management Regulations - regulation 26 negates any limit where all residents are related, with extended definition of related to include de facto, carer and indigenous kinship relationships.

By-Law enforcement

Section 137 permits an association to issue a notice to comply.

If a notice relates to breach of a condition under an association property rights by-law or non-payment of an amount due under such a by-law:

- the person will not be entitled to vote on a motion to amend management statement as it relates to the restricted property (e.g. to remove person's right to use it), and
- the person loses the right to use the restricted property until compliant.

Section 138 also provides that Tribunal may impose a civil penalty for breach:

- Failure to comply with notice to comply – 10 penalty units ($1,100).
- Plus previous civil penalty within 12 months – 20 penalty units ($2,200).

Section 138(3) states that the Tribunal can impose larger penalties:

- Penalty of 50 penalty units for failure to comply with a notice to comply.
- Monetary penalty of 100 penalty units with previous penalty within 12 months.

In the equivalent section of the SSMA 2015, the larger penalties are limited to breaches of by-laws relating to occupancy limited under s137 of the Act. There is no such restriction specified under the CLMA 2021, although this may be an oversight to be corrected.

Monetary penalties are payable to the association unless the Tribunal orders otherwise and may be registered and enforced as a judgment debt.

These are just some of the key by-law amendments that the associations should be considering, and depending upon what by-laws you have there may be others.

Prepared by Bannermans Lawyers
14 October 2021

BANNERMANS LAWYERS

T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA