



By-laws

The following explains the purpose of by-laws and how they can be enforced under the *Body Corporate and Community Management Act 1997* (the BCCM Act). It is not an exhaustive guide to by-laws or their enforcement. The legislation should be consulted as the primary reference.

What are by-laws?

By-laws are a set of rules for a community titles scheme that regulate a variety of matters including the keeping of animals, noise and parking on common property. The BCCM Act allows bodies corporate to either adopt standard by-laws set out in the BCCM Act, or to make rules that best suit individual circumstances. The body corporate committee should give copies of the by-laws to owners and occupiers, to ensure they are familiar with their rights and responsibilities as set out in the by-laws.

What by-laws apply to a scheme?

By-laws are contained in the community management statement (CMS) for a community titles scheme. The CMS is a document held in the Land Registry of the Department of Environment and Resource Management. The CMS also contains other information about a body corporate, including the name of the scheme, the regulation module applying to the scheme, and the schedules of lot entitlements.

A body corporate which was in existence before 13 July 1997 automatically retains the by-laws applying to it immediately before that date. For example, if the by-laws contained in the 'Third Schedule' to the previous legislation (the *Building Units and Group Titles Act 1980*) applied to a body corporate before 13 July 1997, those by-laws continue to apply to the scheme until different by-laws are adopted. By-laws can only be changed if the body corporate for the scheme adopts a new CMS identifying different by-laws. The changes only come into effect when the new CMS is recorded by the Registrar of Titles.

You should contact your body corporate secretary or the Information Service if you are not sure which by-laws apply to your scheme.

What is an exclusive use by-law?

An exclusive use by-law attaches to a lot in the scheme, and gives the occupier of the lot exclusive rights and enjoyment (or other special rights) to a part of common property or a body corporate asset. For example, an exclusive use by-law may give the owner of a unit an exclusive right to use a common property courtyard adjacent to that unit.

The body corporate can impose conditions on a grant of exclusive use of the common property. For example, the body corporate could require the owner of the lot with the benefit of an exclusive use by-law to make periodic payments to the body corporate.

Unless there is an particular provision in the exclusive use by-law to the contrary, the lot owner who has exclusive use or other rights is responsible for the maintenance and operating costs for that part of the common property.

How are by-laws made?

A body corporate may make additional by-laws, or amend or repeal existing by-laws, provided they comply with the BCCM Act.

The body corporate may make specific by-laws allowing it to:

- administer, manage and control common property and body corporate assets
- regulate the use and enjoyment of lots, common property, assets, services and amenities supplied by the body corporate.

To formalise a by-law, the body corporate must, in a general meeting, consent to a new CMS. A new CMS identifying the changes to the by-laws must be consented to by special resolution.

The rules for making exclusive use by-laws are stricter than those for making ordinary by-laws. An exclusive use by-law may attach to a lot only if:

- the lot owner agrees in writing
- a resolution without dissent is passed consenting to the recording of a new CMS.

There are limitations on the types of by-laws which can be adopted by a body corporate. A by-law cannot:

- be inconsistent with the Act or other legislation (for example, a by-law cannot provide that the body corporate will not hold an annual general meeting each year)
- prevent or restrict a transmission, transfer, mortgage or other dealing with a lot (for example, a by-law cannot state the type of people who can buy a unit)
- discriminate between types of occupiers (such as families with children).

How are by-laws enforced?

The body corporate is responsible for enforcing its by-laws. The committee as the administrative arm of the body corporate is usually responsible for ensuring all owners and occupiers comply with the by-laws. However, owners and occupiers can also commence enforcement action if certain conditions are met. Enforcement action usually commences with the issue of mandatory notices, however there are limited circumstances in which the service of a notice is not required.

Preliminary procedure for enforcement by body corporate

Sections 182, 183 and 184 of the BCCM Act (when read together) provide that contravention notices must be issued before any formal enforcement action is taken.

The decision to serve a contravention notice can be made by the committee or by the body corporate in a general meeting.

Types of contravention notices

1. Continuing contravention notice

The body corporate may give a continuing contravention notice to an owner or occupier where it reasonably believes that the person is contravening a by-law, and where, given the circumstances, it is likely that the contravention will continue. An example of this type of contravention is where an owner is parking a vehicle on common property without approval.

The purpose of this notice is to require the person to remedy the contravention. Section 182(4) of the BCCM Act specifies the details that must be included in the notice. BCCM Form 10 may be used as a guide and is available from the BCCM Office.

2. Future contravention notice

The body corporate may serve a future contravention notice on an owner or occupier if it reasonably believes that the person has contravened a by-law and the circumstances of the contravention make it likely that the contravention will be repeated. This notice would be appropriate when an owner has a noisy party which contravenes the noise by-law. The body corporate may give the owner notice that if this contravention is repeated, proceedings can be commenced in the Magistrates Court without any further notice.

The purpose of the future contravention notice is to require the person not to repeat the contravention. Section 183(4) of the BCCM Act specifies the details that must be included in the notice. BCCM Form 11 may be used as a guide and is available from the BCCM Office.

Consequences of failure to comply with a contravention notice

If an owner or an occupier fails to comply with a contravention notice, the committee, or the body corporate in a general meeting, can decide to commence enforcement proceedings in the Magistrates Court or in the BCCM Office. The BCCM Act empowers the Magistrates Court to impose a financial penalty for failure to comply with the notice.

Preliminary procedure for enforcement by owners or occupiers

If an owner or an occupier 'reasonably believes' that:

- another owner or occupier has contravened the by laws
- it is likely the contravention will continue or be repeated.

He or she must take a preliminary step before taking action in the BCCM Office. (**Note:** there is no provision in the BCCM Act for an owner/occupier to commence proceedings in the Magistrates Court).

The owner or occupier ('the complainant') must ask the body corporate to issue a contravention notice to the person who is allegedly contravening the by laws. The BCCM Act requires that the approved form (BCCM Form 1) be used to request the body corporate to issue the contravention notice. The form is available from the BCCM Office.

If the body corporate does not, within 14 days after receiving the request, advise the complainant that the contravention notice has been issued, the complainant may take action in the BCCM Office.

Dispensing with ‘preliminary procedures’

The body corporate or a lot owner or occupier may lodge an application without giving a preliminary notice if the requirements set out in section 186 of the BCCM Act are met, namely:

1. ‘special circumstances’ justify the dispute being resolved urgently. Special circumstances include contraventions which:
 - a. are likely to cause injury to people or serious damage to property
 - b. are a risk to people’s health or safety
 - c. are causing a serious nuisance to people
 - d. for another reason, give rise to an emergency, or
2. the by-law contravention is incidental to an application for an order under section 281 of the BCCM Act (namely an application for an order to repair damage or reimburse amount paid for carrying out repairs).

The application must initially be for an interim order of an adjudicator.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

Information Service telephone (freecall): 1800 060 119

Email: bccm@justice.qld.gov.au

Website: www.justice.qld.gov.au/bccm

Street address: Level 17, 288 Edward Street, Brisbane

Postal address: GPO Box 1049, Brisbane Qld 4001

Copies of the *Body Corporate and Community Management Act 1997*, the regulation modules, and any amendments can be accessed for free via the Office of the Parliamentary Council at: www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm or purchased from SDS, Ground Floor, Mineral House, 41 George Street, Brisbane. SDS Customer Service can be contacted on: 07 3118 6900 or 1800 679 778 or at: www.publications.qld.gov.au.

Disclaimer

The laws referred to in this guide are complex and various qualifications may apply in different circumstances. The information in this factsheet does not constitute legal advice. You are encouraged to obtain independent legal or financial advice if you are unsure of how these laws apply to your situation.

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