

## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 6

## By-law enforcement applications

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. The legislation sets out preliminary procedures for applications seeking to enforce body corporate by-laws [Act, *sections 184-186*]. These preliminary procedures are the requirements that must be met before an application seeking the enforcement of by-laws can be lodged with the Commissioner's Office.
2. Applications that do not comply with the preliminary procedures may be rejected by the Commissioner or dismissed by an adjudicator for not meeting the jurisdictional requirements of the legislation.

### Applications by the body corporate

3. Where a body corporate has concerns that an owner or occupier has not complied with the by-laws, they may firstly consider making informal contact with the person involved to raise their concerns.
4. The first formal step a body corporate must take is to issue a future or continuing by-law contravention notice. A contravention notice can be issued if the body corporate reasonably believes that an owner or occupier has breached a by-law.
5. A contravention notice must specify in a single document:
  - a. That the body corporate believes the person is breaching a provision of the by-laws; and
  - b. The by-law provision the body corporate believes is being breached; and
  - c. Sufficient details to identify the contravention; and
  - d. That the person must not repeat the contravention, or a reasonable period in which the person must remedy the contravention; and
  - e. That if the person fails to comply with the notice the body corporate may, without further notice, start proceedings in the Magistrates Court or lodge a dispute resolution application.
6. The Commissioner's Office provides BCCM Forms 10 and 11 which set out all the requirements for a contravention notice. The use of these forms is not mandatory but if a form is not used, the body corporate must ensure that the notice includes all five elements outlined above.



7. The contravention notice must name and be sent to the person who the body corporate believes is contravening the by-law. The body corporate must specifically identify the individual/s on the contravention notice. If the person contravening the by-law is an occupier, the body corporate must also provide a copy of the notice to the lot owner.
8. If the person breaches the by-law again following receipt of the contravention notice, the body corporate may lodge an application with the Commissioner's Office.
9. The person named in the contravention notice must be named as the respondent in the application.

#### **Applications by an owner or occupier against the body corporate**

10. Where an owner or occupier (the 'complainant') is concerned that another owner or occupier has not complied with the by-laws, they may firstly consider making informal contact to raise their concerns.
11. The first formal step the complainant must take is to issue a notice to the body corporate advising that they reasonably believe the by-laws are being breached. The complainant must use BCCM Form 1, which is a prescribed form.
12. The notice must name the person who the complainant believes is breaching the by-law (the 'accused person'), and clearly identify both the by-law being contravened and how the by-law is being contravened. The complainant must specifically identify the individual/s on the contravention notice.
13. It is advisable that the complainant also give a copy of the notice to the person who the complainant believes is breaching the by-law.
14. On receipt of the BCCM Form 1 the body corporate should notify the complainant within 14 days after receiving the request of whether a contravention notice has been given to the person allegedly breaching the by-law.
15. If the body corporate notifies the complainant that it has issued a contravention notice, the body corporate is then responsible for taking action if the contravention notice is not complied with.
16. If the accused person continues to contravene the by-law and the body corporate does not enforce the by-law, the complainant may lodge an application to require the body corporate to take enforcement action. The complainant would name the Body Corporate as the respondent and the accused person as the affected person.

#### **Applications by an owner or occupier against the accused person**

17. If the body corporate does not notify the complainant that it has issued a contravention notice or it resolves not to issue a contravention notice, the complainant may lodge an application directly against the accused person, seeking compliance with the by-law.
18. Before making an application directly against the owner or occupier breaching a by-law, the complainant must show that, in addition to the BCCM Form 1 served on the body corporate, the complainant has also attempted internal dispute resolution with the accused person. In particular, the application should demonstrate that the complainant has notified the accused person of their complaint and given that person an opportunity to rectify the complaint before lodging an application with the Commissioner's Office.

### **Dispensing with preliminary procedures**

19. In some limited circumstances, a body corporate or any owner or occupier may bring an application to enforce a by-law without having complied with the applicable preliminary procedures if:
  - a. The by-law contravention is incidental to an application for an adjudicator's order [under Act, *section 281(1)*] to repair damage or reimburse an amount paid for carrying out repairs; or
  - b. The application is for an interim order of an adjudicator and the applicant reasonably believes that special circumstances apply which make it necessary for the dispute to be resolved urgently.
20. Special circumstances may apply if the by-law contravention is:
  - a. Likely to cause injury to people or serious damage to property; or
  - b. A risk to people's health or safety; or
  - c. Is causing a serious nuisance to people; or
  - d. Otherwise gives rise to an emergency.

### **Other relevant information**

21. Refer to the attached by-law enforcement process flowchart which has been provided as a guide only.

## **COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT**

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