

Enforcing Body Corporate By-laws



Body Corporate and Community Management

How to ask questions

- Keep questions until the end of the presentation
- Only questions about by-law issues will be answered
- We prefer you use the Q&A function for questions
- If you cannot access Q&A, you can ask questions via the chat function



TOPICS

- Overview of by-laws
- Validity of by-laws
- By-laws for your scheme
- Enforcing by-laws
- Pet by-laws
- Parking by-laws



Overview of by-laws

By-laws may only: (Section 169 Act)

- Provide for administration and management of common property and assets
- Regulate use and enjoyment of:
 - lots
 - common property and utility infrastructure
 - assets, including easements
 - services and amenities supplied by the body corporate



Validity of by-laws

To be valid a by-law must not: (Section 180 Act)

- be inconsistent with the BCCM Act or any other Act
- discriminate between types of occupiers
- restrict type of residential use
- prevent a mortgage or sale of a lot
- impose a monetary liability
- be oppressive or unreasonable



Body Corporate and Community Management

By-laws for your scheme

For all schemes:

- By-laws on CMS will be the enforceable by-laws

Schemes created between Oct 1980 and July 1997 if nothing on CMS:

- Check what is registered at Titles Queensland
- Probably Schedule 3 BUGTA plus any amendments, additions or deletions



Body Corporate and Community Management

By-laws for your scheme

Schemes created pre 1980 if nothing on CMS:

- Schedule 3, other registered by-laws plus pre 1980 by-laws that have been registered or retained under amendments



Enforcing by-laws

- To be enforceable a by-law must be registered on the scheme's CMS or at Titles Queensland.
- If a by-law is suspected of being invalid it does not prevent the body corporate from carrying out initial steps to enforce them e.g. contravention notices then applying for conciliation.
- Adjudicator may not be able to make an order to enforce an invalid by-law.
- Read Practice Direction 6 – by-law enforcement.



Owner enforcing by-laws

- Owner or occupier (tenant) gives BCCM Form 1 - Notice to body corporate of a contravention of a body corporate by-law
 - Prescribed form (you must use the form)
 - Body corporate has 14 days to advise complainant if they are issuing a notice
- Occupiers (tenants) can enforce using Form 1
- Do not need to go through their real estate agent
- Form 1 can be given directly to offender as part of direct self-resolution



BC ignoring BCCM Form 1

After 14 days, owner/occupier can lodge a conciliation application against either or both:

- the body corporate for not enforcing the by-laws
- the owner/occupier breaching the by-law if self-resolution has been attempted directly with offending owner/occupier

Conciliation Application must have a copy of form 1 and any other evidence of attempts to resolve the issue attached



BC enforcing by-laws

- Committee (or general meeting) must make decision to issue contravention notice and to lodge conciliation application to enforce the by-laws
- Can be a verbal or written reminder at first
- Committee must issue contravention notice to enforce further and may use:
 - BCCM Form 10 Notice of continuing contravention of a body corporate by-law
 - BCCM Form 11 Notice regarding likely future contravention of a body corporate by-law



Continuing contravention

BCCM Form 10 – continuing contravention notice - is used in situations where the contravention is continuing for example:

- Pergola built without approval
- Pet without approval
- Lot painted purple
- Continuous parking on common property

BCCM Form 27 for Specified Two-lot Schemes Module



Body Corporate and Community Management

Future contravention

BCCM Form 11 – future contravention notice - is used in situations where a breach has occurred repeatedly and is likely to occur again in the future, for example:

- Parties
- Occupier repeatedly parking in a visitor's car park
- Approved pet causing a nuisance – barking

BCCM Form 28 for Specified Two-lot Schemes Module



Skipping notices

- Owner/occupier can skip Form 1 (Section 186 Act)
- BC can skip contravention notices
- In special circumstances where contravention is:
 - likely to cause
 - injury to persons; or
 - serious damage to property; or
 - is a risk to the health or safety of persons; or
 - is causing a serious nuisance to persons; or
 - for another reason, gives rise to an emergency.



Offender not complying

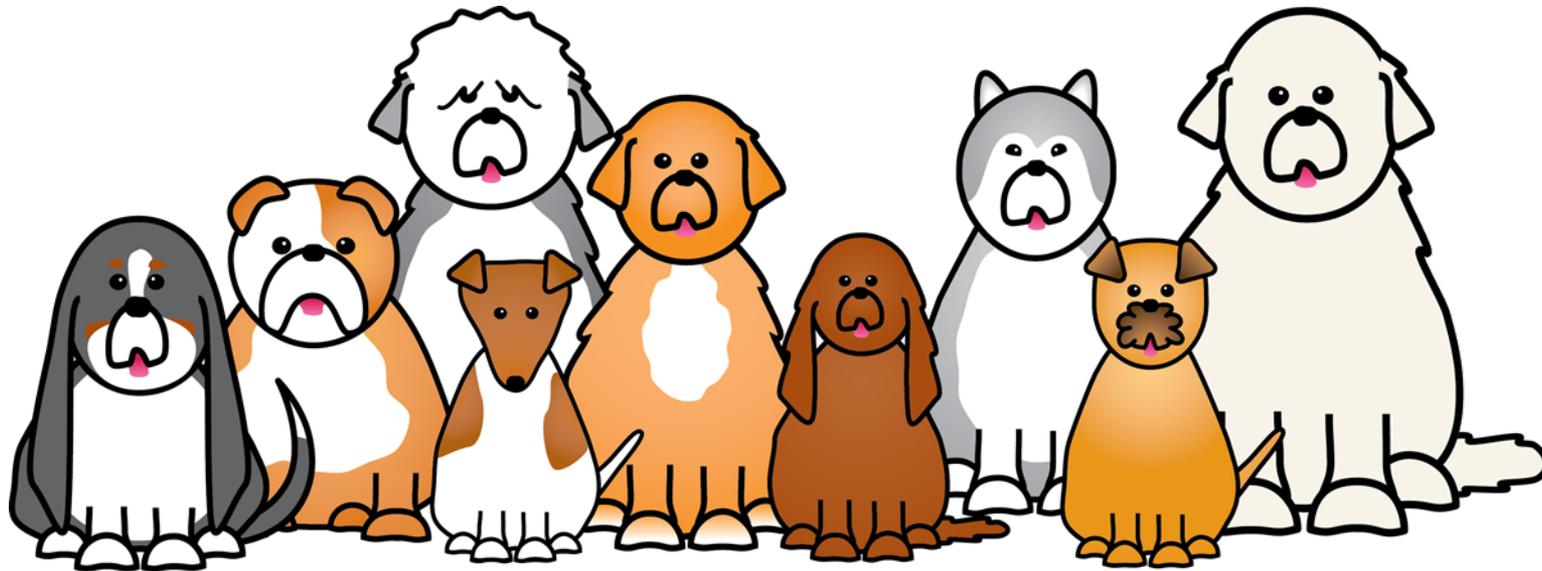
The body corporate may consider two options:

- start proceedings in the Magistrates Court for the court to impose a monetary penalty
 - committee can authorise proceedings to enforce by-laws (Section 312 Act, Section 42 Standard Module 2008)
- apply for conciliation
 - committee can authorise dispute resolution process with BCCM



Animal by-laws

- Permissive by-laws
- Prohibitive by-law
- Assistance animals



Body Corporate and Community Management

Permissive by-laws

- Permissive by-laws are fairly common
- Animal allowed with written permission of body corporate
- May not need any permission but still need to comply with other by-laws such as noise
- You need to ask permission if you are:
 - an owner or occupier (includes tenants)
 - a prospective purchaser or occupier (includes tenants)



Permissive by-laws

- Committee or body corporate must act reasonably when making a decision (Section 94 of the Act)
- Animals approved on a case by case basis
- New animal needs new approval
- Body corporate cannot charge application fee to approve animal (Adjudicator's Order - Lenvilla [2018] QBCCMCmr 146)



Permissive by-laws

- Committee or body corporate can set different reasonable conditions for each approval
- More appropriate to set conditions that address concerns than to outright refuse permission
- Committee needs to focus on avoiding a dispute
- Dispute outcome is very likely that animal will be permitted by adjudicator unless the committee has valid and strong reasons for saying no



Permissive by-laws

When the body corporate has approved an animal with reasonable conditions:

- Committee / body corporate can still enforce by-laws or nuisance provision and seek to have an approved animal removed
- Will have evidence of nuisance or by-law breach if animal has been in the scheme rather than saying no based on hypothetical situations



Prohibitive by-laws

- Some schemes still have prohibitive by-laws
- Can be enforced through contravention notice and conciliation
- Adjudicator may not be able to make enforcement order for a potentially invalid by-law
- Wording may fully prohibit animals or restrict a type or number eg no dogs over 10kg or only one dog



Prohibitive by-laws

- Committee and body corporate cannot give permission for an animal the by-law prohibits
- Owner can attempt to change by-law by proposing motion to a general meeting
- By-law could be found to be invalid – eg being oppressive and unreasonable (Section 180 of the Act)



Guide and assistance dogs

- Animal must be registered in Queensland under *Guide, Hearing and Assistance Dogs Act 2009*
- Can be trained or in training
- Section 181 of the Act states:
 - Person with registered animal has right to enter common property or lot with animal or keep an animal on lot
 - By-law cannot restrict this right



Parking

- Parking on common property
- Visitor car parks
- Towing



Parking

- Permissive parking by-law is common
- Committee must act reasonably – i.e approve parking as long as car will not obstruct, cause nuisance or damage
- Committee approval is NOT granting exclusive use
- Committee can revoke approval at any time



Visitors' car parks

- Visitors' car parks are regulated by local council planning requirements
- Removing visitors' car parks may need application to local council
- Committee cannot authorise occupiers to park in visitors car parks
- No definition of visitor in Act – can be short term or long term visitor who is not living at premises
- Visitors' parks can have time limit in by-law



Towing

- Body corporate must follow by-law enforcement process for parking issues
- By-laws stating body corporate is authorised to tow vehicle may be invalid
- Body corporate can be found liable for damage to property
- Obtain legal advice before towing a vehicle



Towing

- Ability to tow depends on who is breaching the by-laws.
- Third party with no connection to the scheme possibly can be towed – but get legal advice first
- Legitimate visitors in visitors parks should normally not be towed
- Occupier parking in another person's carpark e.g part of the lot or exclusive use – can be dealt with directly by the owner or through the body corporate enforcing the exclusive use by-laws.



Contact us & Questions?

Phone: 1800 060 119 (free call back service)

Online enquiry: www.qld.gov.au/bodycorporatequestion

Website: www.qld.gov.au/bodycorporate

Search Adjudicators' Orders:

<http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/qld/QBCCMCmr/>



Body Corporate and Community Management