



## The golden rules of by-law enforcement

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Acquiescence. Such a beautiful word. But not when it comes to by-law enforcement.

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Enforcing by-laws is not an optional activity. By-laws must be enforced, and the responsibility for their enforcement lies with the committee.

There are a few golden rules that all committees must follow when it comes to by-law enforcement.

### You must resolve to enforce by-laws

The by-law enforcement process in the *Body Corporate and Community Management Act 1997 (BCCM Act)* must be followed.

The BCCM Act sets out a specific procedure for enforcing by-laws. Regardless of your personal view on the effectiveness (or otherwise) of these procedures, the committee must follow them. Deviate from the procedural requirements at your peril!

Firstly, when the committee (acting reasonably) forms the view that a by-law is being contravened, it must resolve to serve a by-law contravention notice. The operative word here being *the committee must resolve to serve the contravention notice*. This means that the committee has to make a decision, either at a properly convened committee meeting or by flying minute, to serve the contravention notice on the offending person.

Of course, all the usual rules about notice of committee meetings, minutes, etc. will apply.

If there is no decision backing up the serving of a contravention notice, an adjudicator or conciliator is likely to make you start the whole process again.

The BCCM Act lists a number of matters that must be detailed in a by-law contravention notice. Again, if you fail to include any of the matters required by the Act, your notice will likely be deemed invalid. Preparing contravention notices requires careful drafting and particular care should be taken to ensure the notice is not later struck down by an adjudicator.

### Does a resident manager do the by-law enforcing?

If you are in a scheme that has a resident manager, the resident manager's role should be reporting breaches of the by-laws to the committee. It is the committee alone that can enforce by-laws.

That's not to say the manager (or a committee member) won't have a gentle word with the offender about the rules before anything further happens, but the enforcement action we are talking about is far more formal than that.

If the resident manager is acting as letting agent for the owner of the lot whose occupant is offending the manager may have rights under the tenancy agreement with respect to that tenant. That will be on the owner's instructions, though – not the body corporate's.

If the offender is not a lot in the manager's letting pool (being an outside agent or an owner occupier), then the manager has no rights whatsoever with respect to that occupant.

### Contraventions must be acted on whilst they are current

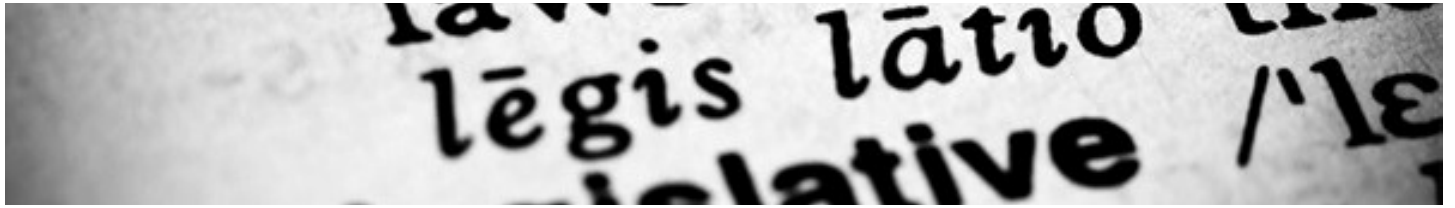
The purpose of by-laws is to ensure a sense of order exists throughout the scheme and to make sure owners and occupiers act in a civilised way, mindful of the needs of others and the body corporate more broadly.

Accordingly, if someone is contravening a by-law and the committee knows about it, they have a responsibility to other owners and occupiers to try and address the issue.

The importance of acting quickly is also important from the point of view of the Commissioner's Office. If a by-law enforcement matter makes it way to the Commissioner's Office, they will expect the dispute to be a current dispute. If the committee doesn't enforce by-laws whilst the contravention is current, the body corporate is likely to lose its right to complain about that particular by-law contravention.

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## Unlawful by-laws should not be enforced

The by-laws for a scheme are contained in the community management statement (**CMS**). When a CMS is registered, no one at the relevant government department combs through the by-laws to determine whether they are all lawful. Our experience is that every scheme has at least one (but usually a lot more) unlawful by-laws.

The requirement to enforce by-laws does not apply to unlawful by-laws because this would be considered unreasonable and in contravention of the BCCM Act. If you try and enforce an unlawful by-law, the Commissioner's Office will come down harshly and likely make comments that the committee has acted unreasonably – not a good look if you are going for re-election!

For example, by-laws that amount to a blanket prohibition on pets or that allow towing of vehicles will be **considered unlawful**. In some circumstances, towing has been permitted but only when the committee has followed the by-law enforcement process exactly according the requirements of the legislation and has received an adjudicator's order saying that the vehicle can be towed.

So don't go charging in regardless with enforcing every by-law. Make sure it is valid first. If you want help with that, click [here](#) to send us your CMS for an obligation free quote.

## Conclusion

We have assisted hundreds of bodies corporate in reviewing and enforcing their by-laws. We also regularly act for lot owners defending allegations of breaches of by-laws. We have drafted contravention notices, advised on the requirements of the legislation and the validity of by-laws and have made applications through the Commissioner's Office.

If you require assistance, please let us know. It is important that all steps taken by a committee are correct and reasonable. You don't want to receive an adjudicator's decision and for it to be the first time you realise there was a mistake in the process as it is quite possible you'll have to start the process all over again.

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