

By-Law Enforcement Tool Kit¹

By-Laws are the essential mechanism for guiding people towards appropriate and acceptable conduct. They set the standards by which everyone can live in peace and harmony. Like the laws of our country, they provide protection against conduct which affects the safety and common good of all community members.

1. Importance of By-Laws

Living in a home unit, townhouse or villa home community can have its challenges. Those challenges are usually associated with the behaviour of people (owners, tenants and visitors). By-Laws are the essential mechanism for guiding people towards appropriate and acceptable conduct. They set the standards by which everyone can live in peace and harmony. Like the laws of our country, they provide protection against conduct which affects the safety and common good of all community members.

2. Importance of enforcement

Having good by-laws in place is not, in itself, sufficient to ensure a harmonious communal environment. The by-laws need to be communicated to all stakeholders and fairly but firmly enforced. Failure to enforce the by-laws, or make people aware of their content, will diminish their effectiveness. A by-law enforcement strategy is the way to go.

3. By-Law enforcement strategy

An effective by-law enforcement strategy for a body corporate involves the following steps:

STEP 1 – Communicating the by-laws to stakeholders (i.e. owners, tenants and other occupiers).

STEP 2 – Identification of breaches.

STEP 3 – Initial warning to offender.

STEP 4 – Monitoring for any ongoing breach.

STEP 5 – Service of a Contravention Notice on the offender.

STEP 6 – Prosecution for failure to comply with the Contravention Notice.

STEP 7 – Application for an Adjudicator's Order for compliance with the by-law.

STEP 8 – Prosecution for breach of the Adjudicator's Order.

¹ This Tool Kit is suitable for use under all Regulation Modules, except for the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011*.

4. Communicating the by-laws to stakeholders

This is a very important step. People cannot be expected to comply with by-laws if they are unaware of them.

If the by-laws have been newly adopted, a letter to all owners, tenants and occupiers (or as many as can be identified) enclosing a copy of the by-laws is recommended (see **Form A**). In addition, a copy of the by-laws should be posted on the common property notice board, or other conspicuous place. If the by-laws have been in place for some time, a periodic letter to stakeholders reminding them of the by-laws and enclosing an up-to-date copy is recommended (see **Form B**). Permanent display of a copy of the by-laws on the common property notice board is also a good idea.

5. Identification of breaches

This is the effective start of the enforcement process. The by-law breach must be observed and documented. Documentation can involve factual diary notes of what occurred with clear reference to date, times and potential witnesses. It can also involve the taking of photographs. This documentation will be essential if it becomes necessary to enforce the by-law being breached. **Form C** is an example of the type of documentation required.

Responsibility for identifying breaches must be assigned to a person or persons. If there is an on-site manager, they are usually the person who monitors performance of the by-laws, documents and reports breaches to the committee of the body corporate. Alternatively, a member of the committee, or even all committee members, can be given responsibility for monitoring the by-laws.

6. Initial warning to offender

Once a by-law breach has been identified and documented it is reasonable to provide a warning to the offender before formal enforcement action is taken. In many cases offenders are not aware of the fact they are breaching a by-law, or they fail to appreciate the impact of the breach on their neighbours. Bringing the breach to their attention will often result in remedial action and the avoidance of further breaches.

The warning can take one of a number of approaches:

- A friendly 'chat' with the person in breach.
- A preliminary letter (see **Form D**).
- A 'sticker' placed in an appropriate position (such as the windscreen of an illegally parked motor vehicle) (See **Form E**).

7. Monitoring for any ongoing breach

After the initial warning, the person or persons responsible for identifying breaches should monitor further compliance with the by-law to ensure that the previous offender has not re-offended. Again, this involves observing and (if necessary) documenting in the same way recommended in paragraph 5 above.

8. Service of a Contravention Notice on the offender

There are 2 types of Contravention Notices:

- **Continuing Contravention Notice** where the circumstances of the contravention make it likely that the contravention will continue (see **Form F**).
- **Future Contravention Notice** where the circumstances of the contravention make it likely that the contravention will be repeated (see **Form G**).

Issue of the Contravention Notice must be authorised by a resolution of the committee (see **Form H**) and the notice must be properly served. If the Contravention Notice is served on a person who is not the owner of a lot in the Scheme, then a copy of the notice must be given to the owner of the lot when the first notice is given, or as soon thereafter as practicable.

Service on an owner may be:

- (a) personal (i.e. by handing it to the person to be served);
- (b) by post to the address for service on the Roll; or
- (c) if no such address is recorded, by post or delivery to the address of the lot.

Service on a tenant or occupier may be:

- (a) personal (i.e. by handing it to the person to be served); or
- (b) by post or delivery to the address of the lot.

A diary note should be prepared recording details of the service (see **Form I**).

9. Prosecution for failure to comply with the Contravention Notice

Failure to comply with a Contravention Notice is an offence which carries a maximum penalty of 20 penalty units (currently \$2,611.00). One option available if a person fails to comply with a Contravention Notice is for the body corporate to prosecute the person who failed to comply with the notice. The criminal standard of proof (i.e. beyond reasonable doubt) applies to any such prosecution.

If the likely cost of the prosecution is within the committee's spending limit, then the prosecution can be authorised by a resolution of the committee. Because of the technical nature of these types of proceedings and the potential liability for costs if a prosecution is not successful, the body corporate should engage a lawyer to act for it in these proceedings.

10. Application for an Adjudicator's Order for compliance with the by-law

The other option available if a person fails to comply with a Contravention Notice is for the body corporate to make an application to the Commissioner's Office for an Adjudicator's order requiring the offender to comply with the by-law. Service of a contravention notice is usually a required first step before such an application can be made. If an order is made and the offender refuses or fails to comply with the order, then they commit a further offence.

11. Prosecution for breach of the Adjudicator's Order

Failure to comply with an Adjudicator's order is an offence which carries a maximum penalty of 400 penalty units (currently \$52,220.00). It is clearly a much more effective remedy than a failure to comply with a Contravention Notice. Again, the criminal standard of proof applies and because of the nature of these proceedings and the costs risk, the body corporate should engage a lawyer to act for it in these proceedings.

12. By-law enforcement by lot owners

If a lot owner is concerned about a by-law breach and the body corporate has refused or failed to take action to enforce the by-law, then the lot owner or occupier can complete an approved Form 1 (*Notice to body corporate of a contravention of a body corporate by-law*) and serve it on the body corporate. The body corporate then has 14 days in which to give a Contravention Notice and advise the complainant that the notice has been given (See **Form J** for the approved Form 1). Service of an approved Form 1 is usually a requirement before an owner or occupier can themselves make an application for an Adjudicator's order.

13. Need help?

This tool kit contains general information and generic forms which may assist the body corporate in dealing with by-law contraventions. It is no substitute for expert legal advice on the specific circumstances of a by-law breach. If you need such advice, please contact one of our experienced body corporate lawyers by telephoning 07 3905 9260 or 02 9199 1055.

Form A

Letter enclosing a copy of by-laws

[Return address and contact details]

Dear Resident,

Notification of new by-laws

The body corporate recently adopted a new set of by-laws for [**building**]. A copy is attached for your information.

Please read this copy carefully and make any adjustments to the use of your unit or the common property which may be required by the new by-laws. This is most important, because the body corporate committee has put in place a strict monitoring and enforcement process for these by-laws involving (in order):

- An initial warning.
- Service of a By-law Contravention Notice (breach of which attracts a maximum penalty of \$2,5611.00).
- Adjudication proceedings under the *Body Corporate and Community Management Act 1997* (where a breach of an order requiring compliance with a by-law attracts a maximum penalty of \$52,220.00).

Your co-operation in ensuring that the new by-laws are complied with would be appreciated. By-laws are an important contributor to an orderly and harmonious communal environment. They ensure that everyone can peacefully enjoy their unit without unreasonable disturbance from other residents. They also preserve the appearance and reputation of the building and contribute to the enhancement of its attractiveness and value.

If you have any questions or concerns, please contact me or the body corporate manager. Otherwise, thank you for your understanding and co-operation.

Yours faithfully,

.....
[Name]

Secretary
Body corporate for [Name] CTS [Number]

Form B

By-law reminder letter

[Return address and contact details]

Dear Resident,

Reminder about by-law compliance

As you know, [*building*] is regulated by a comprehensive set of by-laws. For convenience, a further copy of the by-laws is enclosed with this letter.

It is most important that these by-laws are complied with by all residents and their visitors. There are 2 reasons for this:

1. The by-laws are an important contributor to an orderly and harmonious communal environment in that they ensure everyone can peacefully enjoy their unit without unreasonable disturbance from other residents.
2. There is a process in place for enforcement of the by-laws.

This enforcement process involves (in order):

- An initial warning.
- Service of a By-law Contravention Notice (breach of which attracts a maximum penalty of \$2,611.00).
- Adjudication proceedings under the *Body Corporate and Community Management Act 1997* (where a breach of an order requiring compliance with a by-law attracts a maximum penalty of \$52,220.00).

Your co-operation in ensuring that the new by-laws are complied with would be appreciated.

Yours faithfully,

.....
[Name]

Secretary
Body corporate for [Name] CTS [Number]

Form C

By-law breach documentation

Body corporate for [*name*] CTS [*number*]

By-Law Breach Record

Subject	Available Information
Date of Breach:	
Time:	
Location:	
By-law concerned:	
Details of the breach:	
Witnesses:	
Reported by:	

	Signature
	Date: / /

Attach photographs:

Form D

Warning letter

[Return address and contact details]

Dear [*name*],

Notification of breach of by-law

The body corporate believes that on [*date*] at [*time*] you were in breach of by-law [*number*], which reads as follows:

[*Quote wording of by-law*]

As the breach may have been unintentional, this letter will serve as your initial warning under the body corporate's by-law enforcement process. However, it is important that I point out that a further breach of the by-law will result in a By-Law Contravention Notice being issued, where non-compliance can result in a maximum penalty of \$2,611.00 being applied.

It is most important that all residents comply with the Scheme's by-laws and your future observance of the above by-law, as well as the by-laws generally, would be appreciated by the body corporate committee.

If you have any questions or concerns, please feel free to contact me or the body corporate manager.

Yours faithfully,

.....
[*Name*]

Secretary
Body corporate for [*Name*] CTS [*Number*]



Form E

Warning sticker

WARNING

**This vehicle is parked contrary to By-Law
[*number*].**

**If this occurs again a By-Law Contravention
Notice will be issued (non-compliance with
which can result in a maximum penalty of
\$2,611.00 being applied).**

Body Corporate

Form F

Continuing Contravention Notice

Download from:

<https://publications.qld.gov.au/dataset/body-corporate-by-laws/resource/232ec957-b9e6-4040-8661-5e8bcc26e197>



BCCM

Form 10



Notice of continuing contravention of a body corporate by-law

Body Corporate and Community Management Act 1997

This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM ONLY APPLIES TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:

- *Body Corporate and Community Management (Standard Module) Regulation 2008*
- *Body Corporate and Community Management (Accommodation Module) Regulation 2008*
- *Body Corporate and Community Management (Commercial Module) Regulation 2008*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*

For schemes regulated under the *Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011*, refer to BCCM Form 27 – Notice to continuing contravention of a body corporate by-law (*Specified Two-Lot Scheme*).

Section 1—Respondent

The person/s against whom the complaint is made.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Section 2—Notice

<p>WARNING: If you repeat the contravention while this notice is in force the complainant may, without any further notice:</p> <p>1. Start proceedings in the Magistrates Court for failure to comply with this notice.</p> <p>2. Make an application under chapter 6 of the BCCM Act for the resolution of a dispute.</p>	<p>TAKE NOTICE that the complainant has reasonable grounds to believe that you are contravening the following by-law (<i>insert number and text of the body corporate by-law</i>):</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>and that you have done so in the following manner (<i>provide details of how the by-law has been contravened</i>):</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>You are required to cease the contravention within.....days* of receiving this notice. (*7 days or such other shorter or longer period as is reasonable in the circumstances)</p>
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Section 3

Signed by the authority of the body corporate under seal.	Name of each authorised signatory.
	Name
	Signature Dated: <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Name
	Signature Dated: <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Name of body corporate secretary.....
Address	
Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	

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Form G

Future Contravention Notice

Download from:

<https://publications.qld.gov.au/dataset/body-corporate-by-laws/resource/56ea046a-3590-4091-92d6-0e7054fcd022>



BCCM

Form 11



Notice regarding likely future contravention of a body corporate by-law

Body Corporate and Community Management Act 1997

This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM ONLY APPLIES TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:

- Body Corporate and Community Management (Standard Module) Regulation 2008
- Body Corporate and Community Management (Accommodation Module) Regulation 2008
- Body Corporate and Community Management (Commercial Module) Regulation 2008
- Body Corporate and Community Management (Small Schemes Module) Regulation 2008

For schemes regulated under the Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011, refer to BCCM Form 28 – Notice regarding likely future contravention of a body corporate by-law (Specified Two-Lot Scheme).

Section 1—Respondent

The person/s against whom the complaint is made.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Section 2—Notice

WARNING:
If you repeat the contravention while this notice is in force the complainant may, without any further notice:

1. Start proceedings in the Magistrates Court for failure to comply with this notice.
2. Make an application under chapter 6 of the BCCM Act for the resolution of a dispute.

TAKE NOTICE that the body corporate has reasonable grounds to believe that you are contravening the following by-law (*insert number and text of the body corporate by-law*):

.....

.....

.....

.....

and that you have done so in the following manner (*provide details of how the by-law has been contravened*):

.....

.....

.....

.....

You are required to not repeat the contravention.

Section 3

Signed by the authority of the body corporate under seal.	Name of each authorised signatory.
	Name
	Signature Dated: <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Name
	Signature Dated: <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Name of body corporate secretary
	Address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Form H

Committee resolution authorising notice

RESOLVED THAT the body corporate:

- (a) note the By-Law Breach Record dated [*date*] submitted by [*name*];
- (b) issue and serve a [*Continuing/Future*] By-Law Contravention Notice on [*name*], the [*owner/resident*] of Lot [*number*], for breaching by-law [*number*] in the circumstances set out in that By-Law Breach Record; and
- (c) execute the By-Law Contravention Notice under its common seal, to be witnessed by the Chairperson/Secretary and another member of the Committee.



Form I

Diary note recording service

Body corporate for [*name*] CTS [*number*]

Document Service Record

Subject	Available Information
Document Served:	
Person who Served the Document:	
Person Served:	
Date of Service:	
Time of Service:	
Place where served:	
Details of any conversations:	

.....

Signature

Date: / /

Form J

Notice to body corporate of a contravention of a body corporate by-law

Download from:

<https://publications.qld.gov.au/dataset/body-corporate-by-laws/resource/a7a7843d-5c48-4411-bff7-4ed2cd2e5fc9>



BCCM Form 1



Notice to body corporate of a contravention of a body corporate by-law

Body Corporate and Community Management Act 1997
This form is effective from 28 February 2012

If you need help completing this form, please visit www.justice.qld.gov.au or contact the BCCM Office on free call 1800 060 119.

NOTES: THIS FORM APPLIES ONLY TO SCHEMES REGULATED UNDER THE FOLLOWING REGULATIONS:
• Body Corporate and Community Management (Standard Module) Regulation 2008
• Body Corporate and Community Management (Accommodation Module) Regulation 2008
• Body Corporate and Community Management (Commercial Module) Regulation 2008
• Body Corporate and Community Management (Small Schemes Module) Regulation 2008
For schemes regulated under the Body Corporate and Community Management (Specified Two-Lot Schemes Module) Regulation 2011, refer to BCCM Form 25 – Notice to owner of a contravention of a body corporate by-law.

Section 1—Body Corporate details

Name and address of person authorised to receive notices on behalf of the body corporate.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Section 2—Complainant

Person making the complaint.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Lot number

Section 3—Respondent details

Person/s against whom the complaint is made.	Name
	Postal address
	Suburb State <input type="text"/> <input type="text"/> <input type="text"/> Postcode <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Lot number

Section 4—Complaint details

Insert number and text of the body corporate by-law.	TAKE NOTICE that I/we believe that the respondent has contravened a provision of the following by-law and the circumstances of the contravention make it likely that the contravention will continue or be repeated:
Provide details of how the by-law is being contravened.	I/we believe that the respondent has contravened the by-law in the following manner:
Signature of complainant/s	I/we ask that the body corporate give the respondent a contravention notice for the contravention of the by-law. Signature of complainant/s Dated: <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D D / M M / Y Y Y Y

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