

QUEENSLAND

Deter, or not Deter?
Using by-laws as deterrents



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By-Law Refresher: The Hot Take

- What is a by-law?
- What is a by-law meant to do?
- How do by-laws get made and changed?
- A few by-law myths dispelled
- Relevant legislation

What is a 'Wrong' By-Law?

- Invalid
- Oppressive or unreasonable
- Conflicts with Section 180 ('limitations')
- Anything which prohibits rather than regulates – smoking is an exception
- Only an adjudicator decides a by-law is 'wrong'
- Technically, by-laws must be enforced even if they look and smell 'wrong' – gets very messy and is that reasonable?

‘Wrong’ By-Laws as Deterrents: Please Explain

- Using a by-law the committee knows is likely invalid as a deterrent to encourage good behaviour and compliance
- **OR** using a by-law the committee knows is likely invalid as a deterrent to target or take punitive action against owner or occupier
- Relies on owner or occupier ignorance, misunderstanding or other factors
- Anyone heard of Google?
- Might just be signage about something the committee knows they cannot do – i.e., capping visitor parking at 2 hours

‘Wrong’ By-Laws as Deterrents: The Good

- Encourages good outcomes, behaviour and conduct
- Aspirational in nature
- May promote scheme harmony
- Demonstrates strong leadership by the committee
- Could contribute positively to property values

‘Wrong’ By-Laws as Deterrents: The Bad

- Feelings of oppression, division, discrimination
- May encourage disputes, especially when compliance does not occur
- Costly if challenged in Commissioner’s Office
- Feeds an unhelpful sense of ‘control’ in a committee
- Mistrust: if this is happening, what else is happening that is ‘wrong’?
- Committee loses credibility – making threats they cannot follow through on
- No long-term corporate knowledge

Our Tips

1. Don't kid yourself on consequences
2. Be clear on objectives
3. Should you REALLY be doing this? Is it **reasonable**?
4. Use alternatives, such as persuasive communications and third-party facilitation
5. Get by-laws properly reviewed

QUESTIONS?





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