



# By-laws – Where, what and why?

QUEENSLAND TITLES REGISTRY **FIRST/NEW COMMUNITY MANAGEMENT STATEMENT** CMS Version 4  
Body Corporate and Community Management Act 1997 Page 1 of 1

THIS CMS MUST BE DEPOSITED WITH:  
- A FORM 14 GENERAL REQUEST; AND  
- A FORM 18C (IF NO EXEMPTION TO THE PLANNING BODY CMS NOTATION APPLIES).

A NEW CMS MUST BE LODGED WITHIN THREE (3) MONTHS OF THE DATE OF CONSENT BY THE BODY CORPORATE

Office use only  
CMS LABEL NUMBER

**This statement incorporates and must include the following:**  
*Schedule A - Schedule of lot entitlements*  
*Schedule B - Explanation of development of scheme land*  
*Schedule C - By-laws*  
*Schedule D - Any other details*  
*Schedule E - Allocation of exclusive use areas*

1. Name of community titles scheme	2. Regulation module

3. Name of body corporate

4. Scheme land

Lot on Plan Description	Title Reference

5. #Name and address of original owner	6. Reference to plan lodged with this statement

# first community management statement only

7. New CMS exemption to planning body community management statement notation (if applicable)  
Insert exemption clause (if no exemption – insert 'N/A' or 'not applicable')

\*If there is no exemption or for a first community management statement (CMS), a Form 18C must be deposited with the Request to record the CMS.

8. Execution by original owner/Consent of body corporate

Execution Date:      /      /

\*Execution

\*Original owner to execute for a first community management statement  
\*Body corporate to execute for a new community management statement

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# By-law basics

- Kept in schedule C of the CMS – looks like > > >
- How do I get a copy? Easiest way is to:
  - ask your body corporate manager for a copy;
  - search the body corporate record; or
  - do a search of the titles office (for a fee).
- The copy you were given when you purchased may not be the current by-laws as they do change from time to time.

# By-law basics

- Just because they are registered does not mean they are valid, lawful or enforceable.
- Are there to be enforced – by-laws are to regulate the conduct of owners and occupiers. By-laws are not there to regulate the body corporate, grant additional powers to the committee or to act as disclosure of certain issues to owners.
- To enforce them successfully (assuming valid) – needs to follow a specific step by step process without shortcutting it.
- There is a positive obligation on committees to enforce by-laws.

# By-laws and house rules

- By-laws – enforceable rules (if valid) that are kept in the CMS, approved by general meeting and recorded in the titles office.
- House rules – unenforceable rules made by the caretaker or committee that are put on a notice board or circulated by email. They are not recorded anywhere are at best, guidelines.
- What if the by-laws contemplate the committee making house rules? Both the by-law and the house rule will be unenforceable:

*Atlantis West [2010] QBCCMCmr 190:*

*The Atlantis West Renovation Procedures, Agreement and Conditions (and apparently other similar documents) appears to have been made by the Committee... However it is important to recognise that such rules do not replace or override the by-laws and are not legally enforceable against an owner or occupier...To purport to delegate rule-making power to a committee resolution is therefore inconsistent to the Act and consequently invalid....Therefore, the Atlantis West Renovation Procedures, Agreement and Conditions (and similar documents) are permissible as guidelines which are not binding on owners and occupiers...*

# Why are there variances between by-laws



- The initial by-laws that a scheme is recorded with will be those that the developer chose. That choice could be based on:
  - the developer's own precedent – which would change over time;
  - the developer's lawyer's precedent – which would change over time;
  - the facilities and structure of each specific scheme; or
  - legislative changes.
- Over time those changes will be cherry picked and expanded upon without any real thought as to the requirements of the BCCMA.
- The original by-laws are chosen pre-development and are not considered by those stakeholders after the development – who do not work with the BCCMA day in-day out.
- Means there is a lot of “bad by-laws” adopted over time.

# Validity – regulation

- Rules are set out in section 169 and 180 of the BCCMA.
- By-laws must be “regulatory”. Regulatory is not prohibitive. Regulatory is something that contemplates conduct.
- EG – which of the two is valid and which is invalid:
  - An owner or occupier must not keep a pet in their lot.
  - An owner or occupier must not keep a pet in their lot, *without body corporate approval*.

# Validity – limitations

- *If a by-law for a community titles scheme is inconsistent with this Act (including a regulation module applying to the scheme) or another Act, the by-law is invalid to the extent of the inconsistency.*
  - e.g. – the Body Corporate may access a lot upon 3 days' notice.
- *If a lot may lawfully be used for residential purposes, the by-laws can not restrict the type of residential use.*
  - e.g. – a lot may not be used for short term letting.
- *A by-law can not prevent or restrict a transmission, transfer, mortgage or other dealing with a lot."*
  - e.g. – a lot may only be sold to a person over the age of 55.

# Validity – limitations

- *A by-law must not discriminate between types of occupiers.*
  - e.g. – the pool may only be used by owner occupiers.
- *A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.*
  - e.g. – An owner must reimburse the body corporate for any costs incurred related to a breach of these by-laws.
- *A by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers of lots included in the scheme and the use of the common property for the scheme."*
  - The catch all for all by-laws.



# Validity – limitations

- *A by-law must not include a provision that has no force or effect under the Building Act 1975, chapter 8A, part 2*
  - e.g. – roof colours, energy efficient windows, house orientation, floor area, minimum bathroom/bedroom requirements, solar hot water or panel installations.
- *A by-law cannot interfere with the rights of a person with a disability who has the right to be accompanied by a guide, hearing or assistance dog.*

# How to draft and prepare new by-laws



- The answer is not combining a set of by-laws that has been consolidated based on other by-laws cherry picked from other schemes.
- Any by-law should be put through the filter of:
  - Sections 169 and 180 of the BCCMA; and
  - identifying any issues in the by-laws that are dealt with separately in legislation. If it's dealt with in the legislation then it shouldn't be a by-law.
- Once the by-law is drafted – it needs to be incorporated into a general meeting motion and considered by special resolution.

# How to draft and prepare new by-laws

- Once approved at a general meeting a new CMS is prepared. This is a complete redraft of the existing CMS with only the approved changes being made. There is no amendment or variation document.
- Once CMS drafted and signed, it is lodged with the Titles Office for registration.
- Biggest issue here is the exclusive use plans. If they are out of date (which commonly takes place) the body corporate will be required to obtain new plans, even if it is a 1 line unrelated change to the by-laws.

# Enforcing by-laws



Once we know the by-law is valid, there are two obligations:

- Must enforce by-laws. In Artique [2021] QBCCMCmr 596 the adjudicator relevantly provided:

[46] I will make a comment about the body corporate. The body corporate has said this is a matter between the applicant and the respondent and it declined to make a submission on this application. It did not issue a by-law contravention notice in response to the applicant's complaints. In correspondence to the applicant, it said it gave the respondent a copy of the bylaw and tried to 'broker a resolution', but that it was a personal interpretation as to whether there was a breach and it could not make that determination.

[47] The body corporate is not obliged to enforce section 167 of the Act, but it does have a statutory obligation to enforce the by-laws, including By-law 5. Moreover, it must act reasonably in undertaking its functions and in making decisions. If the body corporate did not reasonably believe the respondent was in breach of By-law 5, it did not need to issue a by-law contravention notice to her. If it was unsure if the by-law had been breached, it could have asked the applicant for more evidence to assist it in making a decision. However, I do not consider that it could fail to act simply because it thought it was not its responsibility to decide if the by-law had been breached or that it was just a matter between residents.

- Must act reasonably (i.e. not single out some owners).

# Enforcement – step 1 (contravention notice)



- Issue a contravention notice:
  - continuing contravention notice – if the breach is ongoing (such as an unapproved installation); or
  - future contravention notice – for anticipated and recurring breaches (such as noise complaints or intermittent parking issues).
- Must be sent to occupier (who is contravening the by-laws) and the owner.
- No required format but there are templates available.

# Enforcement– step 1 (contravention notice cont.)

Contravention notice needs to:

- relate to an enforceable by-law;
- be authorised by the committee through a resolution;
- be reasonable in all of the circumstances;
- be issued in circumstances where the committee believes the recipient:
  - has contravened the by-laws (or is contravening the by-laws); and
  - will likely contravene (or continue to contravene) the by-laws again;

# Enforcement– step 1 (contravention notice cont.)

Contravention notice needs to:

- specifically include the following statements:
  - that the body corporate believes the person has contravened a by-law;
  - the by-law the body corporate believes has been contravened;
  - details sufficient to identify the contravention;
  - for a continuing contravention – the period in which the contravention must be remedied;
  - for a future contravention – that the person must not repeat the contravention; and
  - that if the person does not comply with the notice the body corporate may, without further notice, take steps in the Magistrate's Court of OCBCCM.

# Enforcement – step 2A (conciliation)

- Can't skip conciliation – it is mandatory.
- Involves submitting a dispute resolution application and waiting for the Commissioner's Office to schedule a conciliation session.
- Generally resolves the issue – conciliator will sometimes read the offender the riot act.
- Most important issue here is evidence of the contravention.
- Not enforceable unless the parties specifically agree to a consent order.



# Enforcement– step 2B (Court)

- To impose a fine for a breach of the contravention notice.
- Generally not a real option as Commissioner's Office specifically set up for the process.
- However as of late is worthwhile considering.
- Will be more expensive.
- Will be faster.
- Less likely to obtain a result – Magistrates can be unpredictable and may not appreciate their time being used for a body corporate issue where a specified process exists.

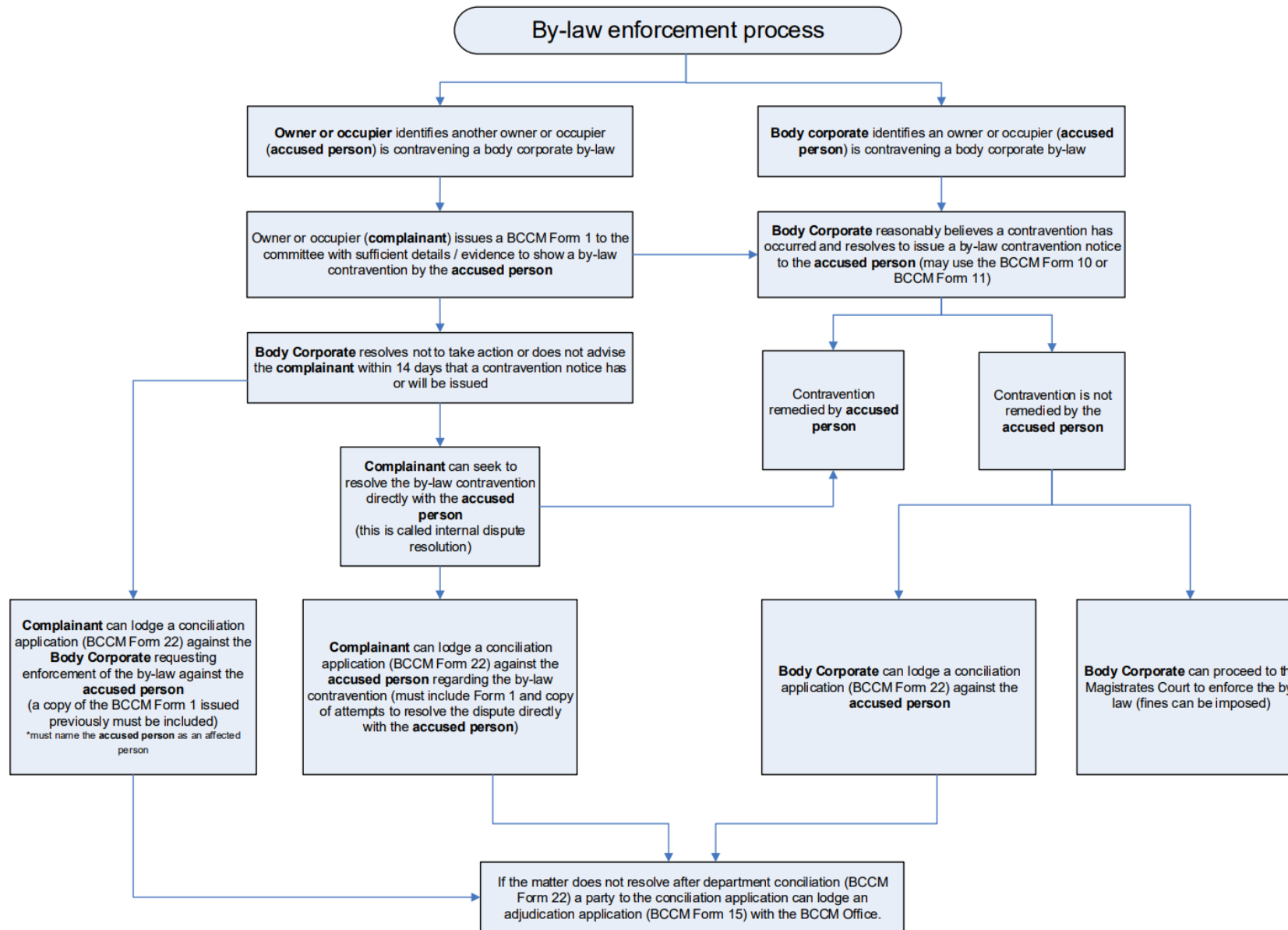
# Enforcement – step 3 (adjudication)



- Needed if conciliation unsuccessful or any non-binding agreement reached is breached.
- Similar to a conciliation application but a higher threshold of submissions and addresses the legal issues.
- Need to make sure that the contravention notice is valid and there is evidence to prove the ongoing or repeated breaches.
- Can take 3-18 months but there is no real alternative.
- Once an order is received – serious consequences if not complied with.

# Enforcement as an owner

- Can send the body corporate a form 1.
- This will trigger the body corporate's obligation to take the enforcement steps.
- If the body corporate fails to do so the owner can:
  - make an application to force the body corporate to enforce the by-laws; or
  - be empowered to enforce the by-laws directly in lieu of the body corporate.



## OCBCCM – practice direction 6

# Further information

- <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/179eb62f-a441-4c66-80d3-45f4c6856a4c/pd6-by-law-enforcement-applications.pdf?ETag=e696a5f7b700027f431336b271c46276>
- <https://www.mahoneys.com.au/making-sure-your-by-laws-are-correct/>
- <https://www.mahoneys.com.au/by-law-series-part-1-what-by-laws-are-legislated-to-provide-for/>
- <https://www.mahoneys.com.au/by-law-series-part-2-limitations/>
- <https://www.mahoneys.com.au/by-laws-series-part-3-what-by-laws-limitations-continued/>
- <https://www.mahoneys.com.au/heading-by-law-series-part-4-enforcement/>



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