

ENFORCING BY-LAW BREACHES



What are by-laws?

By-laws are rules which regulate a building and its occupants



Why are by-laws enforceable?

By-laws are a legal obligation i.e. a statutory contract



Who is bound to comply with the by-laws?

- Owners corporations
- Owners
- Occupiers
- Any mortgagees in possession .

By-laws are a statutory contract which bind each of the above parties as if the by-laws had been signed by all of them.

What is the purpose of by-laws?

By-laws may be made in relation to

- The Management
- Administration
- Control
- Use or enjoyment of the lots or the common property

By-laws must not be inconsistent with the SSMA or any other law otherwise they will be of no force or effect

By-laws generally govern items such as:

- Keeping of pets
- Noise
- Parking
- Smoking
- Behaviour



Why it is important to enforce by-laws?

- To have order
- To have clearly established guidelines for what is and is not permissible within the building (and lot)
- To ensure proper behaviour of residents. Some examples include
 - Smoking on the common property or balconies
 - Management of noise and where people park
 - Uniformity of the appearance of the building



How they are enforceable? What is the procedure?

Step 1: Issue of FIRST By-Law Breach Letter

- The Secretary of the Owners Corporation will often issue a warning letter first citing the breach of by-law and asking the offender to stop.
- If you have a Building Manager they may perform this role.
- While this step is not compulsory, in our experience it is prudent, because the alleged offender is afforded the opportunity to:
 - a). Defend their position
 - b). Comply with the by-law without further escalation of the matter

Step 2: Issue a second By-Law Breach letter

7-14 days letter

How they are enforceable? What is the procedure?



Fair Trading

Notice to Comply with a By-Law

Strata Schemes Management Act 2015 (section 146)

Name/s of lot owner or occupier

Address

Postcode

The owners corporation of Strata Plan has decided to issue you this notice.

It believes that you have contravened by-law number

A copy of the by-law is attached.

The owners corporation believes that you have contravened this by-law by: (state action causing contravention and give dates and details.

Example: On (date) you parked motor vehicle (registration number) on common property driveway without permission.)

You must comply with the by-law immediately by: (state action required to stop the contravention.

Example: Removing motor vehicle (reg. no.) from the common property driveway)

You must stop contravening this by-law and obey it now and in the future. If you do not comply with the by-law, the owners corporation may apply to the NSW Civil and Administrative Tribunal to impose a monetary penalty on you.

Signed for and on behalf of the owners corporation
(please sign)

Name of signatory (please print name)

Date

DD/MM/YYYY

IMPORTANT INFORMATION ABOUT THIS NOTICE

1. This Notice should refer to one by-law only.
2. The strata committee, or owners corporation (if it has decided not to let the strata committee issue this Notice), must convene and hold a meeting to decide to issue this Notice or to issue notices for the type of breaches concerned in this Notice, and record

Step 3: Issue a Notice to Comply

Is there a specific form of notice?

YES

It is a prescribed form issued by the Secretary:

- You must use the prescribed form and complete it strictly in accordance with its instructions

A Notice to Comply formally seeks compliance with a by-law failing which the offender risks a fine through NCAT.

An Affidavit of Service must be completed and sworn before a JP or Solicitor in relation to service of the Notice to Comply





Who can issue a Notice to Comply?

- Only an Owners Corporation can issue the Notice to Comply unless the strata manager has been delegated this function, in which case, no resolution of either the Owners Corporation or strata committee is required.
- The Notice to Comply must contain a copy of the by-law allegedly breached.
- An Owners Corporation has powers to enforce by-laws if it is satisfied that an owner or occupier has breached a by-law

What happens if the breach continues?

Step 4 : Apply to NCAT for Penalty & Compliance Orders

The Owners Corporation may apply to NCAT for a monetary penalty that the offender has breached the by-law since the issuance of the Notice to Comply
(up to 10 penalty units = 10 x \$110 = \$1,100).



Are there time limits for seeking a penalty?

- Yes:
an application for a monetary penalty must not be made later than 12 months after the Notice to Comply was issued.



Proceeds of penalties

Penalties are paid to the Owners Corporation unless the Tribunal orders otherwise.

Step 4 : Application for NCAT Orders

- The Owners Corporation can:
 - Seek Mediation as a precursor to applying for Orders from NCAT that there has been a breach of by-laws;
or
 - Mediation can result in a mediated agreement or if the offender does not attend/declines Mediation, then the owners corporation can seek Orders from NCAT to determine whether a by-law has been contravened.
 - Breach of NCAT Orders can result in a civil penalty of up to \$5,500 (payable to the Owners Corporation)

Summary of Steps

Step 1

Step 2

Step 3

Step 4

Issue 1st By-Law
Breach Letter

Issue 2nd By-Law
Breach letter

Issue a notice
to comply

Apply to NCAT for
penalty and compliance
orders

(As soon as breach is reported)

(7-14 days later)

(Within 14 days)

What happens if there is a breach after a notice to comply is issued?

1st monetary penalty

- Up to \$1,100 (Application must be made within 12 Months of Notice to comply)

What happens if the breach continues after NCAT issues a monetary penalty?

- A monetary penalty of up to 20 penalty units (\$2,200) can be imposed if an offender breaches the by-law within 12 months after issuance of the original monetary penalty.
- Up to 50 penalty units (\$5,500) and 100 penalty units (\$11,000) can be imposed for initial and subsequent breaches of the overcrowding restrictions in the SSMA.

Mediation & Application for NCAT Orders

Mediation free and legal representation only if consented to
by all parties

Application for Orders of NCAT
(Fee \$222 for Owners Corporations)
(Legal representation with discretion of the Tribunal)

Attempted Mediation either accepted or declined

Order of NCAT (if successful) that the person is in breach
of the by-laws

In case of breach of Orders of NCAT, OC can apply for civil
penalty and NCAT may order up to 50 penalty units (\$5,500) for
breach of NCAT Order (see S247A SSMA)

Helpful Hints

- Keep a log of dates, times and duration of breaches
- Take photos and videos where possible and permitted by law
- Keep a list of witnesses, complainants in case statutory declarations/affidavits are required and ensure everything is documented
- All the above adds weight to prove the Owners Corporation's case



Case study

- Smoke drift
- Despite persistent complaints, the source of the smoke could not be identified with precision
- No smokers were visible, smoke was difficult to photograph

Issues Arising

- The alleged offenders were adamant that they were non-smokers and that the source of smoke might be their diffuser/incense
- As the Owners Corporation is the applicant to enforce breaches of by-laws it is critical that probative evidence is collected, as the applicant bears the onus of proof



Solution

- This office recommended that the complainant contact the Building Manager immediately in case of suspected smoke to enable the Building Manager to determine the source of the smoke and instigate further action, if required



Results

- The Building Manager did in fact attend on invitation of the complainant and quickly determined the presence of cigarette smoke and its source which was not burning scent
- Cigarette smoke could be seen and smelled drifting from outside a tenant's lot
- The tenant was contacted regarding the outcome of the Building Manager's findings (having had witnesses in attendance)
- The tenant vacated the premises soon after due to the persistence in enforcing this by -law



Need help with By-law Enforcement?

Contact us Today

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