

**Office of the Commissioner for  
Body Corporate and Community Management**

**Practice Direction 6**

**BY-LAW ENFORCEMENT APPLICATIONS**

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This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the policies and procedures applying to dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation and the Commissioner retains the discretion provided for in the legislation in the case management of dispute resolution applications.

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1. The legislation sets out preliminary procedures for applications seeking to enforce body corporate by-laws [Act, *sections 184-186*].
2. Applications that do not comply with the preliminary procedures may be rejected by the Commissioner or an adjudicator for not meeting the jurisdictional requirements of the legislation.

**Applications by the body corporate**

3. Where a body corporate has concerns that an owner or occupier has not complied with the by-laws, they may consider making informal contact with the person involved to raise their concerns.
4. The first formal step a body corporate must take is to issue a future or continuing by-law contravention notice. A contravention notice can be issued if the body corporate reasonably believes that a person (an owner or occupier) has breached a by-law.
5. A contravention notice must specify in a single document:
  - a. That the body corporate believes the person is breaching a provision of the by-laws;
  - b. The by-law provision the body corporate believes is being breached;
  - c. Sufficient details to identify the contravention;
  - d. That the person must not repeat the contravention, or a reasonable period in which the person must remedy the contravention; and
  - e. That if the person fails to comply with the notice the body corporate may, without further notice, start proceedings in the Magistrates Court or lodge a dispute resolution application.

6. The Commissioner's Office provides BCCM Forms 10 and 11 which set out all the requirements for a contravention notice. The use of these forms is not mandatory but if a form is not used, the body corporate should ensure that the notice includes all five elements outlined above.
7. The contravention notice must name and be sent to the person who the body corporate believes is contravening the by-law. If the person contravening the by-law is an occupier, the body corporate must also provide a copy of the notice to the lot owner.
8. After a contravention notice has been issued, and if the notice does not resolve the matter, the body corporate may lodge an application to rectify the contravention named in the notice.
9. The person named in the contravention notice must be named as the respondent to the application.

### **Applications by an owner or occupier**

10. Where an owner or occupier (the 'complainant') is concerned that another owner or occupier has not complied with the by-laws, they may consider making informal contact to raise their concerns.
11. The first formal step the complainant must take is to issue a notice to the body corporate advising that they reasonably believe the by-laws are being breached. The complainant must use BCCM Form 1, which is a prescribed form. The notice must name the person who the complainant believes is breaching the by-law.
12. It is advisable that the complainant also give a copy of the notice to the person who the complainant believes is breaching the by-law.
13. On receipt of the BCCM Form 1 notice the body corporate should notify the complainant within 14 days after receiving the request of whether a contravention notice has been given.
14. If the body corporate notifies the complainant that it has issued a contravention notice, the body corporate is then responsible for taking action if the contravention notice is not complied with. If the body corporate does not take action to pursue the matter, the complainant may only lodge an application to require the body corporate to enforce the contravention notice. In this case the complainant may not lodge an application directly against the person they believe is breaching the by-law.
15. If the body corporate does not advise the complainant that it has issued a contravention notice to the person believed to be breaching the by-laws, the complainant may lodge an application directly against the person they believe is breaching the by-law seeking compliance with the by-laws.

16. In making an application directly against an owner or occupier, the complainant must consider the self-resolution requirements of the dispute resolution process.
17. If the body corporate has not issued a contravention notice, an applicant should demonstrate that the person who they believe is breaching the by-law has been otherwise notified of the complaint and been given an opportunity to rectify the complaint.

### **Dispensing with preliminary procedures**

18. A body corporate or any owner or occupier may bring an application to enforce a by-law without having complied with the applicable preliminary procedures if:
  - a. The by-law contravention is incidental to an application for any order [under Act, *section 281(1)*] to repair damage or reimburse an amount paid for carrying out repairs; or
  - b. The application is for an interim order and the applicant reasonably believes that special circumstances apply which make it necessary for the dispute to be resolved urgently.
19. Special circumstances may apply if the by-law contravention is:
  - a. likely to cause injury to people or serious damage to property; or
  - b. a risk to people's health or safety; or
  - c. is causing a serious nuisance to people; or
  - d. otherwise gives rise to an emergency.



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