



## The five most common invalid by-laws

We see thousands of by-laws every year. The examples below are some of the most common by-laws we see that are unnecessary or unlawful.

By-law	Issue
<p>An Occupier must not create noise at any time likely to interfere with the peaceful enjoyment of a person lawfully on another Lot or the Common Property.</p> <p>Occupiers must take all reasonable steps to ensure that their Invitees abide by the by-laws and do not behave in a manner likely to interfere with the peaceful enjoyment of a person lawfully on another Lot or the Common Property.</p>	<p>The legislative standard is not <i>'likely to interfere'</i> – the standard is not to <i>'unreasonably interfere.'</i></p> <p>All noise will be likely to interfere with someone else's use and enjoyment of their lot – such as hearing a television during the middle of the day or the odd door slamming.</p> <p>The standard required by this by-law is simply not enforceable based on the standards set out by the legislation.</p>
<p>An Owner or Occupier may not keep an animal in their lot or the Common Property.</p>	<p>By-laws that are prohibitory in nature are unlawful. An absolute ban on anything is simply not enforceable. Any building with this by-law has no rights with respect to the keeping of pets, or at best, it is read down to allowing pets with committee consent.</p> <p>A conditional by-law is acceptable, but the question is then the reasonableness of the conditions.</p>
<p>The Committee may require a bond of up to \$300 from an Owner or Occupier before they move into or out of a Lot.</p>	<p>A by-law cannot impose a monetary penalty or payment. That is what this is. If damage is done to common property during a move the remedy for that is action afterwards. A body corporate cannot impose a security requirement for any potential damage.</p>
<p>The committee may set policies or procedures from time to time about the governance of the scheme.</p>	<p>This is a house rule and it is completely unlawful.</p> <p>Any rule that is to be enforceable must go through the by-law approval process set out in the legislation. The committee cannot be given powers to circumvent the legislation.</p>
<p>Where the Committee or the Body Corporate spends money to repair damage caused by a breach of the Act or of these by-laws by any Occupier or Invitee then the Body Corporate is entitled to recover the amount spent as a debt in any court action from the Owner of the Lot from which that Occupier or Invitee came.</p>	<p>A by-law cannot impose a monetary penalty or payment. That is what this is and it is invalid.</p> <p>The body corporate may have rights under the Act to recover costs, but cannot do so through the by-laws.</p>

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