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NCAT CLARIFIES APPEAL RIGHTS AGAINST DECISIONS OF STRATA ADJUDICATORS

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In a recent decision, NCAT has confirmed that it is business as usual and that appeals against decisions of Strata Adjudicators will continue to be dealt with by NCAT in the same manner, even though strata adjudications have been abolished under the *Strata Schemes Management Act 2015*.

Introduction

The *Strata Schemes Management Act 1996* (**old Act**) allowed Strata Adjudicators to make orders to resolve strata disputes. On 30 November 2016, the old Act was repealed and replaced by the *Strata Schemes Management Act 2015* (**new Act**). The new Act abolished strata adjudications. However, there were still strata adjudications pending at the time the old Act was repealed and decisions of Strata Adjudicators under the old Act continued to be made up until recently. This created uncertainty as to whether or not a party dissatisfied with a decision made by an Adjudicator could appeal against the decision after 30 November 2016.

Appeals Against Decisions of Adjudicators – The Old

Under the old Act, a party who was dissatisfied with a decision of a Strata Adjudicator was able to appeal against the decision to NCAT. The appeal was typically conducted as a fresh hearing where the parties were able to rely on new evidence and the party who succeeded before the Adjudicator generally enjoyed little advantage. Those appeals were dealt with by a single NCAT Member. However, the repeal of the old Act abolished strata adjudications and, some thought, appeals against decisions of Adjudicators.

Appeal Rights Against Decisions of Adjudicators – The New

On 5 May 2017, NCAT clarified that the repeal of the old Act did not change the rights of parties to appeal against decisions of Strata Adjudicators and that it is business as usual in that regard: see *Wrigley v Owners Corporation SP 53413* [2017] NSWCATAP 100.

The Wrigley Case

The facts in the *Wrigley* case are straightforward. On 6 September 2016, an owners corporation applied to a Strata Adjudicator for an order to require an owner of a lot in its scheme, Mr Wrigley, to remove his dog. On 24 November 2016, an Adjudicator made the order sought by the owners corporation. On 30 November 2016, the old Act was repealed and replaced by the new Act. On 20 December 2016, Mr Wrigley lodged with NCAT an appeal against the Adjudicator's decision.

In his appeal, Mr Wrigley argued that the procedure to appeal against decisions of Adjudicators was different under the new Act and that instead of the appeal being dealt with as a fresh hearing by a single NCAT Member, the appeal should be dealt with by the Appeal Panel of NCAT comprising two or three Members and be treated as a traditional appeal where the scope for the parties to rely on new evidence was very limited.

NCAT's Appeal Panel disagreed with Mr Wrigley. The Appeal Panel concluded that the procedure to appeal against decisions of Strata Adjudicators had not changed despite the repeal of the old Act. Therefore the Appeal Panel concluded that it does not matter whether a Strata Adjudicator makes a decision before or after the repeal of the old Act on 30 November 2016 and that a person having a right under the old Act to appeal against the decision of the Adjudicator can still exercise that right within any relevant time period specified in the old Act and the appeal is to be determined in the same way that appeals against decisions of Strata Adjudicators have always been determined, namely by way of a re-hearing before a single NCAT Member.

Conclusion

The Appeal Panel's decision provides clarity to stakeholders in the strata industry and confirms that, so far as appeals against decisions of Strata Adjudicators are concerned, it is still business as usual.

About JS Mueller & Co

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for over 30 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.



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