



JS MUELLER & CO
LAWYERS



AN INTERESTING TOPIC: CAN NCAT REVIEW ALL STRATA DECISIONS

Adrian Mueller

Partner | Senior Lawyer

B.Com LLB FACCAL

[Email](#) | [LinkedIn](#)

AN INTERESTING TOPIC: CAN NCAT REVIEW ALL STRATA DECISIONS

A recent hot topic has been the width of the powers given to NCAT to resolve strata disputes. In particular, can NCAT resolve any strata dispute or just some disputes? This interesting issue was considered in a recent decision of the Appeal Panel of NCAT.

The *Strata Schemes Management Act 2015* gives NCAT power to make orders to settle complaints or disputes about the operation, administration or management of strata schemes or the exercise of functions of an owners corporation. But the width of that power is not entirely clear. For example, does the power allow NCAT to make an order to resolve any strata dispute?

For instance, if an owners corporation decides to change the colour of its building to brown, and an owner dislikes that colour, can NCAT make an order stopping the owners corporation changing the colour of the building? Or if an owners corporation decides to install new terracotta tiles to replace existing pavers in an outdoor area, can NCAT stop the owners corporation from proceeding because some owners dislike terracotta tiles even though the majority of the owners wish to install them?

These questions were answered in a recent decision of the Appeal Panel of NCAT in the case of *Quo Warranto Pty Ltd v Goodman* [2022] NSWCATAP 315. In that case, NCAT had to consider whether it was able to make an order to resolve a strata dispute about levies. The Appeal Panel concluded that even though NCAT's power to make orders to resolve a strata dispute is broad, the power is not unlimited. This meant that NCAT could not make an order to resolve a strata dispute unless the person seeking the order shows that they have a cause of action known to the law. The cause of action could arise under the common law (e.g. negligence) or under the *Strata Schemes Management Act 2015* (e.g. a claim for a breach of the statutory duty of an owners corporation to repair common property).

However, the Appeal Panel concluded that if a person who applies to NCAT for an order does not have a cause of action known to the law, NCAT cannot make orders to resolve the dispute that is the subject of the application. This is important. It means that, for example, if an owners corporation makes a valid decision to change the colour of its building or install terracotta tiles in an outdoor area, NCAT does not have power to stop that work proceeding just because a minority of owners do not want the work to go ahead. In other words, NCAT does not have power to embark on a review of the merits of a decision that is made by an owners corporation.





The decision in the *Quo Warranto* case has broad reaching implications. It reduces the scope for NCAT to intervene in many strata disputes. That is good news for owners corporations as it makes it more difficult for their decisions to be successfully challenged in NCAT.

Adrian Mueller

Partner | B.Com LLB FACCAL
adrianmueller@muellers.com.au

About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collections.

02 9562 1266
enquiries@muellers.com.au
www.muellers.com.au



Disclaimer: The information contained in this newsletter is provided for your personal information only. It is not meant to be legal or professional advice nor should it be used as a substitute for such advice. You should seek legal advice for your specific circumstances before relying on any information herein. Contact JS Mueller & Co Lawyers for any required legal assistance.

