

Difficulties Paying Strata Levies?

How to change the amount or when it needs to be paid

Strata levies are part and parcel of ownership of lots within a strata scheme. The owners corporation is entitled to make decisions about the striking of levies to meet its present and future expenses and lot owners are required to make levy payments to continue to remain financial and capable to contributing to the decision-making within a scheme.

How can levies be struck?

Under Sections 81 and 83 of the Strata Schemes Management Act 2015 ("SSMA"):

81 Owners corporation to set contributions to administrative and capital works funds

- (1) *The owners corporation must determine the amounts to be levied as a contribution to the administrative fund and the capital works fund to raise the amounts estimated as needing to be credited to those funds.*
- (2) *That determination must be made at the same meeting at which those estimated amounts are determined.*
- (3) *The owners corporation must levy on each person liable for it such a contribution.*
- (4) *If the owners corporation is subsequently faced with other expenses it cannot at once meet from either fund, it must levy on each owner of a lot in the strata scheme a contribution to the administrative fund or capital works fund, determined at a general meeting of the owners corporation, in order to meet the expenses.*
- (5) *A contribution is, if an owners corporation so determines, payable by the regular periodic instalments specified in the determination setting the amount of the contribution.*

83 Levying of contributions

- (1) *An owners corporation levies a contribution required to be paid to the administrative fund or capital works fund by an owner of a lot by giving the owner written notice of the contribution payable.*
- (1A) *The written notice must be accompanied by the information approved by the Secretary.*
- (2) *Contributions levied by an owners corporation must be levied in respect of each lot and are payable (subject to this section and section 82) by the owners in shares proportional to the unit entitlements of their respective lots.*

- (3) *A contribution levied by an owners corporation becomes due and payable to the owners corporation on the date set out in the notice of the contribution.*
- (3A) *The date set out in the notice must be—*
- (a) *for a contribution levied for the purpose of carrying out emergency repairs—at least 14 days after the day the notice is given, or*
- (b) *otherwise—at least 30 days after the day the notice is given.*
- (4) *Regular periodic contributions to the administrative fund and capital works fund of an owners corporation are taken to have been duly levied on an owner of a lot even though notice levying the contributions was not given to the owner.*
- (5) *In this section—*

emergency repairs means urgent repairs to a building in the strata scheme that are necessary to mitigate a serious and imminent threat to the health or safety of the occupants.

A decision to strike a levy must be made by resolution at a general meeting of the owners corporation. A strata committee or managing agent exercising delegated powers does not have the authority to strike special levies.

However, unexpected levies can often be a source of dispute within strata schemes, especially if the levies involve large sums and/or require payment within an unreasonable period of time.

Special Case | Proceedings involving Owners

There are special rules where an owners corporation incurs costs in Court or NSW Civil and Administrative Tribunal (“Tribunal”) proceedings against lot owners. In this case:

- If the proceedings are in a Court and the owners corporation is unsuccessful:
 - The Court can make a costs order against the owners corporation and frame it such that the successful owner is not required to contribute. Section 98 of the *Civil Procedure Act 2005* (“CPA”). *Moallem v Consumer, Trader and Tenancy Tribunal & Ors* [2013] NSWSC 1700
 - The Court may also make a quarantine order, i.e. an order requiring the owners corporation to raise a special levy to fund a payment it has been ordered to make (not limited to costs), payable by particular owners in particular proportions, as specified in the order, but there is some doubt whether this extends beyond payment orders to the costs of complying with work orders. Section 90 of the *Civil and Administrative Tribunal Act 2013* (“NCAT Act”).
 - An order is required. These consequences are not automatic, as may be the case with Tribunal proceedings (discussed below).
- If the proceedings are in the Tribunal and the owners corporation is unsuccessful:

- The owners corporation cannot pay those costs from the administrative fund and must raise a special levy, to which the successful owner is not liable to contribute. Section 104 of the SSMA. This is automatic, i.e. a Tribunal order is not required.
- There is some doubt as to the extent of the Tribunal's power to make a quarantine order, i.e. an order requiring the owners corporation to raise a special levy to fund payments the owners corporation may be ordered to make, to which the successful owner is not required to contribute:
 - In *Trentelman v The Owners -Strata Plan No 76700 [2020] NSWCATCD*, the Tribunal decided that Sections 104 and 232 gave the Tribunal power to make such an order. However, Section 104 is more limited in scope than Section 90.
 - In *The Owners Strata Plan No. 80412 v Vickery (No 2) [2019] NSWCATAP 97*, the Appeal Panel decided that the Tribunal did not have power to make such an order under Section 90. The Court of Appeal has since allowed an appeal in this case, *Vickery v The Owners - Strata Plan No 80412 [2020] NSWCA 284*. However, the Court of Appeal did not consider the issue concerning the Tribunal's powers under Section 90 material to the issues on which the appeal turned and made no definitive decision on that point. That said, there was strong support for the proposition that the Tribunal can make an order to the effect of Section 90(2). See the judgement of Basten JA at p38 "it is doubtful that the Tribunal would not have the power to make an order of the kind identified in s 90(2)". This would presumably be based on Sections 104 and 232, supporting the decision in *Trentelman*.

How do I challenge a levy?

Levies need to be made in accordance with the requirements of Division 2 of the Strata Schemes Management Act 2015. If levies are not made in accordance with the Act, or if the resolutions at the general meeting to strike the levies are invalidly made, they can be challenged in the Tribunal.

The Tribunal also has the power to vary levies under section 87 of the Strata Schemes Management Act 2015:

87 Orders varying contributions or payment methods

The Tribunal may, on application, make either or both of the following orders if the Tribunal considers that any amount levied or proposed to be levied by way of contributions is inadequate or excessive or that the manner of payment of contributions is unreasonable:

- an order for payment of contributions of a different amount,
- an order for payment of contributions in a different manner.

The SSMA, as well as subsequent decided cases, e.g. *The Owners –Strata Plan No 76830 v Byron Moon Pty Limited [2020] NSWCATAP 186*, indicate crucial limits on the scope of the Tribunal's powers under Section 87, particularly:

- The only circumstances permitting imposition of differential levy contributions, i.e. levy contributions not pro rata to unit entitlements are:
 - Section 82, which effectively permits increased levies in respect of a lot, the use of which increases the owners corporation's insurance costs.
 - Sections 90 & 104 regarding funding of proceedings involving owners.
- Section 87 does not permit differential levy contributions. It permits variation of aggregate contributions payable by lot owners collectively and does not permit variation of levy contributions as between lot owners.
- Where an inequity between lot owners is identified, e.g. where lot owners receive different degrees of benefit from use of common property, this will need to be addressed by a method other than differential levies. Fortunately, there is some scope for this:
 - Where an owner gets the sole benefit of use of some part of the common property and it is considered inequitable that other owners contribute to its maintenance, a common property rights by-law could be made allocating the maintenance obligation to the relevant owner.
 - Where an owner gets the sole benefit of a utility, arrangements could be made for the relevant owner to contract directly with the supplier, negating the owners corporation's liability to the supplier and in turn the owners corporations need to satisfy and recoup that liability. However, this would likely require separate metering and a by-law.
 - An owners corporation can impose charges for various benefits provided to owners, e.g. for use of common property under common property rights by-laws and for benefits under agreements to provide services and amenities. However, this is not quite the same thing, as it would not negate any liability of the owners corporation to third party suppliers (e.g. liability for something supplied to the owners corporation by a third party, which the owners corporation on supplies to one or more owners) and consequently could not displace the need to satisfy and recoup such liabilities by way of levy contributions, except to the extent of charges actually received from the relevant owners.

For more information on this topic please read our factsheet [User Pays By-Laws – An Alternative to Levies?](#)

An application for an order may be made by the lessor of a leasehold strata scheme, an owners corporation, an owner or a mortgagee in possession.

The test for the exercise of power under section 87 is an objective test of whether or not the levies struck are “inadequate or excessive” or if the manner for payment is “unreasonable”. The powers under section 87 relates to the totality of the amount levied, and not whether the levy imposed on the owner of one lot is inadequate or excessive.

The Tribunal can give regards to a range of factors including (but not limited to):

- The purpose of the levy;
- Whether or not the owners corporation has an interest in the matter requiring the levy;
- Whether the decision to strike the levy is reasonable;
- Whether the levy raised is proportional to the proposed expenditure; and
- Whether the method of payment is reasonable.

It is up to the applicant in the proceedings to establish the unreasonableness of the levy proposed.

The commencement of proceedings in the Tribunal can be a lengthy process and owners seeking to challenge levies need to be aware of the inherent risks of litigation, including adverse cost orders if they are unsuccessful.

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