

Enforcement of By-laws

Commonly used options

Two commonly used options to enforce by-laws are:

- Option 1: Notice to comply under section 146 of the Strata Schemes Management Act 2015 (“SSMA”) and penalty proceedings in the NSW Civil and Administrative Tribunal for breach.
- Option 2: Mediation, Tribunal’s orders and penalty proceedings for breach of those orders.

Note:

- This factsheet excludes applications for interim orders in urgent circumstances.
- From 1 July 2021, the Tribunal has the power under section 247A of the SSMA to impose a pecuniary penalty of up to 50 penalty units (currently \$5,500) for a contravention of an order under the SSMA. Application can be made by the applicant for the original order, the owners corporation, an owner or other person with an interest in a lot in the strata scheme to which the order relates or a party to mediation, if the order gives effect to any agreement or arrangement arising out of a mediation session.

Option 1 – Notice to comply and penalty proceedings

- In the circumstances mentioned below, a breach of a notice to comply can result in the NSW Civil and Administrative Tribunal ordering:
 - a penalty of up to \$1,100 which is payable to the owners corporation (unless otherwise ordered); and
 - if an order for costs is made, the owner or occupier paying a significant proportion of the owners corporation’s costs of the penalty proceedings (legal and strata managing agent’s costs).
- The penalty awarded in the first instance is generally minimal. The Tribunal may award a penalty of up to \$2,200 if it is satisfied that the person has contravened the by-law within 12 months after the Tribunal had imposed a monetary penalty on that person for a previous breach of the by-law.
- Please note, for breaches of by-laws regarding occupancy limits, the Tribunal may award a penalty of up to \$5,500 or up to \$11,000.00 for a second offence within 12 months after the Tribunal imposed a penalty for breach of by-laws.
- The penalty is payable to the owners corporation unless the Tribunal orders otherwise.

- The costs implications are generally a greater deterrent than the penalty itself, however the Tribunal cannot award costs unless it deems there are special circumstances warranting an award of costs.
- Notices to comply and penalty proceedings are usually suitable for minor infractions, such as, breaches of parking by-laws and rubbish.
- The time spent and costs incurred in this option are much less than option 2.

If the application is dismissed and the Tribunal deems that there are special circumstances warranting an award of costs, the owners corporation could be ordered to pay the owner or occupier's costs.

The usual steps are set out in the following table.

| Steps | Estimate of time |
|---|---|
| Resolution from the owners corporation that it is satisfied that there has been a breach of the by-law. For 2 lot schemes, a resolution from the owners corporation is not required. The notice can be issued by the strata managing agent upon the request of the other owner. | Time required for a notice of a strata committee or general meeting. For 2 lot schemes, the time required to request the notice be issued the strata managing agent. |
| Preparation, signing and service of notice to comply which is valid for 12 months after service. A separate notice for each by-law and to each owner or occupier should be issued. | 2 weeks. |
| Resolution from the owners corporation that it is satisfied that there has been a breach of the notice to comply and that it will commence proceedings in the Tribunal. | Time required for a notice of a strata committee or general meeting. |
| Complete and file application for a penalty. | No time limit. |
| Tribunal serves application on all parties. | 1 –2 weeks. |
| Directions and/or hearing (if it can't be dealt with, within 30 - 45 minutes it will normally be treated as a directions hearing). | 4 –6 weeks. |
| Compliance with directions. | As per agreed timetable. |
| Further directions hearing. | As required. |
| Hearing. | As set by the Tribunal. |
| TOTAL OF ALL THESE STEPS | Usually, completed within 4 to 6 months, |

| | |
|--|--|
| | however, potentially longer depending on the conduct of the parties. |
|--|--|

Option 2 – Orders to comply with by-laws

- If the steps set out below are followed, an order can be obtained that someone comply with a by-law or undertake activities to comply with a by-law e.g. to not unlawfully park on common property or to remove works installed without the owners corporation's consent.
- The Tribunal has power to make an order that the owner or occupier pays the owners corporation's costs of Tribunal's orders if it finds that there was special circumstances warranting the awarding of costs.
- The owners corporation is only exposed to the owner's or occupier's costs in the event that the owners corporation's application is dismissed and the Tribunal finds that there are special circumstances warranting the awarding of costs.
- From 1 July 2021, the Tribunal has the power under section 247A of the SSMA to impose a pecuniary penalty of up to 50 penalty units (currently \$5,500) for a contravention of an order under the SSMA. Application can be made by the applicant for the original order, the owners corporation, an owner or other person with an interest in a lot in the strata scheme to which the order relates or a party to mediation, if the order gives effect to any agreement or arrangement arising out of a mediation session.

The usual steps involved in this option are set out in the following table:

| Steps | Estimate of time |
|--|--|
| Resolution from the owners corporation that it is satisfied that there has been a breach of the by-law and that it wants to attempt mediation. | Time required for a notice of a strata committee or general meeting. |
| File application for mediation at the Office of Fair Trading. | |
| Office of Fair Trading advises of application being made and tentative time for mediation. | 1-2 weeks. |
| Mediation conducted. | 4 weeks. |
| Mediator issues letter regarding mediation. | 2-5 days. |
| Complete and file application for Tribunal's orders. | No time limit. |
| Tribunal serves application on all parties. | 1-2 weeks. |
| Tribunal gives both parties time to file written submissions and evidence. | 3-4 weeks (subject to further extensions being granted). |

| | |
|---|--|
| Parties file submissions. | By close of submission period. |
| Tribunal issues orders. | 4 –8 weeks depending on workload. |
| Time limit to appeal and/or stay against Tribunal's orders. | 28 days of when notified by the orders. |
| Complete and file application for a penalty. | No time limit. |
| Directions hearing. | 4 weeks. |
| Compliance with directions. | As per agreed timetable. |
| Hearing. | As set by the Tribunal and the parties. |
| TOTAL OF ALL THESE STEPS | Usually, somewhere between 8 to 12, months but could take even longer depending on the conduct of the parties. |

Prepared by Bannermans Lawyers
Updated 11 December 2023