

Enforcement of By-laws

Commonly used options

Two commonly used options to enforce by-laws are:

1. Option 1: Notice to comply under section 146 of the Strata Schemes Management Act 2015 and penalty proceedings in the NSW Civil and Administrative Tribunal for breach.
2. 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.

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) a penalty of up to \$1,100.00 which is payable to the owners corporation (unless otherwise ordered); and
 - (b) 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	Time required for a notice of a strata committee or general meeting
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.
- The case of *The Owners – Strata Plan No. 82306 -v- Anderson* [2017] NSWCATCD 85 confirmed that with the introduction of the Strata Schemes Management Act 2015 on 30 November 2016, there is now no ability for an owners corporation to seek a penalty against an owner or occupier for a breach of an NCAT order made under the 2015 Act.
- It is anticipated that legislative reform will correct this flaw in the 2015 Act shortly.
- The usual steps involved in this option are set out in the following table, noting that a penalty cannot be sought until the legislative reform occurs.

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

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