

Urgent or Emergency = Interim Orders in NCAT

If a matter is urgent and time sensitive, an applicant can seek urgent interim orders in the NSW Civil and Administrative Tribunal (the Tribunal). Key to any interim application is establishing urgency.

Typical scenarios

Typical scenarios where interim orders are appropriate:

1. A lot owner is carrying out works to common property without approval from an owners corporation.
2. An owners corporation is proposing to carry out works that affect a lot owner.
3. A lot owner is proposing to carry out works even though the owners corporation has refused consent to the works being carried out.

Process and orders made

Under these circumstances, the applicant can file an application and may receive orders within 24 – 48 hours that the offending or threatening party cease carrying out works or cease commencing works until an interim hearing can be held. Orders will be made for each party to file evidence in a short timetable in anticipation of an interim hearing that would usually be held within two to three weeks from filing the application.

At the same time as filing the interim application the applicant would typically also file a substantive application where the applicant would be seeking a different set of orders, such as orders that the lot owner remove the unauthorised works and reinstate the common property. Or alternatively orders that the lot owner cease from carrying out any further works until such time as a by-law is made and registered for the works that have been carried out. Depending on the orders being sought, there may be a requirement in the substantive application for the applicant to first attempt to resolve the matter with mediation.

In circumstances where the applicant is seeking that the Tribunal make orders to keep the status quo i.e. seeking orders preventing a person from doing something, like carrying out works to common property or lot property, the Tribunal will often quickly make these orders for the applicant prior to the interim hearing occurring. The Tribunal is typically happy to keep the status quo.

For an applicant to be successful in an interim application, it will need to clearly and concisely set out the case and orders that it is seeking and provide enough evidence for a member to make orders without the parties being present. If they do so, they may be able to quickly obtain orders. If not, it will be determined at the interim hearing between the parties.

Urgency requirement

The urgency requirement to an application for interim orders is crucial. If urgency can be established orders are likely to be made. If a party can show a high level of urgency, an applicant may be successful in obtaining orders for matters much more drastic than keeping the status quo. An applicant who showed dire urgency in a dysfunctional strata scheme was successful in obtaining orders from the Tribunal that the existing strata manager be appointed as the compulsory strata manager, who effectively will make all decisions of the owners corporation without input from the strata committee or the owners corporation. Such decisions include the raising of levies to carry out repairs and maintenance of common property.

An applicant should be very careful that it satisfies the urgency requirement, if it fails to do so, the Tribunal will likely dismiss the interim application. There is a risk that the Respondent may obtain a cost order against the application if the interim application is dismissed. Although, the substantive application, will typically remain on foot.

Scenarios where an interim application will generally be dismissed are in circumstances include :

1. where the applicant is seeking orders regarding the behaviour of the strata committee or owners corporation; and
2. where the applicant is seeking orders with respect to by-law.

In the above scenarios, the Tribunal may determine that a matter is not urgent and interim orders are not appropriate.

In matters where an applicant is seeking orders for repairs to common property, while the urgency requirements may be met, the Tribunal may be reluctant to make orders without allowing the respondent to file a full defence to the allegations made which would include expert evidence. As such, the appropriate application is the substantive application.

The Tribunal may also wish for the parties to first mediate on the matter in an effort to resolve a dispute if the Tribunal deems it necessary.

Before an applicant commences urgent interim proceedings it is strongly recommended that legal advice is obtained because the applicant should be advised and fully aware of the appropriate course of action in order to achieve the best results. Also, there are risks associated with bringing interim proceedings in that a respondent may be successful in obtaining an order for costs against the applicant.

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