

NCAT Expands Possibilities for Recovering Costs in Strata

Matters dealing with strata and community title disputes in NCAT are normally heard in the Consumer & Commercial Division of that Tribunal. In that Division, leave of the Tribunal is required for a party to be legally represented. Further, the question of legal costs is governed by Section 60 of the *Civil & Administrative Tribunal Act* which determines that such costs are payable only when “special circumstances” apply.

Sometimes the Tribunal refuses leave for an owners corporation to be legally represented (particularly if an Applicant lot owner is not legally represented) and it has been generally understood that in those circumstances the owners corporation is unable to recover any legal costs which it incurs in preparing for those proceedings.

NCAT Decision: Recovering Preparation Legal Costs Without Leave for Legal Representation

In a recent decision, *Brandes v. Community Association DP No. 270482 (No. 2)* [2026] NSWCATAP 225, NCAT’s Appeal Panel determined there was no reason in principle why an owners corporation or community association should not be entitled to claim legal costs incurred in assisting it to prepare for a hearing, including assisting a party in drafting documents which are required by the Tribunal.

This means that, in theory, an owners corporation or community association which is required to appear at proceedings in NCAT itself because leave for legal representation has not being

granted, can still engage legal advisors to assist it with preparation of materials required by NCAT, including documents and submissions and, provided the “special circumstances” test is met, can make an application that its opponent pay its legal costs of those proceedings.

Proving ‘Special Circumstances’ Under Section 60 of the NCAT Act

In the *Brandes* decision (and in any case where a party is making an application that the other party pay its legal costs), it is still necessary to demonstrate that “special circumstances” exist that warrant the making of a costs order, as normally each party is required to pay its own costs. In this case the Tribunal determined there were “special circumstances”, as it found the Appellant’s case was weak and misconceived and, therefore, there were special circumstances identified in Section 60(3)(e).

Key Takeaways for Owners Corporations and Strata Managers

This case identifies that a successful owners corporation or community association should consider the possibility of making an application for costs in NCAT proceedings even if it has not been granted leave to be legally represented in those proceedings. Although it may not recover all its legal costs as part of the costs assessment process, if it can demonstrate that “special circumstances” exist, then it may be able to recover a significant portion of those costs.

Need Expert Legal Guidance on Your NCAT Strata Dispute?

Navigating NCAT proceedings and seeking legal cost recovery

requires strategic advice tailored to your specific situation. Whether your Owners Corporation or Community Association is preparing for a Tribunal hearing or considering a costs application, our experienced strata law specialists are here to guide you every step of the way.

[Speak to an NCAT Strata Law Specialist](#)



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Since 1990, Warwick has specialised in strata law, property law and litigation. Recognised for his expertise, he is also a NSW Law Society Accredited Specialist in Property Law. In 2021 he was selected to serve on the Property Law Committee of the Law Society of NSW. [Profile I LinkedIn](#)

Need Expert Strata Law Advice?

Whether you are navigating a complex dispute or looking to protect your scheme, our specialist NSW and Sydney strata lawyers are here to help. We provide clear, practical advice on all aspects of strata law, including by-laws, building defects, and fast levy debt collections. Call our team on 02 9562 1266 or [email us here](#) today.