

# NCAT Again Weighs In On Cost Recovery By-Laws

## Core Findings

*In Nicholson v The Owners – Strata Plan No 104042 [2025] NSWCATCD 202*, the NSW Civil and Administrative Tribunal (NCAT) held that a short-term rental by-law was invalid. The determination was based on a finding that the by-law's cost-recovery provisions were "harsh, unconscionable, or oppressive" within the meaning of the Strata Schemes Management Act 2015.

## Key Legal Principles

**Discretionary Recovery:** By-laws that permit an Owners Corporation to determine and recover administrative costs at its sole discretion, without independent assessment, are likely unenforceable.

**Property Rights:** The imposition of a compulsory bond (e.g., \$1,000) for short-term letting was found to be an arbitrary financial barrier to the exercise of property rights.

**Severability:** The Tribunal determined that cost-recovery mechanisms were integral to the by-law's structure. Consequently, the invalidity of these specific provisions rendered the entire by-law void.

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## The Case: NCAT Determination on

# **Cost Recovery**

In a recent decision NCAT has again weighed in on the debate about cost recovery by-laws. This is the latest in a series of decisions in which NCAT has held that cost recovery by-laws are not enforceable. However, the sun has not completely set on cost recovery by-laws as there are still some other decisions of NCAT which have upheld them.

## **Facts**

An owners corporation introduced a by-law to regulate short term rental accommodation arrangements in its building. The by-law permitted the owners corporation to recover from an owner any reasonable administrative costs, or any other costs and expenses, it incurred as a direct result of the owner using their lot for short term rental accommodation. The by-law also required an owner to pay the owners corporation a bond in the sum of \$1,000.00 or any other amount reasonably determined by the strata committee before using their lot for short term rental accommodation.

## **The Decision**

NCAT concluded that those aspects of the by-law were not inconsistent with the Strata Schemes Management Act 2015 or the mandatory Code of Conduct for short term rental accommodation. NCAT considered that an owners corporation was able to regulate short term rental accommodation arrangements in its own building through a by-law. However, NCAT concluded that those aspects of the by-law were harsh, unconscionable or oppressive and were therefore invalid.

## **The Reasoning**

NCAT concluded that the aspect of the by-law that permitted the owners corporation to recover from an owner any administrative or other costs it incurred as a result of the

owner allowing their lot to be used for short term rental accommodation was harsh because it allowed the owners corporation to unilaterally determine and recover from an owner the costs and expenses it incurred as a result of the owner using their lot for short term rental accommodation “without any requirement for those costs to be reasonable or independently assessed”.

NCAT also considered that aspect of the by-law was harsh because it imposed an immediate liability on the owner to reimburse the owners corporation for those costs without the need for the owners corporation to sue the owner to establish an entitlement to recover those costs and which also could make the owner unfinancial and unable to vote at meetings of the owners corporation. NCAT also disapproved of the aspect of the by-law that allowed the owners corporation to recover those costs from an owner “as a debt” again finding that this essentially allowed the owners corporation to “unilaterally determine and recover costs” from the owner. Ultimately, NCAT found that the by-law imposed an open ended liability on owners which imposed an unreasonable burden on them and shifted the financial risk of owners corporation administrative decisions entirely onto owners without independent oversight which was harsh and unenforceable.

NCAT also held that the requirement for an owner to pay a bond to the owners corporation before being entitled to use their lot for short term rental accommodation was arbitrary and oppressive and constituted a significant encroachment on an owner’s property rights. Further, NCAT held that the ability the by-law gave to the strata committee to determine “another amount” for the bond created uncertainty and the potential for discriminatory application of the bond in particular cases. Ultimately NCAT found that the imposition of a compulsory bond, particularly one with a variable amount that could be determined by the committee, was oppressive and imposed a financial barrier to the exercise of a property right that

exceeded what was necessary to protect the interests of the strata scheme.

## **Severance**

NCAT then considered whether the aspects of the by-law that it concluded were invalid could be severed from the by-law, leaving the remainder of the by-law in force. That depended on whether severing those aspects of the by-law would result in the residue of the by-law operating in a manner wholly different from the original by-law approved by the owners corporation. NCAT concluded that the requirement for a bond and the ability to recover administration fees were integral protections on which the owners corporation relied when adopting the by-law in order to regulate short term rental accommodation in the building and it could not be assumed the by-law would have been approved without those aspects being included in it. For that reason, NCAT held that to sever those aspects of the by-law would leave in place a by-law that lacked the financial safeguards that form part of the “package” that was approved by the owners corporation which, in turn, would result in the by-law operating in a substantially different way to what was intended. For those reasons, NCAT determined that it could not sever the offending parts of the by-law and declared that the entire by-law was invalid.

## **Conclusion**

The case is the latest in a series of decisions in which NCAT has invalidated so called cost recovery by-laws or by-laws that contain cost recovery aspects to them. The recurring theme of those cases is that NCAT disapproves of by-laws that permit an owners corporation to unilaterally determine an amount that it is entitled to recover from an owner or occupier of a lot or which permits an owners corporation to recover any such amount from an owner or occupier as a debt

without having to take legal action to recover the amount. The case is also another example of a decision in which NCAT has disapproved of provisions in a by-law that do not limit the costs that are recoverable by an owners corporation to costs that are reasonable in amount or reasonably incurred.

Does the case have broader implications for by-laws? For example, does the case mean that any by-law that requires an owner to pay a bond is invalid? Perhaps.

However, the sun has not completely set on cost recovery type by-laws. There are some NCAT cases which have upheld them. Those cases are difficult to reconcile with the series of cases which have invalidated cost recovery by-laws. All of this means that the law in this area is unsettled and developing and that cost recovery aspects to by-laws cannot be guaranteed to be enforceable.

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## Determination of Compliance Risk for 2026

As we move into the **April 2026 Strata Reforms**, the focus on “financial fairness” is intensifying. Schemes relying on generic or “off-the-shelf” cost recovery by-laws risk non-compliance.

At JS Mueller & Co Strata Lawyers we recommend a **comprehensive audit of your scheme’s by-laws** to ensure they meet the new standards of transparency and reasonableness established by NCAT.

**The Case:** *Nicholson v The Owners – Strata Plan No 104042 [2025] NSWCATCD 202*

[DO YOUR BY-LAWS RISK NON-COMPLIANCE? BOOK A BY-LAW AUDIT NOW!](#)



## **Adrian Mueller I BCOM LLB FACCAL I Partner**

Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

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