

STRATA LAW SYMPOSIUM

The Honourable Robertson Wright SC ¹

30 September 2026

- 1 Living with other people can be one of the most difficult things in life. Like the Russian Revolutionary, Vladimir Lenin, one can love humanity but hate people, especially if one has to live next door to them.
- 2 Residents in strata units governed by the *Strata Schemes Management Act 2015* (NSW) (SSMA) often live very close to one another and the strata scheme is required to function in accordance with the Act. In these circumstances, the scope for disagreements, disturbance and disputes is enormous and those disagreements, disturbances and disputes must be addressed and resolved.
- 3 The ways to address such problems include initially talking it out respectfully and politely or using a voluntary internal dispute resolution procedure, if available, established under s 216 of the SSMA. If that does not work, one can go to mediation, especially the mediation service offered by NSW Fair Trading to resolve disputes in strata communities. If that does not work, then the most likely option is litigation.
- 4 The *Strata Schemes Management Act* viewed as a whole and, in particular, Pt 12 envisages that the Civil and Administrative Tribunal of New South Wales, known affectionately or otherwise as NCAT, will be the principal forum for the resolution of strata disputes by litigation.² The attitude of the Supreme Court was summarised by Parker J in *The Owners - Strata Plan No 54026 v Phillipa Ternes* [2019] NSWSC 1579 at [50]:

¹ Formerly a judge of the Supreme Court of New South Wales and Inaugural President of the Civil and Administrative Tribunal of New South Wales.

² It can be noted that the Tribunal has no power to make declarations under the SSMA: *EB 9 & 10 Pty Ltd v The Owners SP 934* [2018] NSWSC 464 at [41]; *Walsh v The Owners Strata Plan No 10349* [2017] NSWCATAP 230; nor does it have the power to determine purely equitable claims but it does have the power to determine equitable defences in certain cases: *Steak Plains Olive Farm Pty Limited v Australian Executor Trustees Limited* [2015] NSWSC 289 at [62]-[82].

“In general, the appropriate forum for disputes under the SSMA should in my view be the Tribunal. Applications under that Act form an important part of the Tribunal’s jurisdiction, and the Tribunal has ample powers and resources to deal with this particular dispute.”.

5 My address today is not a theoretical exposition of the dispute resolution provisions of SSMA or the powers of NCAT under the Act rather it is an attempt to address three practical topics that are relevant to litigating strata disputes successfully:

- (1) What characteristics of NCAT make it appropriate for litigating strata disputes and how do you take advantage of them?
- (2) Where do strata litigants in NCAT often go wrong?
- (3) What can one do when the other side is making the proceedings difficult?

What characteristics of NCAT make it appropriate for the resolution of strata disputes?

6 The Tribunal has a number of characteristics that make it somewhat different from a Court and more suitable for determining many strata disputes. These can be summarised as:

- (1) Flexibility in relation to procedure and evidence;
- (2) Limited costs consequences;
- (3) Legal or other representation may not be necessary or appropriate; and,
- (4) Dissatisfied parties have certain rights to appeal to an internal appeal panel within NCAT and do not have to go to the Supreme Court.

7 That is the good news. As in life, however, there is also some not so good news. While these characteristics of NCAT are generally helpful for the strata litigant, it is vital to understand their limitations and exceptions. That, unfortunately, involves a degree of complexity. Nonetheless, lawyers, strata

professionals and strata litigants need to understand where to find the provisions that determine the procedures to be followed in their matters and what the limitations on those provisions are.

- 8 First of all, it is necessary to be aware that the *Civil and Administrative Tribunal Act 2013* (NSW), or the NCAT Act, is composed of the substantive Act, ss 1 to 92 (including Pt 4 headed “Practice and Procedure”), and seven schedules. Of those seven schedules, Schedules 3, 4, 5 and 6 relate respectively to the Administrative and Equal Opportunity Division, the Consumer and Commercial Division, the Occupational Division and the Guardianship Division and are called division schedules. Each of these division schedules specifies which matters are allocated to that particular division and establishes certain specific practices and procedures for that division. Schedule 4 relates to the Consumer and Commercial Division (CCD). By cl 3(1) of Sch 4, proceedings under the SSMA are allocated to the CCD. That is not, however, the only relevant aspect of the Division Schedule.
- 9 Section 17(3) of the NCAT Act provides that “[t]he provisions of a Division Schedule for a Division of the Tribunal prevail to the extent of any inconsistency between those provisions and any other provisions of this Act (except Part 3A [which is not relevant]) or the provisions of the procedural rules”.³
- 10 Accordingly in a strata matter, when you go to the “Practice and Procedure” Part of the NCAT Act, Pt 4, ss 35 to 70, you have to recall that its provisions are subject to what is in Sch 4 to the Act.
- 11 The Practice and Procedure Part of the NCAT Act, Part 4, itself is also quite treacherous because its first section, s 35, provides that each of the provisions of Pt 4 is, somewhat unusually, subject to the NCAT Rules and any regulations made relating to practice and procedure. As a result, when you go to Pt 4 you must bear in mind that the NCAT Rules and the regulations (as well as the

³ “Procedural rules” are defined in s 4(1) of the NCAT ACT as the Tribunal rules and the regulations in their application to the practice and procedure of the Tribunal.

Division Schedule, Sch 4) may override a provision in that Part relating to practice and procedure.

- 12 If you think this is difficult, it is not the first time, in my experience, that NCAT has borne out the wisdom of the 20th century American popular philosopher, Will Rodgers, who opined:

“The minute you read something that you can't understand, you can almost be sure that it was drawn up by a lawyer”.

- 13 Let me now go back to the characteristics I identified earlier.

NCAT's Flexibility

- 14 NCAT's flexibility is principally enshrined in s 38 and nothing in the Division Schedule or the NCAT Rules overrides this section in relation to strata proceedings.

- 15 Section 38(1) allows NCAT to determine its own procedure where there is no legislatively mandated procedure. Under s 38(2), the Tribunal “is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice”. In addition, the Tribunal is to act according to “the substantial merits of the case without regard to technicalities or legal forms”: s 38(4). And, under s 38(5), NCAT is to take such measures as are reasonably practicable:

“(a) to ensure that the parties to the proceedings before it understand the nature of the proceedings, and

(b) if requested to do so—to explain to the parties any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceedings, and

(c) to ensure that the parties have a reasonable opportunity to be heard or otherwise have their submissions considered in the proceedings.

- 16 Finally, s 38(6) states that the Tribunal:

“(a) is to ensure, as far as practicable, that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings, and

(b) may require evidence or argument to be presented orally or in writing, and

(c) in the case of a hearing—may require the presentation of the respective cases of the parties before it to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases.”

17 It does not follow from this, however, that proceedings in NCAT are a legal, procedural or evidentiary free for all.

18 Despite the flexibility inherent in s 38, NCAT is still required to determine matters:

(1) in accordance with law;

(2) having regard to the relevant evidence; and

(3) in a way that is procedurally fair to all parties.

19 The Court of Appeal in *Makowska v St George Community Housing Ltd*⁴ has made clear that although s 38(4) is a legislative requirement that the Tribunal should adopt a relatively informal approach when conducting proceedings, “[i]t does not alter or in any way affect the substantive principles of law which the Tribunal must apply in arriving at its decision”.⁵

20 More specifically in relation to evidence, the specific wording of s 38(2) is important. The subsection states that the Tribunal “is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice”. A distinction is drawn between the rules of evidence and natural justice (or procedural fairness), but such a distinction is not clear cut. The rules of evidence are informed by, and in turn inform, an understanding of natural justice and procedural fairness.

⁴ [2022] NSWCA 5.

⁵ [2022] NSWCA 5 at [47].

Those rules also represent a distillation of experience as to what evidence is likely to be persuasive and reliable. A number of matters flow from this.

- 21 First, while NCAT has considerable scope for flexibility in evidentiary matters, the fact that the rules of evidence do not apply in NCAT does not mean that the nature and quality of the evidence, witnesses and documents relied on can be ignored.
- 22 Common sense dictates that to be likely to be accepted by the Tribunal, evidence should be relevant, reliable and as comprehensive as possible. Thus, even though the rules of evidence do not apply directly, they can assist to determine what evidence is relevant and reliable.
- 23 In addition, a particular case may require expert evidence. If expert evidence is to be relied on, it is worthwhile bearing in mind what is set out in “NCAT Procedural Direction 3 - Expert Evidence”, available on the NCAT website,⁶ Although this Direction is not generally applicable in strata matters without a particular direction of the Tribunal, it can be helpful. This is so because expert evidence is more likely to be cogent and reliable if the requirements of the rules of evidence in relation to expert evidence, including what is set out in the procedural direction, are complied with.
- 24 Secondly, the Tribunal can only decide cases on the basis of the evidence presented to it by the parties which the opposing parties have had the opportunity to consider and challenge. Otherwise, it would not be acting in a procedurally fair manner. For this reason, the Tribunal can and will require that evidence be given orally or in writing with prior notice of the evidence given to the other side.
- 25 Finally, in relation to evidence, it should be noted that NCAT Procedural Direction 7, Use of Generative Artificial Intelligence (GEN AI),⁷ generally prohibits the use of AI to produce evidence and the specific requirements of

⁶ https://ncat.nsw.gov.au/documents/procedural-directions/ncat_pd3_expert_witnesses.pdf

⁷ <https://ncat.nsw.gov.au/documents/procedural-directions/ncat-pd7-use-of-generative-ai.pdf>

that procedural direction should be complied with in relation to evidence. Notwithstanding that restriction in relation to evidence, this procedural direction permits AI to be used to develop written submissions, subject to certain qualifications and exceptions.

- 26 Another specific aspect of NCAT's relevant procedure which can be very useful is its flexibility in relation to time limits. Section 41 of the NCAT Act provides that the Tribunal can, even after a time limit has expired, extend the period of time for the doing of anything under any legislation in respect of which the Tribunal has jurisdiction despite anything to the contrary under that legislation. Note that r 8 of the NCAT Rules provides that "[a]n application for an extension of time made under section 41 of the Act must be made in writing unless the Tribunal dispenses with that requirement."
- 27 One last matter to bear in mind is that, although NCAT has flexibility in relation to procedure and evidence, not only must it decide cases in accordance with law, based on reliable evidence in a manner that is fair to all parties, the Tribunal is also required, by s 36(1) of the NCAT Act, to apply the Act and the Rules so as to facilitate the just, quick and cheap resolution of the real issues in the proceedings. To this end, s 36(3) imposes a duty on all parties and legal and other representatives to co-operate with the Tribunal to give effect to that guiding principle by participating in the processes of the Tribunal and complying with directions and orders of the Tribunal.

Costs

- 28 Unlike a court where costs generally follow the event so that a losing party usually has to pay the winning party's costs, NCAT has a different approach to costs.
- 29 Under s 60(1) of the NCAT Act (which is found in Pt 4) the general rule is that each party to NCAT proceedings bears its own costs and the losing party does not have to pay the winning party's costs. However, s 60(2) provides that the Tribunal may award costs in the event it is satisfied that there are special

circumstances warranting an award of costs. In determining whether there are special circumstances the Tribunal may have regard to matters such as

- (1) whether the proceedings were conducted in a way that unnecessarily disadvantaged another party or unreasonably prolonged the proceedings,
- (2) the relative strengths of the claims made,
- (3) the nature and complexity of the proceedings,
- (4) whether the proceedings were vexatious or oppressive, or
- (5) whether a party failed to comply with the obligation to co-operate in s 36(3).

30 Beware, however! Since s 60 is in Pt 4, it is also subject *inter alia* to the NCAT Rules. These rules include r 38, which applies to CCD proceedings, and subr (2) of that rule establishes most importantly that where the amount claimed or in dispute in CCD proceedings is more than \$30,000, the restriction on the awarding of costs in s 60 does not apply. Accordingly, if more than \$30,000 is in dispute there is no restriction on NCAT awarding costs against an unsuccessful party, or any party, for that matter. There is also a further exception which I shall mention later.⁸

31 Some assistance can also be derived from the Guideline in relation to costs in the CCD published on the NCAT website entitled “Consumer and Commercial Division Guideline, August 2017, Costs - Who pays for the costs of running a case?”.⁹

⁸ Rule 38(2) of the NCAT Rules provides that where the amount claimed or in dispute in the proceedings is more than \$10,000 but not more than \$30,000 and the Tribunal has made an order under cl 10(2) of Sch 4 to the Act in relation to the proceedings the restriction in s 60(1) does not apply.

⁹ https://ncat.nsw.gov.au/documents/guidelines/ccd_guideline_costs.pdf

Representation

32 As to legal or other representation, the general position under s 45 of the NCAT Act is that a party is not entitled to be represented by another person without the leave of the Tribunal.¹⁰

33 Rule 32 of the NCAT Rules provides that an application may be made orally or in writing at any stage in the proceedings and establishes a non-exclusive list of mandatory considerations for the Tribunal when determining whether to grant leave to be represented by a person other than an Australian legal practitioner. The list includes:

“(i) whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal,

(ii) whether the proposed representative has the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings,

(iii) whether the proposed representative is vested with sufficient authority to bind the party”.

34 More assistance in relation to representation can be found in the document entitled “Representation in the Consumer & Commercial Division – Guideline”¹¹ published on the NCAT website which provides guidance as to how and when leave to be represented will usually be granted in strata matters. Paragraph 10(a) of that Guideline states that the Tribunal will usually grant leave to a person to represent a party if the party is an owners corporation under the SSMA and the proposed representative is a member of the Strata Committee or the strata managing agent.

35 Paragraph 11 indicates the Tribunal will usually permit a party to be represented, especially by an Australian legal practitioner:

“a) if the proceedings involve a claim or dispute for more than \$30,000;

¹⁰ Clause 7 of Sch 4 does make a different provision for some CCD proceedings but not strata matters.

¹¹ https://ncat.nsw.gov.au/documents/guidelines/ccd_guideline_representation.pdf

- b) if another party in the proceedings is, or is to be represented by, an Australian legal practitioner;
- c) if the application is for a penalty to be imposed under the Strata Schemes Management Act 2015 ...;
- d) if another party in the proceedings is a government agency;
- e) if the Tribunal is of the opinion that the party would be placed at a disadvantage if not represented at the hearing; and
- f) if the Tribunal is of the opinion that representation should be permitted due to the likelihood that complex issues of law or fact will arise in the proceedings.”

NCAT internal appeal

36 Another feature of strata proceedings in the CCD of NCAT is that a party dissatisfied with the result has certain rights to appeal to an internal Appeal Panel in the Tribunal rather than having to incur the expense and time involved in going to the Supreme Court.

37 Section 80(2)(b) of the NCAT Act provides that such an appeal is “as of right on any question of law, or with the leave of the Appeal Panel, on any other grounds”. Clause 12(1) of Sch 4 to the NCAT Act, however, includes a restriction on s 80(2)(b) in CCD matters, including strata proceedings, by permitting the Appeal Panel to grant leave to extend the grounds of appeal beyond a question of law only if the Appeal Panel is satisfied the appellant may have suffered a substantial miscarriage of justice because:

- “(a) the decision of the Tribunal under appeal was not fair and equitable, or
- (b) the decision of the Tribunal under appeal was against the weight of evidence, or
- (c) significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).”

38 In addition, under s 80(3) the Appeal Panel is given further flexibility in that it may:

- “(a) decide to deal with the internal appeal by way of a new hearing if it considers that the grounds for the appeal warrant a new hearing, and

(b) permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Tribunal at first instance, to be given in the new hearing as it considers appropriate in the circumstances.”

- 39 In this way, legal or other errors by a decision maker at first instance may be corrected without the need to bring proceedings in the Supreme Court.

Summary

- 40 In summary, NCAT has very significant powers to resolve strata disputes and it has procedural and evidentiary flexibility in doing so. Nonetheless, it is vital to be aware of the limitations on that flexibility provided by the NCAT Act, including Sch 4, and the NCAT Rules. In addition, experience and common sense indicate that any litigant in NCAT should be fully aware that NCAT must determine disputes in accordance with the law, having regard to the relevant and reliable evidence and in a manner which is procedurally fair to all parties.

Where do strata litigants in NCAT often go wrong?

- 41 Against that background, it is useful to identify a number of areas where strata litigant often go wrong.
- 42 First, litigants sometimes fail to ensure that the prerequisites for commencing proceedings in NCAT have been satisfied. One of the most important of these is the requirement to have mediated, or attempted to mediate, the dispute where that is mandated under s 227 of the SSMA. (The cases where prior mediation is not required are set out in subs (4)). If prior mediation is required but has not been attempted, under s 227(1), the registrar of the Tribunal must not accept the application.
- 43 Another prerequisite can be that the application must be made within a specified period, such as the 6 year period (previously 2 years) in s 106(6) of the SSMA. But, as already noted, a failure to apply within time can be cured by an application under s 41 of the NCAT Act for an extension of time. To be successful in such an extension application, however, it will usually be necessary to make the application in writing, have a credible explanation for not

commencing within time, demonstrate that the party acted as soon as reasonably possible after finding out about the lapse and establish that the party has a reasonably arguable case so that an extension of time serves some useful purpose.

- 44 Secondly, litigants, especially if unrepresented, may also fail because they do not understand the procedural requirements and are not prepared for what is likely to happen at interlocutory hearings and at a final hearing. This problem can be overcome by finding out as much as possible about what is involved in Tribunal hearings and being prepared. An understanding of the SSMA, NCAT Act and NCAT Rules is essential. A lot can be learnt from attending the Tribunal and watching what happens in other strata proceedings, and obtaining all the relevant information available on the NCAT website and from Fair Trading.
- 45 Thirdly, it is obvious that in order to be successful a party must know and be able to articulate the legal basis for its claim. In complex cases, this may be required to be done formally by way of points of claim or points of defence, which are in essence the same as pleadings in a court. If a party cannot articulate the legal basis for its claim, the Tribunal is not required to, nor will it usually determine for one party what its case should be. Nothing in s 38(5) suggests otherwise. That subsection is concerned with the Tribunal ensuring that the parties understand the nature of proceedings and the procedures which will be followed and have a reasonable opportunity to be heard or otherwise make their submissions. It is not concerned with ensuring that the parties have identified the correct legal basis for their claim or defence.
- 46 Fourthly, strata litigants with a sound legal claim often fail because they do not present to the Tribunal sufficient evidence to support their claim. As already noted, to be successful, a party must present relevant, reliable and comprehensive evidence in support of its claim that has been filed in accordance with the Tribunal's directions or orders. If the evidence is deficient, the party is likely to fail.

- 47 Although the Tribunal is flexible and has the ability to require material to be provided to it, a party cannot rely on the Tribunal to correct its errors of law, fill the gaps in its evidence or tell the party how it should formulate or make out its case. There are essentially two reasons for this. One is a matter of principle. The Tribunal is required to act in accordance with procedural fairness and natural justice. If the Tribunal acted by assisting one party in these ways it would be favouring one party over another and might legitimately be perceived to be biased in favour of one party and not acting fairly to the other party.
- 48 The second is a practical matter. The CCD is a high volume jurisdiction in which the members have many matters in a list, limited time and limited support. In order to deliver just, quick and cheap decisions, Tribunal members legitimately expect and depend on litigants to have done their research, to have understood the legal basis for their case, to have prepared and served their evidence in accordance with the Tribunal's orders and directions and to be prepared to lead their evidence and make submissions when the matter is listed for final hearing. Otherwise, the work of the Tribunal would become bogged down and all litigants in the CCD would suffer.
- 49 Good claims fail; sometimes because the party does not do its research and prepare so that the claim is made within time and in the right way, sometimes because the party does not know what is required procedurally at each stage of Tribunal proceedings, or because it is not able to identify the proper legal foundation for the claim, or because it does not know what it has to prove to establish the claim or because it does not have sufficient evidence and submissions to support it.

What to do when the other side is making the proceedings difficult?

- 50 The matters I have spoken about so far are all matters that a litigant or representative in strata proceedings in the Tribunal can control. The final matter I would like to address is what to do when the other side in NCAT proceedings is difficult, obstructive or vexatious.

51 Let me start with a practical recommendation. Do not allow yourself to respond to a difficult, obstructive or vexatious litigant by becoming difficult, obstructive or vexatious yourself. This can be easier said than done. Sometimes the NCAT member may depend on the party who is behaving properly to make up for the deficiencies of the difficult or obstructive opponent. This can be somewhat frustrating. Nonetheless, where it is possible to assist the member in this way without compromising the claim or the interests of the party, it is usually wise to try to assist. It is unlikely to do your claim any harm and may help. If it is not appropriate to do what the member requests, it is important to explain respectfully to the member why you cannot give the assistance the member seeks.

52 At a more technical level, the Tribunal has a number of powers and responses which can be invoked by a party in circumstances where the difficulty, obstructiveness or vexatiousness cannot be managed by other means.

53 In the CCD, under cl 10 of Sch 4 to the NCAT Act, the Tribunal has certain powers if “the Tribunal is of the opinion that a party in any proceedings ... is conducting the proceedings in such a way that unreasonably disadvantages another party in the proceedings by any conduct (including by failing to comply with an order or direction of the Tribunal)”. In those circumstances, the Tribunal may

(a) if the party causing the disadvantage is the applicant—order that the proceedings (or part of the proceedings) be dismissed or struck out, or

(b) if the party causing the disadvantage is not the applicant—

(i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or

(ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).”

54 Before making any such order, the Tribunal must have regard to:

“(a) the extent to which the party is familiar with the procedures of the Tribunal,

(b) the party’s capacity to understand, and act on, a direction of the Tribunal,

(c) whether the party suffers from a disability,

(d) whether the party is acting deliberately in failing to comply with the Tribunal's directions."

55 It will be question of fact in the particular circumstances of each case whether the proceedings have been conducted in such a way that "unreasonably disadvantages another party". Nonetheless, a party can make an application for the Tribunal to exercise those powers in an appropriate case.

56 If the Tribunal does make an order under cl 10 of Sch 4, that may also have costs consequences under r 38(2) of the NCAT Rules which establishes that in CCD proceedings, where the amount claimed or in dispute is between \$10,000 and \$30,000 and the Tribunal has made an order under cl 10(2) of Sch 4, the restriction on the ordering of costs against a party under s 60 of the NCAT Act does not apply.

57 The power under cl 10 of Sch 4 is in addition to the Tribunal's general power under s 55(1)(b) of the NCAT Act. That is a power to dismiss proceedings at any stage if "the Tribunal considers that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance". These words have technical legal meanings in this context which tend to overlap to some extent.

58 It has been held that the words "frivolous" and "vexatious", used together, may signify that the application lacks a legal foundation or that it is "not legally properly based". Further, "vexatious" can include: ¹²

(1) proceedings brought with the intention of annoying or embarrassing or harassing the other party;

(2) proceedings brought for some collateral purpose other than having the Tribunal adjudicate on the issues raised by the proceedings; or,

¹² *Sethi v Secretary, Department of Communities & Justice (No. 2)* [2024] NSWCATAD 107 at [44].

- (3) irrespective of the motive of the litigant, if the proceedings are so obviously untenable or manifestly groundless as to be utterly hopeless.
- 59 Proceedings may be “misconceived or lacking in substance” if the claim for relief made in the proceedings is not reasonably arguable.
- 60 Once again, a party can make an application to the Tribunal for the dismissal of proceedings under s 55 in appropriate circumstances.
- 61 Finally, there is the *Vexatious Proceedings Act 2008* (NSW) which applies in relation to proceedings in NCAT as well as to court proceedings. The expression “vexatious proceedings” is defined in that Act relevantly to include:
- “(a) proceedings that are an abuse of the process of a court or tribunal, and
 - (b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose, and
 - (c) proceedings instituted or pursued without reasonable ground, and
 - (d) proceedings that are conducted to achieve a wrongful purpose, or in a way that harasses, or causes unreasonable annoyance, delay or detriment, regardless of the subjective intention or motive of the person who instituted the proceedings.”
- 62 Under the *Vexatious Proceedings Act*, the Supreme Court may make orders on the application of certain officials or of a person against whom another person has instituted or conducted vexatious proceedings, if the Court is satisfied that the person has frequently instituted or conducted vexatious proceedings in Australia.
- 63 Those orders include in relation to proceedings in the Tribunal:
- “(a) an order staying all or part of any proceedings in New South Wales already instituted by the person,
 - (b) an order prohibiting the person from instituting proceedings in New South Wales”.

- 64 Orders under the *Vexatious Proceedings Act* are essentially designed for an extreme case of a litigant who has instituted or conducted vexatious proceedings not just once but frequently.

Conclusion

- 65 Litigation of strata disputes may, in some cases, be necessary. That litigation will usually be in NCAT. In preparing your case, it is useful to bear in mind that the Tribunal member hearing strata proceedings will be seeking to do what is right by applying the correct law to the facts established on the evidence by a process which is procedurally fair to all parties.
- 66 Success in NCAT proceedings is not something to which a party with a good case is entitled without preparation and hard work. Success usually depends on a detailed understanding of NCAT's applicable practice and procedure, compliance with the Tribunal's directions and orders, a clear understanding of the proper legal foundation of the case, and the presentation of cogent, reliable and comprehensive evidence and submissions.