

# Community schemes

The following information explains how to apply to the NSW Civil and Administrative Tribunal (NCAT) to resolve a community schemes dispute.

## Mediation before lodgement

Mediation is compulsory for most community schemes disputes before lodging an application with NCAT.

A mediation service is provided by NSW Fair Trading. There is no charge for the service.

Applications in which mediation is compulsory that are lodged without evidence of attempted mediation will not be accepted.

If you are unsure whether you need to mediate your dispute check the orders table in this fact sheet or contact NSW Fair Trading on 13 32 20 or visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

## Applying to NCAT

To apply to NCAT complete the Strata and Community Schemes application form and lodge it with the appropriate fee.

Specify the section of the *Community Land Management Act 2021* and the orders you want NCAT to make. You can request more than one order.

## Interim order applications

An interim order application may be lodged to stop the actions of a party or to preserve the current state until the substantive application is decided.

The Tribunal can only make an interim order if it is satisfied on reasonable grounds that urgent considerations justify the making of the order.

There must be a separate but related substantive application, either already lodged or lodged at the same time as the interim order application.

There is a separate filing fee for an interim order application.

## Copies of the application to other members of the association

NCAT will give a copy of the application to the parties and to the relevant association.

The association is required to give a copy of the application (except an application for a penalty) to all other members of the association.

## Who is an interested or connected person?

The *Community Land Management Act 2021* defines interested person in section 187 and connected person in section 6.

## What happens next?

After applying to NCAT your matter will be listed for a directions hearing.

You and the other parties will receive a notice of hearing from NCAT specifying the day, time and venue of your hearing. Generally the first listing will be within 3-5 weeks.

The application will be served by the association on all other association members. Do not include any confidential information you do not want disclosed.

## Directions hearing

At the directions hearing the issues in dispute will be identified, a timeframe for the final hearing will be set, and direction will be given for the exchange of evidence between parties and lodgement at NCAT.

## Evidence and supporting materials

If your matter is not resolved at the first listing it will be listed for a contested hearing. NCAT will make a timetable for the parties to provide their written evidence to each other and to the Tribunal. You do not need to lodge all evidence with the application.



## Can someone represent me?

NCAT Consumer and Commercial Division hearings are conducted as informally as possible. Parties are encouraged to present their own case.

If you want to be represented, send your written request to NCAT. Either at or before the first hearing a Tribunal Member will decide if you can be represented.

## For information and assistance

### NCAT Getting Help

A list of services in NSW that provide free or low-cost legal information, advice and assistance can be found on NCAT's web page [Get Legal Help and Advice](#) or 'Getting help' fact sheet.

### LawAccess NSW

**Phone:** 1300 888 529

**Website:** [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

For free legal information and referrals to other services that provide legal advice and assistance.

### NSW Fair Trading

**Phone:** 13 32 20

**Website:** [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

For information about mediation **before** lodging an application with NCAT.

### NCAT Consumer and Commercial Division

**Phone:** 1300 006 228

**Website:** [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

For information and assistance about processes or procedures **after** lodging the application to NCAT.

## ORDERS under the *Community Land Management Act 2021*

You can apply to NCAT for orders under the *Community Land Management Act 2021*. The orders below are a guide only. Refer to the relevant sections of the Act for more detailed information.

For orders requiring mediation before applying to NCAT, please contact NSW Fair Trading on 13 32 20 or visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).

### Meetings of associations

Section	Orders	Information required	Mediation
15	An order requiring an original owner to provide documents to an association <b>Who can apply?</b> <ul style="list-style-type: none"><li>Association</li></ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Provide details of the documents not provided to the association which was required to be provided under section 16 of the Act</li> </ul>	Yes
18	An order requiring a meeting to be held <b>Who can apply?</b> <ul style="list-style-type: none"><li>Owner</li><li>Association</li><li>Covenant charge</li></ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Provide details about the failure to hold a meeting</li> <li>Provide details of the person who has consented to convening the meeting</li> </ul>	Yes
22	An order invalidating a resolution passed by, or election held by an association <b>Who can apply?</b> <ul style="list-style-type: none"><li>Person entitled to vote on a motion at a meeting of the association</li><li>First mortgagee of lot or covenant charge of a lot where the owner is entitled to vote</li></ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Describe what resolutions you want invalidated and why</li> <li>Describe why an election should be invalidated</li> <li>Evidence includes copies of relevant minutes</li> </ul>	Yes
23	An order nullifying a resolution of an association on ground that a person was denied a vote or notice was not given <b>Who can apply?</b> <ul style="list-style-type: none"><li>Person entitled to vote on resolution at a general meeting</li></ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Describe the circumstances which led to you being improperly denied a vote on the motion, or not being given due notice of the item of business and your entitlement to vote for or against the motion</li> <li>Evidence includes a copy of the resolution you want nullified and a copy of minutes of meetings</li> </ul>	Yes
52	An order appointing a person to convene a meeting if no committee after first AGM <b>Who can apply?</b> <ul style="list-style-type: none"><li>Owner</li><li>Mortgagee</li><li>Covenant chargee</li></ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Provide details about the failure to hold a meeting</li> <li>Provide details of the person who has consented to convening the meeting</li> </ul>	Yes

### Initial period

Section	Orders	Information required	Mediation
28	An order waiving, varying or extinguishing restriction relating to the initial period of a scheme, and to authorise matters to be done in relation to the waiving, varying or extinguishing of that restriction <b>Who can apply?</b> <ul style="list-style-type: none"><li>Association to which the restriction applies</li><li>Developer to which the restriction applies</li></ul>	<ul style="list-style-type: none"> <li>Evidence includes: <ul style="list-style-type: none"> <li>Copy of the plan of subdivision</li> <li>Where appropriate evidence that the applicant is the original owner</li> <li>Name and address of each lot owner</li> <li>Name and address of any registered mortgagee, enrolled mortgagee and/or covenant chargee</li> </ul> </li> </ul>	No

## Managing agents and building managers

Section	Orders	Information required	Mediation
64	An order about the payment of commissions following non-disclosure <b>Who can apply?</b> <ul style="list-style-type: none"><li>• Association</li></ul>	<ul style="list-style-type: none"><li>• Evidence includes details of commissions believed to have been paid to the managing agent which were not disclosed in good faith.</li></ul>	Yes
76	An order terminating or varying a managing agent or building or facilities manager agreement <b>Who can apply?</b> <ul style="list-style-type: none"><li>• Association</li></ul>	<ul style="list-style-type: none"><li>• Attach evidence of attempted mediation</li><li>• Evidence includes detailed information about why the termination or variation of the agreement is sought</li></ul>	Yes
196	An order for the appointment of a compulsory managing agent <b>Who can apply?</b> <ul style="list-style-type: none"><li>• A person who obtained an order under this Act that imposed a duty on the association or strata corporation or office holder of the association or strata corporation and that has not been complied with</li><li>• A person with an estate or interest in a development lot, neighbourhood lot or strata lot in the scheme</li><li>• The authority having the benefit of a positive covenant that imposes a duty on the association or strata corporation</li><li>• A judgment creditor to whom the association or strata corporation owes a judgment debt</li></ul>	<ul style="list-style-type: none"><li>• Describe how the management structure is not functioning satisfactorily</li></ul> <b>OR</b> <ul style="list-style-type: none"><li>• Provide evidence of the association or strata corporation's failure to comply with an NCAT order or failure to perform one or more of its duties</li></ul> <b>OR</b> <ul style="list-style-type: none"><li>• Provide evidence of the association or owners corporation's judgment debt</li><li>• What functions do you want the agent to have and exercise?</li><li>• Attach written consent from a managing agent listing their terms, conditions, fee and licence under the <i>Property and Stock Agents Act 2002</i></li></ul>	No

## Managing statement

Section	Orders	Information required	Mediation
139	An order to vary a management statement <b>Who can apply?</b> <ul style="list-style-type: none"><li>• Person entitled to vote on the amendments to, or the repeal of a management statement</li></ul>	<ul style="list-style-type: none"><li>• Attach evidence of attempted mediation</li><li>• Evidence includes:<ul style="list-style-type: none"><li>– Details of why the management statement should be varied or revoked, whether a new statement should be issued and the reasons why</li><li>– Copy of management statement</li></ul></li></ul>	Yes
140	An order amending invalid part of management statement or revoking association by-law <b>Who can apply?</b> <ul style="list-style-type: none"><li>• Person entitled to vote at an association or strata corporation meeting</li><li>• Mortgagor</li><li>• First mortgagee</li><li>• Covenant chargee</li></ul>	<ul style="list-style-type: none"><li>• Attach evidence of attempted mediation</li><li>• Evidence includes:<ul style="list-style-type: none"><li>– Details of why the order is sought, including details of invalid part of management statement</li><li>– Copy of management statement</li></ul></li></ul>	Yes
141	An order affecting association property <b>Who can apply?</b> <ul style="list-style-type: none"><li>• Person entitled to vote at an association or strata corporation meeting</li></ul>	<ul style="list-style-type: none"><li>• Attach evidence of attempted mediation</li><li>• Evidence includes:<ul style="list-style-type: none"><li>– Details of whether the association or strata corporation has made or refused to make a by-law or if necessary consent has been refused or not given</li></ul></li></ul>	Yes

## Contributions and funds

Section	Orders	Information required	Mediation
81	An order allocating payment of surplus money <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> <li>Covenant chargee</li> <li>Owner</li> <li>Mortgagee</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Details of orders sought</li> <li>Evidence includes copies of relevant minutes and the strata plan</li> </ul>	Yes
87	An order for payment of individual contributions of a different amount if insurance costs greater because of use of lot <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> <li>Lessor of leasehold strata scheme</li> <li>Owner</li> <li>Mortgagee in possession</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Provide details of the use of the lot and the insurance premium</li> <li>Describe why the lot owner's refusal to pay the extra amount of the insurance premium is unreasonable</li> </ul>	Yes
90(9)	An order that no interest is chargeable for late payment of contribution <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Owner</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Describe why the association should reasonably have determined not to charge interest</li> <li>Evidence includes copies of levy notices and details of interest</li> </ul>	Yes
91	An order for the recovery of unpaid contributions and interest <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> <li>Owner</li> </ul>	<ul style="list-style-type: none"> <li><b>Note:</b> You cannot apply under this section about unpaid levies unless other orders under the Act are also sought</li> <li>Attach evidence of attempted mediation</li> <li>Evidence includes copies of levy notices, details of interest and reasonable expenses</li> </ul>	Yes
92	An order varying contributions or payment methods <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> <li>Owner</li> <li>Mortgagee</li> <li>Covenant chargee in possession</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Describe why the levy should be a different amount and what the amount should be</li> <li>Provide the date the levy was decided and the last day for payment</li> <li>Describe how the levy should be paid (you should provide sufficient details to enable an understanding of your budgets and levies)</li> <li>Evidence includes the estimates and minutes of meetings where the levy was decided</li> </ul>	Yes
94	An order requiring original owner to pay compensation for inadequate estimates and levies <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> <li>Owner</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li><b>Time limit:</b> Application must be made no later than 3 years after the end of the initial period</li> </ul>	Yes

## Property

Section	Orders	Information required	Mediation
120	An order to enter to carry out work <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> </ul>	<ul style="list-style-type: none"> <li>Describe why entry to the lot is required and if consent has been refused</li> <li>Evidence includes a copy of minutes of relevant meetings or correspondence requesting entry to the lot and any other</li> </ul>	No

Section	Orders	Information required	Mediation
		relevant correspondence	
123	An order requiring an owner or occupier to repair damage or compensate for damage <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Evidence includes (photos, strata minutes, quotes) of the damage and costs to repair</li> </ul>	Yes
194	An order substituting schedule of unit entitlements <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association</li> <li>Strata corporation</li> <li>Owner of development lot</li> <li>Neighbourhood lot or strata lot</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Detail how and why you want the unit entitlements reallocated, including if the initial schedule was based on unreasonable valuations, or if the developer's or subdivider's estimate of proportionate values is inaccurate.</li> <li>Evidence includes: <ul style="list-style-type: none"> <li>A valuation certificate from a qualified valuer giving the value of each of the lots at the time the strata scheme was registered or immediately after the change in permitted land use</li> <li>A copy of the certificate of title or a copy of the registered strata plan that shows the present unit entitlements</li> </ul> </li> </ul> <p><b>Note:</b> The certificate must be given by a person who is a qualified valuer within the meaning of the <i>Community Land Development Act 2021</i></p>	Yes
195	An order about restricted property <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Association or strata corporation</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Detail why the by-law or management statement should be changed, including if the association or strata corporation has created or refused to create restricted property</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>If a consent required to the creation of or refusal to create restricted property is not given</li> </ul>	Yes

## Insurance

Section	Orders	Information required	Mediation
159	An order for exemption from requirement to insure <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Person required to insure</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Detail why compliance with the requirements to insure is unnecessary or impracticable</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>If all other persons required to insure the building have consented in writing to the order being made.</li> <li>Evidence includes copies of any minutes and correspondence including evidence of unanimous resolution</li> </ul>	Yes
161	An order requiring a person to make or pursue insurance claim <b>Who can apply?</b> <ul style="list-style-type: none"> <li>Owner</li> <li>Tenant of a development lot or neighbourhood lot</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> <li>Evidence includes copies of any minutes and correspondence</li> </ul>	Yes

Section	Orders	Information required	Mediation
162	<p>An order that the amount of insurance taken out must be varied</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>• Owner</li> <li>• Authority having benefit of a positive covenant affecting building site</li> </ul>	<ul style="list-style-type: none"> <li>• Attach evidence of attempted mediation</li> <li>• Specify why amount of the current insurance taken out is unreasonable</li> <li>• Specify by whom the insurance is to be taken out or varied</li> <li>• Evidence includes copies of any relevant policies, minutes and correspondence</li> </ul>	Yes

## Records

Section	Orders	Information required	Mediation
176	<p>An order requiring information to be entered on the roll</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>• Association</li> <li>• Owner</li> <li>• Other person having or acquiring an estate or interest in a lot</li> </ul>	<ul style="list-style-type: none"> <li>• Attach evidence of attempted mediation</li> <li>• Provide details of information you want on the association roll</li> <li>• Evidence includes copies of any request for confirmation of the notice made by the Secretary and any reply to the request</li> </ul>	Yes
177	<p>An order requiring the supply of records or documents</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>• Person entitled to inspect records or documents</li> </ul>	<ul style="list-style-type: none"> <li>• Attach evidence of attempted mediation</li> <li>• Provide details of the information you require and your entitlement to the information</li> <li>• Evidence includes copies of your request for the supply of information and the refusal</li> </ul>	Yes

## General orders for settlement of disputes

Section	Orders	Information required	Mediation
190	<p>An order made under the general order-making power</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>• Interested person</li> </ul>	<ul style="list-style-type: none"> <li>• Attach evidence of attempted mediation</li> </ul>	Yes
193	<p>An order to settle disputes or complaints</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>• Interested person</li> <li>• Original owner</li> <li>• Building manager</li> </ul>	<ul style="list-style-type: none"> <li>• Attach evidence of attempted mediation</li> <li>• <b>Note:</b> This is the general power of the Tribunal to settle a dispute or complaint about the operation, administration or management of a scheme under the <i>Community Land Management Act 2021</i></li> <li>• Examples of general disputes or complaints: <ul style="list-style-type: none"> <li>- Management of administrative and sinking funds</li> <li>- Holding meetings in accordance with the Act</li> <li>- Interference with support of shelter or essential services</li> <li>- Repairs to common property</li> <li>- Compliance with by-laws</li> <li>- Causing a nuisance or hazard</li> <li>- Interference with the use or enjoyment of common property</li> <li>- Failure to provide documents</li> <li>- Damages for contravention of duty to maintain common property and keep in a state of good and serviceable repair</li> </ul> </li> </ul>	Yes

## Committees and office holders

Section	Orders	Information required	Mediation
197	<p>An order removing a person from a committee or office or prohibiting a committee from determining a matter</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>Interested person</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of attempted mediation</li> </ul> <p>Explain why you think the person should be removed from the association committee or why the association committee should be prohibited from determining a matter</p>	Yes

## Mediation session agreement

Section	Orders	Information required	Mediation
191	<p>An order to give effect to agreements and arrangements arising from mediation sessions</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>Persons who are parties to mediation</li> <li>Mediator</li> </ul>	<ul style="list-style-type: none"> <li>Attach evidence of mediation</li> <li>Attach a copy of the written agreement signed by parties</li> <li>Explain why the Tribunal should make orders in the terms of the mediation agreement</li> </ul>	Yes

## Penalty

Section	Orders	Information required	Mediation
138	<p>An order for a civil penalty for breach of by-laws</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>Association</li> </ul> <p><b>Time limit:</b> Application must be made within 12 months after the Notice to Comply with a by-law was given</p> <p>OR</p> <p>Application must be made within 12 months after the Tribunal had imposed a monetary penalty on the person for a previous breach of the by-law</p>	<ul style="list-style-type: none"> <li>Attach a copy of the relevant resolution of the association or executive committee and the Notice to Comply with a by-law</li> <li>Evidence includes a statement detailing the breach that justified the giving of the Notice to Comply; the authority to give the Notice to Comply; the contravention that justified the application</li> <li>The dates and times on which the contravention occurred</li> <li>A description of the activities which amount to the contravention</li> <li><b>Note:</b> Evidence must be in the form of an affidavit or expert report as appropriate, as the rules of evidence apply in penalty proceedings</li> </ul>	No
207	<p>An order for a civil penalty for contravention of Tribunal orders</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>Applicant for the original order</li> <li>Association or strata corporation</li> <li>A party to the mediation if the Tribunal order is one which give effect to an agreement arising out of a mediation session</li> </ul>	<ul style="list-style-type: none"> <li>Attach the Tribunal order that was contravened</li> <li>Evidence includes a statement of the contravention including dates and description of activities</li> <li><b>Note:</b> Evidence must be in the form an affidavit or expert report as appropriate, as the rules of evidence apply in penalty proceedings</li> </ul>	No

## Interim orders

Section	Orders	Information required	Mediation
192	<p>An order to make, revoke or renew an interim order</p> <p><b>Who can apply?</b></p> <ul style="list-style-type: none"> <li>Party to the substantive application</li> </ul>	<ul style="list-style-type: none"> <li>Describe the urgent considerations that warrant the making of an interim order to stop the actions of a party or to preserve the current state until the substantive application is decided</li> </ul>	Yes