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Owners Corporation Complaints & Disputes *Beyond the Basics*

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Panel



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Understanding Complaints
Who can make one and what makes it valid?

Lynda Lim, Senior Associate

Who Can Make a Complaint?

Under **section 152** of the Owners Corporation Act 2006 (Vic), the following parties can make a complaint:

- A **lot owner**
- An **occupier** of a lot (eg a tenant)
- A **manager** of the OC

What Makes a Complaint Valid?

- Must concern an alleged breach by a lot owner, occupier, or manager of obligations or duty imposed under the Act, the Regulations, or the OC's special rules

- Must be made in writing, using the approved form designated for complaints

- Complaint must contain
  - name and address of the complainant
  - name of the person the complaint is made against (if known)
  - alleged breach and relevant details
  - supporting information or documents

- Good faith and not vexatious

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Owners corporation complaint

Sections 152 and 159A of the *Owners Corporations Act 2006* (the Act), Owners Corporations Regulations 2018 (the Regulations) and Owners Corporation Rules (the Rules)

You can use this form to notify the owners corporation of a breach of the rules, Act or Regulations by another lot owner, occupier or manager. You cannot use this form in relation to personal injury.

Details of person(s) making this complaint

Name(s)	
Lot number	
Lot address	
Suburb	
State	
Postcode	
Postal address (if different from above)	

Are you a (mark appropriate box with an X):

Lot owner ☐ Occupier (tenant) ☐ Manager ☐

Details of person(s) you are making the complaint against

Person(s) name(s)	Address (include lot number)

Are they a (mark appropriate box with an X):

Lot owner ☐ Occupier (tenant) ☐ Manager ☐

Details of complaint/alleged breach of the rules, Act or Regulations

Describe what the complaint/breach is about including dates and times (if known)

What has been done to try to resolve this complaint? Please describe what you have done, who you have talked to and what they offered to do

What remedy are you seeking – how do you want the problem to be solved?

Declaration and signature of complainant

I declare that the above information is true and correct to the best of my knowledge. I agree that the information I have given in this form may be used or disclosed by the owners corporation to process and resolve this complaint.

Signature	
Date	

How to lodge this complaint

(Owners corporation to insert details)

By post (name and postal address)	
By email (name and email address)	
In person by	

Contact telephone number for complaints (owners corporation to insert telephone number)	

What happens next?

- The owners corporation will consider the information provided and respond to you either by telephone or in writing advising you of its decision and the next steps in dealing with your complaint.
- If the owners corporation does not respond or you are unsatisfied with the outcome:
  - for **information and advice**, contact Consumer Affairs Victoria on 1300 55 81 81 or visit the Consumer Affairs Victoria website (consumer.vic.gov.au/contact)
  - for help **resolving a dispute**, contact the Dispute Settlement Centre of Victoria on 1300 372 888 or visit the Dispute Settlement Centre of Victoria website (disputes.vic.gov.au), or
  - apply directly to the Victorian Civil and Administrative Tribunal (VCAT) to hear your case. For more information on VCAT applications call 1300 01 8228 (1300 01 VCAT) or go to the Victorian Civil and Administrative Tribunal website (vcat.vic.gov.au). Calling this number costs the same as a local call. Additional charges may apply if you call from overseas, on a mobile or payphone.

Other important information

- In accordance with Section 158 of the *Owners Corporations Act 2006*, notices can only be delivered by post or in person, or in accordance with the *Electronic Transactions (Victoria) Act 2000*.
- Your personal information is required by law to be disclosed to resolve the complaint.
- Details of all complaints and decisions are required to be reported to lot owners at the annual general meeting.
- Records of complaints must be kept by the owners corporation for 7 years.

Invalid Complaint

A valid complaint **cannot** relate to:

- Personal injury
- Recovery of any fees, charges, contributions, or amounts due to the OC under section 28 of the Act.

OWNERS CORPORATIONS ACT 2006 - SECT 28

Liability of lot owners

(1) The owners for the time being and any purchaser in possession of, and any person entitled to receive the rents and profits from, a lot are liable to pay any outstanding fees, charge, contribution or amount owing to the owners corporation in respect of that lot.

(2) Subject to sections 24, 49 and 53, a lot owner is not liable to pay or contribute to the funds of the owners corporation a proportion of any amount required to discharge a liability of the owners corporation exceeding the lot owner's lot liability.

Invalid Complaint - continued

- Verbal complaints, text messages, emails do not meet the formal requirements of a complaint
    - Eg Complaints addressed to the OC

- An OC must make a copy of the approved form available at the request of a person who wishes to make a complaint under this section (section 152(3) of the Act)

Owners corporation complaint

Sections 152 and 159A of the *Owners Corporations Act 2006* (the Act), Owners Corporations Regulations 2018 (the Regulations) and Owners Corporation Rules (the Rules)

You can use this form to notify the owners corporation of a breach of the rules, Act or Regulations by another lot owner, occupier or manager. You cannot use this form in relation to personal injury.

Details of person(s) making this complaint

Name(s)	Arnold Papley
Lot number	418
Lot address	418/88 Princes Road
Suburb	Southbank
State	VIC
Postcode	3006
Postal address (if different from above)	

Are you a (mark appropriate box with an X):

Lot owner [x] Occupier (tenant) [ ] Manager [ ]

Details of person(s) you are making the complaint against

Person(s) name(s)	Address (include lot number)
Owners Corporation Committee – PS348087T	C/- Body Corporation Solutions Pty Limited, Level 3, 26 Clarendon Street, Melbourne VIC 3000
Nightshift Security Guard – Wayne Smith	C/- Allied Security Management, 39/42 McArthurs Road, Altona North, VIC 3025
OC Manager – Peter Drouin	C/- Body Corporation Solutions Pty Limited, Level 3, 26 Clarendon Street, Melbourne VIC 3000

Lot owner		Occupier (tenant)		Manager	x

Details of complaint/alleged breach of the rules, Act or Regulations

Describe what the complaint/breach is about including dates and times (if known)

I have had an ongoing issue with the Nightshift Security Guard, Mr Wayne Smith since 2023. I was discriminated against, ridiculed, humiliated and there was a complete disregard for my privacy. I stopped using the recreational facilities due to his behaviour and have not used them since. His presence on site creates many other issues where I am made to feel uncomfortable in my own home.

What has been done to try to resolve this complaint? Please describe what you have done, who you have talked to and what they offered to do

My understanding is that Mr Peter Drouin passed on my concerns to the Owners Corporation Committee who then enlisted a Director of Allied Security Management to investigate the issue. I do not consider the Director to be a fit and proper candidate to conduct such an investigation. The OC and Mr Drouin have now shut down the issue and I believe a cover up has taken place.

What remedy are you seeking – how do you want the problem to be solved?

I would like Wayne Smith to be terminated from his position as Nightshift Security Guard.

I want the OC committee to explain why they are putting Allied Security Management's interests ahead of lot owners and why this matter has been stonewalled and covered up.

Declaration and signature of complainant

I declare that the above information is true and correct to the best of my knowledge. I agree that the information I have given in this form may be used or disclosed by the owners corporation to process and resolve this complaint.

Signature	A Papley
Date	3 March 2025

A valid complaint has been submitted to the OC – what are the OC's options and next steps?

Catherine Emmerton, Associate

Dispute Resolution

- Section 7 of the Model Rules;
- May be complimented by additional registered rules of the Owners Corporation.

7. Dispute resolution

(1) The grievance procedure set out in this rule applies to disputes involving a lot owner, manager, or an occupier or the owners corporation.

(2) The party making the complaint must prepare a written statement in the approved form.

(3) If there is a grievance committee of the owners corporation, it must be notified of the dispute by the complainant.

(4) If there is no grievance committee, the owners corporation must be notified of any dispute by the complainant, regardless of whether the owners corporation is an immediate party to the dispute.

(5) The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the owners corporation, within 28 calendar days after the dispute comes to the attention of all the parties.

a. A meeting under subrule (5) may be held in person or by teleconferencing, including by videoconference.

(6) A party to the dispute may appoint a person to act or appear on the party's behalf at the meeting.

a. Subject to subrule (6B), the grievance committee may elect to obtain expert evidence to assist with the resolution of the dispute.

b. The grievance committee may obtain expert evidence to assist with the resolution of a dispute if the owners corporation or the parties to the dispute agree in writing to pay for the cost of obtaining that expert evidence.

(7) If the dispute is not resolved, the grievance committee or owners corporation must notify each party of the party's right to take further action under Part 10 of the *Owners Corporations Act 2006*.

(8) This process is separate from and does not limit any further action under Part 10 of the *Owners Corporations Act 2006*.

Step 1 – Written Complaint

Written Complaint

- The party raising the dispute must prepare a **written statement**.
- Must be in the **approved form**.

Step 2 – Notification of Dispute

If a Grievance Committee exists:

- The complainant must notify the committee.

If no Grievance Committee:

- The complainant must notify the **Owners Corporation**, even if it is not directly involved.

Step 3 – Meeting to Discuss the Dispute

- The parties to the dispute must meet within 28 calendar days of the dispute becoming known.

- Meeting must include:
  - The Grievance Committee or the Owners Corporation.

- The meeting may be held in person or by teleconference/videoconference.

Step 4 – Representation

- Each party may appoint a **representative** to act or appear on their behalf at the meeting.
  - Lawyer;
  - Family member;
  - Friend;
  - Another lot owner; or
  - Other third party.

Step 5 – Expert Evidence

- The Grievance Committee may obtain expert evidence to assist with resolution.

- This can only occur if:
  - The Owners Corporation or the parties to the dispute agree in writing to pay the cost.

Step 6 - If Dispute is Unresolved

- If no resolution is reached, the Grievance Committee or Owners Corporation must:
  - Notify each party of their right to take further action under Part 10 of the Owners Corporations Act 2006.

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Key Takeaways

- Written complaints are required.
- Timely communication and meeting within 28 days are essential.
- Parties can be represented.
- Expert advice can be sought with agreement.
- The process supports but does not replace formal legal remedies.

Option 1: Decision to Take no Action

Ebony Rice, Associate

Recap

Whether a complaint is made, or the owners corporation becomes aware of the alleged breach in some other way, section 153(2) of the OC Act requires the owners corporation to decide whether to:

- take action under Part 10;
- to apply to VCAT for an order requiring the person to rectify the breach; or
- to take no action.

That is, there must be a formal decision made under s153(2) in relation to an alleged breach (Senior Member Johnson, *Fang v Owners Corporation Plan No. RO001311 [2025] VCAT 32).*

Section 154: Notice of Decision not to take action



If an owners corporation decides not to take action under this Act or to apply to VCAT for an order in respect of an alleged breach, it must give notice of the decision to any person who made a complaint under s.152 in respect of the alleged breach.



The notice must set out the reasons for the decision.

CAV Notice of Owners Corporation Decision

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Notice of owners corporation decision

Owners Corporations Act 2006 Part 10, Owners Corporations Regulations 2018 and Owners Corporation Rules

Date of notice	

From:

Name	
Owners corporation plan number	
ABN	

To:

(person/s that made complaint and person/s who allegedly committed breach)

Person/s name/s	Address

Details of matter requiring a decision

(description of complaint/breach/matter)

Decision of owners corporation

(description and reasons for decision)

This notice is served by

Signature of person representing owners corporation	
Printed name	
Position/Title	
Address	
Contact telephone number	
Fax number (if applicable)	

Important information

- This is a final decision. If you are not satisfied with the decision you can:
  - contact Consumer Affairs Victoria on 1300 55 81 or visit the Consumer Affairs Victoria website (consumer.vic.gov.au/contact) for information and advice, or
  - apply directly to the Victorian Civil and Administrative Tribunal (VCAT) to hear your case. For more information on VCAT applications call 1300 01 8228 (1300 01 VCAT) or visit the Victorian Civil and Administrative Tribunal website (vcat.vic.gov.au). Calling this number costs the same as a local call. Additional charges may apply if you call from overseas, on a mobile or payphone.
- If you are a tenant/occupier, the owners corporation has also given a copy of this notice the lot owner in accordance with Section 155 or Section 159D of the *Owners Corporations Act 2006*.
- Details of all breaches, complaints and decisions are required to be reported to lot owners at the annual general meeting.
- Records of breaches, complaints and decisions must be kept by the owners corporation for 7 years.
- This notice must be served in person or by post (not electronically) in accordance with section 158 of the *Owners Corporations Act 2006*.

Notice of Decision not to take action

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Must be considered and detailed.

The OCs obligations to act in good faith and exercise due care and diligence apply.

The expression “in good faith” is found in a range of statutes. The precise meaning of the expression will depend upon the context in which it appears. In a Supreme Court case, Bell held that in the context of s 5, the term creates an expectation that an OC will “act in an objective manner". The requirement of good faith has also been found to import “notions of not acting capriciously and of not seeking to further an ulterior purpose.

Shearman v Owners Corporation No 1 417405Y [2016] VSC 551 (21 September 2016)

Potential Reasons and Grounds not to take Action

Common Reason	Basis under the Act
A complaint made against the Building manager or other contractor	A complaint can only be made against a lot owner, occupier of a lot or OC Manager) – s.152.
A complaint made against the Owners Corporation about the issuing of a special levy	No basis to make a complaint against the Owners Corporation or fees – s. 152
There is not enough information or evidence available to the OC to determine that the person may have breached	The OC must only take action if it reasonably believes that the alleged breach has been committed – s.153(4)
Repeated complaints	The OC has already addressed a prior complaint on the same matters and/or held a grievance meeting. The next appropriate step is for the lot owner to apply to VCAT if they are not satisfied.
The lot owner is aggrieved with a passed or interim special resolution of the OC	This relates to an allegation against the Owners Corporation (not a valid complaint). Further, there are avenues under the Act to petition a resolution/proceed to VCAT.

Notice of Decision

Details of matter requiring a decision

(description of complaint/breach/matter)

Alleged breach of Owners Corporation Act Section 122 "Duties of Manager"

1) Failed to advise the Committee to obtain independent legal advice when renegotiating a contract for Caretaking Services [redacted]

2) Improperly argued in favour of the [redacted] caretaking contract and therefore sought to influence the decision of the OC Committee

3) Failed to manage and properly source alternative quotes to the [redacted] contract with sufficient detail to ensure services are procured at competitive prices and terms.

Remedy being sought:

1) Resignation of [redacted] as Owners Corporation Manager

2) Appointment of a new Owners Corporation Manager who does not have any conflict of interest with any related parties including [redacted] and individual members of the Owners Corporation.

Written reasons for the decision

Decision of owners corporation

(description and reasons for decision)

Complaint Against [redacted]

The Grievance Sub-Committee, pursuant to section 154(2) of the Owners Corporation Act 2006, must decide:

a. To take action in respect of the alleged breach;

b. To apply to VCAT for an order required the person to rectify the alleged breach; or

c. To take no action in respect of the alleged breach.

The Grievance Sub-Committee has decided "To Take No Action in Respect of the Alleged Breaches" pursuant to section 153(4) of the Owners Corporation Act 2006 which states that an owners corporation must not take action against a person or apply to VCAT for an order in respect of an alleged breach unless it believes on reasonable grounds that the person has committed the alleged breach.

Pursuant to section 154(2) of the Owners Corporation Act 2006 the Grievance Sub-Committee sets out its reasons for the decision below.

The Grievance Sub-Committee is of the view that it does not have the power to enforce the remedy sought by the complainant "removal of [redacted] as Owners Corporation Manager". [redacted] has declined to resign voluntarily.

The Grievance Sub-Committee assumes that the complaint seeks the termination of [redacted] as the manager of the OC. In response the Grievance Sub-Committee notes that [redacted] was appointed by the OC for a period of 3 years until [redacted]. The Owners Corporation Committee "OCC" has never had cause to discuss the termination of the contract under Section 8 of the contract and has never issued [redacted] with a Notice to Rectify Breach. The Grievance Sub-Committee considers that most OCC members have expressed satisfaction with the level of services provided by [redacted] and will not recommend to the OC that the OC peruse a termination of the Contract of Appointment with [redacted].

The Grievance Sub-Committee notes that termination of any contract for breach is a very serious matter that requires careful consideration. The OC could be exposed to serious legal consequences if it pursued termination of the contract with [redacted] on insufficient grounds. The complainants demand for this remedy is not supported by the evidence provided and demonstrates a narrow understanding of the legal consequences to wrongful termination. This is not a step that a reasonable OC committee would take without a great deal of care and thought and even then only in circumstances where there was evidence of serious and fundamental breaches of the contract by the other party. The Grievance Sub-Committee has been provided with no evidence that [redacted] has failed to perform its contractual obligations to the OC.

Notice of Decision

The complainants assert that [redacted] have breached section 117(1)(c) of the Owners Corporations Act 2006 in that as committee members they are failing to act in the interests of the OCs and/or are using their position as a committee member to gain (either directly or indirectly) an advantage for themselves or someone else.

The complainants also seek that [redacted] OCM and the Chair of the OC Committee consider the complaint and defer the outcome of the AGM vote until a formal legal opinion is obtained and an investigation is completed and:

- Suspend [redacted] from the currently constituted OC1 until all allegations are investigated;
- Suspend all individual suspected of intent to gain advantage from participating in the OC while an appropriate investigation is undertaken, including [redacted] while an independent investigation is conducted;
- Revoke the voting rights (including proxies) and remove associated votes from the count of all individuals suspected of intent to gain advantage, including [redacted] while an independent investigation is conducted; and
- Suspend all individuals who have allegedly historically used their position on the OC to obtain private gains, including [redacted] and revoke their voting rights (including proxies) until these allegations are fully investigated.

Written reasons for the decision

For the reasons detailed below, Owners Corporation [redacted] No.1, No.2, No.3 & No.4 (**"the OCs"**) has resolved, pursuant to section 153 of the Owners Corporations Act 2006 (**"the Act"**), not to take any action under Part of 10 of the Act:

1. The AGM of the OCs was held on [redacted] As no quorum was present for OC1 and OC4, all the resolutions passed at the meeting are interim resolutions.
2. Section 78 of the Act requires the OC to send notice of all interim resolutions and the minutes of the meeting at which the interim resolutions were made to all lot owners within 14 days of the meeting.
3. This section also requires the OC to send a notice with the minutes stating that:
    a. Subject to paragraphs (b) and (c), 29 days from the date of the interim resolution; or
    b. If notice of a special general meeting is given within that 29 day period and the meeting is held within 28 days after the notice is given, only if confirmed at that meeting; or
    c. If notice of a special general meeting is given within that 29 day period and the meeting is not held within 28 days after the notice is given, at the end of that 28 day period.
4. In accordance with the OCs' statutory obligations, the minutes together with the required notice for OC1 and OC4 were sent to all lot owners on or about [redacted]
5. If a lot owner or group of lot owners in OC1 and/or OC4 representing at least 25% of lot entitlements wish to challenge the interim resolutions, the process to be followed (as set out in section 78 of the Act) is for that lot owner or group of lot owners to convene a special general meeting at which those resolutions can be reconsidered or to nominate the manager of the OC to convene that special general meeting.
6. The lodging of a complaint with the OC manager and OC chairperson is not the correct process.
7. In any event and in respect of all the OCs, the request made in the complaint for "[redacted] *OCM and the Chair of the OC Committee to consider the complaint and defer the outcome of the AGM vote until a formal legal opinion is obtained and an investigation is completed*" is beyond the power of the OC manager and/or the OC chairperson and would cause the OC to be in breach of section 78 of the Act as well as its overarching statutory duties as set in the Act.
8. Section 117 of the OC Act only applies to committee members as it sets out the duties of members of committees and sub-committees. As none of [redacted] were members of the committee immediately prior to the [redacted] section 117 has no relevance to their conduct in the lead up to the [redacted] AGM.
9. Alternatively, if the complainants wish to make an application to VCAT seeking orders to set aside the outcome of the annual general meeting and/or to suspend persons from standing for the committees, that is an option open to them. VCAT will then fully consider the evidence presented to it during the course of the hearing.

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Further examples

Details of matter requiring a decision

(description of complaint/breach/matter)

The owner of Lots [redacted] has complained that his car was damaged in the car park while he was overseas a holding the Owners Corporation responsible.

Decision of owners corporation

(description and reasons for decision)

A Grievance meeting was held on 22 June 2022 at 11.30 am to discuss the complaint. Its recommendations are bel

Background Information

- The car was parked within the private carpark;
- The OC CCTV captures the footage of the common driveway, not the full length of the private carpark;
- Concierge is not responsible to monitor private carpark 24/7;
- The OC insurer has denied the liability claim lodged by the owner of Apt [redacted]

The decision from the Owners Corporation

The Owners Corporation rejected the request lodged by the owner of [redacted] for the Owenrs Corporation to cov of a private loss.

Should you wish to take these matters further, please try the Dispute Settlements Centre of Victoria or VCAT.

The Grievance Meeting was attended by:

[redacted]

The complainants explained that the complaint was made against [redacted] as the form does not provide an option to make the complaint against the Owners Corporation or the Committee.
The complainants advised that they believe the benefit principle should have been applied when raising this special levy. They also have concerns about the maintenance fund being used to pay for portion of this work as the maintenance fund should be resolved for maintenance work, not capital work.

Decision of owners corporation

(description and reasons for decision)

The Committee responded as follows:

1. [redacted] raised the special levy in accordance with the decisions duly made by the Committee of management. As such, the complaint is made against the wrong party. Nonetheless, the Committee considered it as if it were lodged against the appropriate party.
2. The benefit principle was considered by the Committee during the decision-making process. The Committee resolved that the benefit would not apply. The crack represents a structural risk. Should the crack develop further and further structural damage is caused, both the apartment tower and the townhouses would be negatively affected.
3. The maintenance plan includes the tower bracing work hence the fund can be used for this project.
4. The engineer has suggested that one most reasonable cause of the crack is the damage caused to the apartment tower foundation during the construction of the townhouses. The two buildings share the main infrastructures and foundation hence the work will benefit both sections of the building.

Based on the above reasons, the Committee does not believe the complaint is valid. No further action will be taken by the Owners Corporation.

Case Study

The lot owner was aggrieved with the application of a 'house rule' in interpretation of a registered rule.

A compliant was made and the OC set up a Grievance Committee to investigate the applicant's complaint, requesting the lot owner to meet.

The lot owner did not attend the meeting.

The Grievance Committee then rejected the allegation in the complaint and recommended that no action be taken in respect of the alleged breach of rule 17.1, and this was based on the OC policy in place to apply rule 17.1.

VCAT found that the OC consistently applied the policy and was entitled to take no action against the alleged breach.

Date v Owners Corporation PS 714706C (Owners Corporations) [2024] VCAT 1017 (22 October 2024)

Option 2: Referral to a Grievance Committee

Elizabeth Densley, Associate

Checklist for initial steps

- ❑ Check if there are any Registered Rules that apply to dispute resolution
- ❑ Acknowledge receipt of complaint
- ❑ Notify the parties listed in the complaint and provide them with a copy of the formal complaint
- ❑ Ask all parties when they are available to attend a meeting
- ❑ Set a meeting for when everyone is available
- ❑ If the complainant is not available within 28 days, ask them to agree to a meeting set on a date as soon as possible
- ❑ Once a meeting date has been agreed, confirm in writing to all parties

Preparations for the grievance committee

We recommend that the grievance committee meet in the days and weeks leading up to the grievance meeting. This will give time for the grievance committee members to discuss the allegations raised in the formal complaint and consider any questions they want to raise. It is also a good time to fact-check and prepare responses.

The grievance committee represents the OC. It only has powers delegated to it by the OC. The full committee of the OC can set boundaries for the grievance committee.

Examples of preparations which are lawful

- Meeting with lawyers to provide legal advice to the grievance committee and the full committee generally – especially relevant if the complaint is directed at members of the committee.
- Meeting with the grievance committee and the full committee generally to discuss what the response to the complaint should be.
- Deciding (and drafting) the response to the complaint before the meeting.
- Collating documentary evidence to rebut all or part of the complaint.

Section 116 of the *Owners Corporations Act 2006*

(1) The committee may appoint sub-committees in accordance with the rules.

(2) The rules may provide for the role and functions of a sub-committee.

(3) A quorum for a meeting of a sub-committee is at least half the members of the sub-committee.

(4) Sections that apply to subcommittees:

- 105 (electing a chairperson)
- 106(appointing an acting chairperson)
- 107 (electing a secretary)
- 108 (calling a meeting)
- 109(notice of meeting)
- 110 (co-opting)
- 111 (ballots)
- 112 (voting)
- 114 (minute taking)

Taking minutes of grievance committee meetings

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5. Consideration of Complaint Received on [redacted]

The Owners Corporation received a complaint on [redacted]. These complaints were:

[redacted]

There was a discussion around the main points of contention within the complaint.

In order to try and resolve the complaints **it was resolved that**:

[redacted] will contact the Complainants and the Respondents to propose a day and time for all parties, together with the members of the Grievance Sub-Committee to meet and consider the issues raised. Given the large number of parties involved and the need to act in a timely and fair manner to all, it was resolved that the morning of Tuesday [redacted] after the completion of the OC Meeting be proposed as the meeting day/time.

Motion Carried

A note on notes

The minutes of the grievance committee meetings are records of the OC.

Any documents created by members of the grievance committee to assist them to respond to the complaint are not records of the OC. These are 'aides' for the grievance committee members.

Do not refer to written notes or memorandums in the minutes of the meeting.

Talking Points – Grievance Sub-Committee Meeting on [redacted]

[redacted]

Alleged breach of Owners Corporation Act Section 117 "Duties of Members of committees and sub-committees"

1) Lack of Disclosure from [redacted] in relation to conflicts of interest and other information
2) Failure to act in the best interests of all owners and investors – [redacted]
3) Misinformation and failure to share true facts and information – not specified

Remedy being sought:

1) Resignation of [redacted] Owners Corporation Manager
2) Resignation of [redacted] OC Chairperson
3) Resignation of [redacted]

Complaint #1a [redacted]

Section 117 does not relate to Owners Corporation Manager [redacted] – rather Section 122 relates to the duties of Managers.

The Grievance Sub-Committee does not have the power to enforce the remedy sought by the complainant "resignation of [redacted] Owners Corporation Manager".

I can't see any evidence provided to support the claim that [redacted] has a conflict of interest or withheld important information

The Owners Corporation Manager was appointed by the OC for a period of 3 years until [redacted] (attachment 1). The Owners Corporation Committee "OCC" has never discussed termination of the contract under Section 8 of the contract and most OCC members have expressed satisfaction with the level of services provided by [redacted]

The [redacted] Management letter of [redacted] (attachment 2) was obtained to provide the OCC members confidence from an independent provider that the cost of building management services to the OC was fair and reasonable when considering the level of services offered by [redacted] This letter confirmed that the cost to replace the current staffing model in the Residential Building Industry would have been 50% greater than the current cost of [redacted] services. At no point did the OC decide that a full tender was required given the role [redacted] has within the building. No further information was requested from [redacted]

Preparations for the grievance committee meeting

- Can be in person or via video conference
- Parties can have support people attend or have their lawyer present
- The grievance committee can obtain expert evidence if the OC agrees to pay the cost OR if all parties agree to pay the cost of obtaining expert evidence.
- The grievance committee may seek legal advice.

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At the grievance meeting:

- ❑ Chairperson to start by given a road map of the meeting
  - ❑ Hear from complainant
  - ❑ Hear from respondent
  - ❑ Questions from the subcommittee
  - ❑ Response from complainant
  - ❑ Response from respondent
- ❑ Give warnings for unruly or disrespectful behaviour and then follow through if behaviour continues.
- ❑ Ask the complainant what they want / what would make them walk away from the meeting happy

At the conclusion of the meeting

The grievance committee can:

- Pronounce their decision.
- Inform everyone that their decision will be provided with the minutes of the meeting.

Regardless of the above, the grievance committee **must**:

- Notify the parties of its decision to take action/take no action
- Notify the parties of their right to take further action under Part 10 of the OC Act

Minutes of the grievance committee meeting

7. Consideration of Complaint

On [redacted], the Owners Corporation received a complaint from [redacted] (former OC Member and lot owner) against the OC Manager, [redacted] under Section 122 of the Owners Corporation Act.

Details of the complaints and the remedy being sought have been summarized in Attachment A "Notice of Owners Corporation Decision".

With respect to the complaint against OC Manager, [redacted], the Grievance Sub-Committee unanimously resolved under Owners Corporation Act 2006 Part 10 Section 153 "To Take No Action in Respect of the Alleged Breaches". Reasons for the decision are outlined in Attachment B.

Motion Carried

Notice of Decision

Details of matter requiring a decision

(description of complaint/breach/matter)

Alleged breach of Owners Corporation Act Section 122 "Duties of Manager"

1) Failed to advise the Committee to obtain independent legal advice when renegotiating a contract for Caretaking Services [redacted]

2) Improperly argued in favour of the [redacted] caretaking contract and therefore sought to influence the decision of the OC Committee

3) Failed to manage and properly source alternative quotes to the [redacted] contract with sufficient detail to ensure services are procured at competitive prices and terms.

Remedy being sought:

1) Resignation of [redacted] as Owners Corporation Manager

2) Appointment of a new Owners Corporation Manager who does not have any conflict of interest with any related parties including [redacted] and individual members of the Owners Corporation.

Written reasons for the decision

Decision of owners corporation

(description and reasons for decision)

Complaint Against [redacted]

The Grievance Sub-Committee, pursuant to section 154(2) of the Owners Corporation Act 2006, must decide:

a. To take action in respect of the alleged breach;

b. To apply to VCAT for an order required the person to rectify the alleged breach; or

c. To take no action in respect of the alleged breach.

The Grievance Sub-Committee has decided "To Take No Action in Respect of the Alleged Breaches" pursuant to section 153(4) of the Owners Corporation Act 2006 which states that an owners corporation must not take action against a person or apply to VCAT for an order in respect of an alleged breach unless it believes on reasonable grounds that the person has committed the alleged breach.

Pursuant to section 154(2) of the Owners Corporation Act 2006 the Grievance Sub-Committee sets out its reasons for the decision below.

The Grievance Sub-Committee is of the view that it does not have the power to enforce the remedy sought by the complainant "removal of [redacted] as Owners Corporation Manager". [redacted] has declined to resign voluntarily.

The Grievance Sub-Committee assumes that the complaint seeks the termination of [redacted] as the manager of the OC. In response the Grievance Sub-Committee notes that [redacted] was appointed by the OC for a period of 3 years until [redacted]. The Owners Corporation Committee "OCC" has never had cause to discuss the termination of the contract under Section 8 of the contract and has never issued [redacted] with a Notice to Rectify Breach. The Grievance Sub-Committee considers that most OCC members have expressed satisfaction with the level of services provided by [redacted] and will not recommend to the OC that the OC peruse a termination of the Contract of Appointment with [redacted].

The Grievance Sub-Committee notes that termination of any contract for breach is a very serious matter that requires careful consideration. The OC could be exposed to serious legal consequences if it pursued termination of the contract with [redacted] on insufficient grounds. The complainants demand for this remedy is not supported by the evidence provided and demonstrates a narrow understanding of the legal consequences to wrongful termination. This is not a step that a reasonable OC committee would take without a great deal of care and thought and even then only in circumstances where there was evidence of serious and fundamental breaches of the contract by the other party. The Grievance Sub-Committee has been provided with no evidence that [redacted] has failed to perform its contractual obligations to the OC.

Option 3: What to do if you don't have a Grievance Committee

Elizabeth Densley, Associate

KCL
Law



If the OC does not have a grievance committee, it may choose to appoint a grievance committee to avoid calling a meeting of the full committee.

This is a good option if the committee members are the subjects of the complaint.

If the OC does not have a grievance committee or a committee, the OC must notify all members of the OC of complaint and arrange a meeting within 28 days of the date of the complaint. This is essentially an SGM.

We recommend that a neutral party be the chairperson of the SGM to ensure it effectively hears the complaint.

Best practice

Appoint a grievance committee at the AGM

Appoint a grievance committee at the first meeting of the committee after the AGM

Create a sub-committee as soon as a formal complaint is received

Establishing a grievance committee

A grievance committee is a sub-committee for the purposes of section 116 of the OC Act and must:

- Appoint a chairperson and a secretary;
- Abide by the notice requirements for calling a meeting;
- Keep minutes of meetings; and
- Otherwise operate in accordance with section 112 of the OC Act (quorum, voting, resolutions)

Compliance with section 116

3. Appointment of Chairperson

As this was the first meeting of the Sub-Committee since the Annual General Meeting (held on [redacted]), **it was** resolved that [redacted] be appointed the Chairperson of the Grievance Sub-Committee.

Motion Carried

4. Appointment of Secretary

As this was the first meeting of the Sub-Committee since the Annual General Meeting (held on [redacted]), **it was** resolved that [redacted] be appointed the Secretary of the Sub-Committee.

Motion Carried

Option 4: Decision to Serve a Breach Notice and Commence Enforcement Proceedings

Anton Block, Principal Lawyer

Notice to Rectify Breach - Section 155 of the OC Act provides:

a) If the owners corporation decides to take action under this Part in respect of an alleged breach, it must give notice of the allegation to the person alleged to have committed the breach.

b) A notice must specify the alleged breach and require the person to whom the notice is given to rectify the breach within 28 days after the date of the notice.

c) A notice under this section must be in writing in the approved form.

d) If the person alleged to have committed the breach is an occupier of a lot affected by the owners corporation, the owners corporation must give a copy of the notice to the lot owner.

What if the person does not rectify the breach? – Section 156 of the OC Act provides:

1. If the person to whom notice is given under section 155 does not rectify the breach within 28 days after the date of the notice under section 155, the owners corporation may decide—
    a) to give the person more time to comply with the notice; or
    b) to give the person a final notice; or
    c) not to proceed with the action under this Part.



What if the person does not rectify the breach? – Section 156 of the OC Act provides: cont…

2. If the owners corporation decides to give the person more time to comply with the notice under section 155, it must give the person notice of that decision setting out the additional time for compliance.
3. If the owners corporation gives a person more time to comply with the notice under section 155 and the person does not comply within that time, the owners corporation may decide—
    a) to give the person a final notice; or
    b) not to proceed with the action under this Part.

What if the person does not rectify the breach? – Section 156 of the OC Act provides: cont…

4. The owners corporation must give notice of its decision under this section to –
    a) any person who made a complaint in respect of the alleged breach under section 152; and
    b) the person to whom the notice was given under section 155.

Final Notice – Section 157 of the OC Act provides:

1. If the owners corporation decides to give a final notice, the notice must—
    a) be in writing in the approved form; and
    b) state that the person must within 28 days after the date of the notice rectify the breach; and
    c) state that if the breach is not rectified within that time, the owners corporation may decide to apply to VCAT for an order requiring the rectification of the breach.

Final Notice – Section 157 of the OC Act provides: cont…

2. If the person who is given a final notice fails to rectify the breach within the required time, the owners corporation may decide—
    a) to apply to VCAT for an order requiring the rectification of the breach; or
    b) to take no further action in respect of the breach.

Final Notice – Section 157 of the OC Act provides: cont…

3. The owners corporation must give notice of its decision under this section to—
    a) the person to whom the notice was given under subsection (1); and
    b) any person who made a complaint under section 152 in respect of the alleged breach.

Owners Corporation PS514657D v Strong (Owners Corporation) [2011] VCAT 877

Lot owner alleged that the OC's Final Notice had gone 'stale' and could not be acted upon.

"There is an irony in a person who admits the boorish behaviour described in multiple Notices relying on an alleged want of procedure, but the path of legal history is paved with ironies and it is necessary to analyse Mr Strong's submission."

Owners Corporation PS514657D v Strong (Owners Corporation) [2011] VCAT 877

"However breaches which are behavioural in nature, such as the admitted behaviour in this case, must be remedied by multiple acts. Each new day requires a new act of refraining from engaging in the offending conduct. By saying in the Final Notice that proceedings may be commenced if the noise was made within 28 days, the Owners Corporation did not say the opposite – that proceedings would not be commenced if the noise was not made within 28 days of the Final Notice

...

I do not consider that by 16 February 2011 Mr Strong could rightfully have considered himself to be no longer bound by the Final Notice."

Decision Made to Commence Proceedings – but is a special resolution required?



The short answer is **YES**

Why?

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Section 18 of the OC Act provides:

1) Subject to subsection (2), an owners corporation must not commence any legal proceeding unless it is authorised by special resolution to do so.
2) If a matter is within the civil jurisdictional limit of the Magistrates' Court and an owners corporation is authorised to do so by ordinary resolution, the owners corporation may commence any legal proceeding in—
    a) the Magistrates' Court; or
    b) VCAT or any other tribunal; or
    c) a court of another State or a Territory that corresponds to the Magistrates' Court.

This section was considered in the decision of *Owners Corporation 1 PS723350Q v Owners Corporation 2 PS723350Q (Owners Corporations) [2025] VCAT 592*

Summary of VCAT Case

- This proceeding was commenced by OC1 for the appointment of an administrator and an order regarding the meaning and effect of the information statements lodged with the plan of subdivision.
- OC1 commenced the proceeding on the back of an ordinary resolution.
- The primary issue for determination was whether OC1 had complied with section 18 of the OC Act.

Summary cont…

Deputy President Bisucci said that OC1 had not complied with s.18. He said:

> *"To commence legal proceedings a special resolution of the owners is required except for matters where the relief sought its within civil jurisdictional limit of the Magistrates Court. If the exception applies, then the legal proceeding can be commenced if an ordinary resolution of the owners corporation has authorised the proceeding being commenced.*
>
> *The phrase "jurisdictional limit" is defined in section 3 of the Magistrates Court act as: "jurisdictional limit" in a civil proceeding means $100,000.*
>
> *It follows that the civil jurisdictional limit refereed to in section 18(2) of the MC Act must mean the "jurisdictional limit" and this is limited to $100,000.*
>
> *If section 18(2) of the OC Act was meant to include any matter in which the civil jurisdictional may be invoked, it would not include the phrase "jurisdictional limit" it would have simply referred to the "civil jurisdiction."*

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So what does this mean for commencing of proceedings?

- Enforcing OC Rules 

- Seeking books, records and OC funds from previous manager 

- Seeking an Access Order to undertake works in a lot 

- Suing a service provider for breach of contract 

- Suing the builder for building defects 

- Suing lot owners for outstanding levies more than $100,000 

- Suing third parties for claims over $100,000 

So what does this mean for commencing of proceedings?

- Suing lot owners for outstanding levies less than $100,000



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Questions?

