

Purpose:

This practice guideline has been developed to assist you step through the internal dispute resolution process provided to owners corporations (OC), under the *Owners Corporations Act 2006* (OC Act).

It also incorporates obligations under the Model Rules of the *Owners Corporations Regulations 2007* (OC Regulations) and provides references where applicable, to special rules and terms of an OC managers contract of appointment.

Background:

The types of disputes experienced within OCs are endless. Examples may include noise, cars, car parking, pets, smoking, rubbish, maintenance of lots, security, boundaries, fences, building defects, water leaks, breaches of the OC Act and its Rules.

It is important to note that the internal dispute resolution process will remain the same although the parties involved will differ. Also, that other avenues to resolve disputes may be necessary where the OC has no or limited jurisdiction; ie building defects, extreme noise levels, violent behaviour or personal injury.

The OC and OC manager must understand

- ✓ who may make a complaint,
- ✓ what the complaint must be in relation to,
- ✓ who the complaint may be made about,
- ✓ as well as how the complaint may be made,

to efficiently implement and manage the OC dispute.

These particulars are stipulated in Part 10 of the OC Act.

Part 10 OC Regs Sch 2	Rule 6 of the Model Rules, as provided in Schedule 2 of the OC Regulations, identifies the process for the resolution of such disputes.
s138 & Sch 1(8)	Where Special Rules of the OC have been registered, these must also be taken into consideration in the process.
SCA (Vic) CoA	Where a complaint is about an OC manager, and the OC manager is using the standard Contract of Appointment (CoA) developed for SCA (Vic) members, there is a corresponding need to comply with the dispute resolution process outlined within the CoA.

Best Practice:

SCA (Vic) recognises the OC Act provides three options for dealing with complaints.

Complaints can be about an alleged breach by a lot owner, an occupier of a lot, or a manager. And must be about an obligation imposed by the OC Act, the Regulations or the Rules of the OC.

Option 1: Internal dispute resolution in accordance with the:

- ✓ OC Act 2006; and
- ✓ The Model Rules and any Special Rules

Option 2: An application to the Victorian Civil and Administrative Tribunal (VCAT)

Option 3: A complaint to Consumer Affairs Victoria (CAV)

SCA
(Vic)
CoA

The SCA (Vic) best practice also recognises where the complaint is about the OC manager, and the OC manager is using the standard Contract of Appointment (CoA) [as developed for the use of SCA (Vic) members], there is a need to comply with the dispute resolution process outlined within the CoA.

The following is an overview of the procedure to be followed to comply with the internal dispute resolution process. The process is explained in more detail under the subheading 'Procedure' within this Practice Guideline.

1. Identify the who, what, why of the complaint
2. Confirm complaint is received in the required format
3. OC to determine what action is to be taken, if any
4. Apply the corresponding dispute resolution process
5. Present report of the complaints to the AGM

This Practice Guideline also offers practical support to assist maximize the effective resolution of disputes. In addition to complying with the formal process [to ensure compliance with the OC Act and its Regulations], an OC and OCM should strive to understand the issue and the parties to the complaint, to assist reach effective outcomes. You can view these suggestions under the 'Issues' section of this Practice Guideline.

Procedure:

1. Identify the who, what, why of the complaint

s152(1) Section 152 of the OC Act provides a complaint may be made by:

- ✓ an owner;
- ✓ an occupier of a lot;
- ✓ a manager;

- in relation to an alleged breach by:

- ✓ a lot owner;
- ✓ an occupier;
- ✓ a manager;

- of the:

- ✓ OC Act;
- ✓ OC Rules; or
- ✓ OC Regulations.

s152(4)

- A complaint cannot be made in relation to a personal injury.

2. Confirm complaint is received in required format

s152(2) The OC must use the mandatory dispute resolution process if:

- the complaint is in writing and in the approved form. The approved form is available from Consumer Affairs Victoria; www.consumer.vic.gov.au

or

s153 (1)(b)

- a breach of the Act, Regulations or the Rules comes to the attention of the OC; Section 153(1)(b).

s152(3) An OC should be aware of its obligations under Section 152(3) that they must make a copy of the approved form available at the request of a person who wishes to make a complaint.

3. OC to determine what action is to be taken, if any

S153(2) The OC should review complaint details and decide according to Section 153(2) to:

- Part 10
- Option 1 Take action under Part 10 of the OC Act;
 - Option 2 Apply to VCAT for orders (if the breach is not rectified after action is taken);
 - Option 3 Apply to CAV for mediation (where permitted);
 - Option 4 Take no action (should the OC resolve not to take action the parties to the complaint must be notified in writing including reasons why; Section 154).
- S154

S153(4) You must ensure the OC is aware when making such decisions that the OC Act stipulates an owners corporation must not take action against a person in respect of an alleged breach unless it believes on reasonable grounds* that the person has committed the alleged breach; Section 153(4).

* **'Reasonable grounds' may be based on a statement being obtained from a witness or a complainant, video or photographic evidence if available.**

4. Apply the corresponding dispute resolution process

After determining what action is to be taken, the OC must implement its decision and manage the dispute resolution process accordingly.

4.1 Option 1 - Take action under Part 10 of the OC Act

Part 10 4.1.1 If the OC decides to take action under Part 10 of the OC Act, the OC must:

S155 In accordance with Section 155:

- give notification of the allegation(s) to the person who allegedly committed the breach; and
- allow 28 days for the breach to be fixed.

The notice must:

- be issued in writing;
- be in an approved form;
- specify the alleged breach; and
- require the person to rectify the breach within 28 days.

S158

According to Section 158, the notice must be given to the person who has committed the breach:

- If the occupier:
 - by post (to the person at the address of the lot);
 - leaving it personally with the occupier;
 - leaving it in the form of a letter in a letterbox of the lot;
 - leaving it with the occupier (apparently over 16); or
 - if the occupier is not a lot owner the OC must also serve a copy of the notice on the lot owner.
- If not the occupier:
 - by post to any address the person has provided to the OC as the address for service of notices.

If the breach is then remedied, the complaint is resolved no further action is necessary.

S156

If 28 days pass and the breach is not rectified, Section 156 provides the following options for the OC:

S156(2)

- to provide the alleged offender with more time to rectify the breach. This decision must be in writing and be provided to the alleged offender setting out the additional time for compliance; Section 156(2);

S157(1)

- to provide a final notice which allows an additional period of 28 days for the breach to be rectified. Section 157(1) requires the final notice to be issued in the approved form, state the person must within 28 days of notice rectify the breach and advise if the breach is not rectified in time, the OC may apply to VCAT for an order requiring rectification of the breach; or
- to decide to take no further action. The OC must issue written reasons why it has made this decision.

If the final notice is issued and the breach is rectified no further action is necessary.

S157(2)

If the final notice is issued and the breach is not rectified, Section 157(2) provides that the OC may:

- apply to VCAT for orders requiring rectification of the breach; or

- decide to take no further action at this stage. The OC must issue written reasons why it has made this decision.

s157(3)

In both instances Section 157(3) provides that the OC must give notice of its decision to the person to whom the final notice was issued and any person who made a complaint in respect of the alleged breach.

4.1.2 Take action under the Model Rules and/or Special Rules of the OC

s139(2)

In accordance with Section 139(2), the Model Rules apply if the OC:

- does not make any rules; or
- revokes all of its rules.

s139(3)

If an OC has passed Special Rules that include a dispute resolution procedure, then according to Section 139(3):

- that procedure must be followed instead of the procedure in the Model Rules; and
- the Model Rules are in addition to, and do not effect rights under Part 10 of the OC Act.

OC
Regs
Sch 2
Rule 6

The dispute resolution process is identified within Rule 6 of the Model Rules - Schedule 2 of the OC Regulations.

The Model Rules:

- Sets out a grievance procedure for disputes between:
 - a lot owner;
 - a manager;
 - an occupier; or
 - the OC.

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

If there is a grievance committee it must be notified of the dispute by the complainant.

If there is no grievance committee the OC must be notified of any dispute by the complainant.

- Regardless of whether the OC is an immediate party to the dispute, the parties to the dispute must:
 - meet and discuss the matter in dispute;
 - with either the grievance committee or the OC;
 - within 14 working days after the dispute comes to the attention of all the parties.
- A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting.
- If the dispute is not resolved:
 - the grievance committee or OC;
 - must notify each party of right to take further action under Part 10 of the OC Act;
 - this process is separate from and does not limit any further action under Part 10 of the Act.

Part 10

Part 10

4.1.3 Take action under the terms and conditions of the standard SCA (Vic) Contract of Appointment (CoA).

SCA (Vic) CoA - Where a complaint is lodged by an OC, lot owner or occupier against an OC manager, and that OC manager is engaged via the SCA (Vic) standard CoA, the procedure outlined in the agreed CoA must also be complied with.

Clause 10 - For more information refer to Clause 10 Disputes/Complaints process of the CoA, which clearly outlines the process.

4.2 Option 2 - Take action via VCAT

s162 Section 162 provides VCAT can hear and determine **ALL** disputes arising under the OC Act, the OC Regulations or the Rules of an OC, relating to:

- the operation of the OC;
- any breach of an obligation by an owner or occupier; or
- the exercise of a function by a manager.

s163 Section 163 of the OC Act states that the following may apply to VCAT to resolve an OC dispute:

- a manager or former manager;

- a lot owner or former lot owner;
- an occupier or former occupier;
- a mortgagee of a lot;
- an insurer;
- the Director of Consumer Affairs; or
- the OC.

Parties can be legally represented subject to the discretion of VCAT.

VCAT is a “no cost” jurisdiction.

S165

VCAT has broad discretionary powers.

Section 165 states VCAT can order:

- anything it considers fair including:
 - a party do or refrain from doing something;
 - a party comply with the Act, Regulations or Rules;
 - an order authorising a lot owner to institute, prosecute, defend or discontinue specified proceedings on behalf of the OC;
 - the payment of money;
 - a chairperson, secretary, member of a committee, or manager is appointed or has their appointment revoked; or
 - insurance payouts received be dealt with in a certain way.

4.3 Option 3 – Take action via Consumer Affairs Victoria (CAV)

S161

Section 161 states a person may complain to the Director of Consumer Affairs if there is a dispute between:

- a current or former lot owner;
- a mortgagee of a lot;
- an occupier of a lot;
- a purchaser of a lot; or
- a manager of an OC.

The complaint must be in writing.

The Director may refer the matter to mediation if it is reasonably likely to be settled.

CAV has the power to refer the dispute to an alternative jurisdiction.

The Director cannot make binding resolutions.

5. Present report of complaints to the annual general meeting (AGM)

s159

Section 159 of the OC Act requires the OC to report to the AGM:

- the number of complaints made;
- the nature of the complaints;
- the number of matters on which action was taken;
- the nature of the matters in respect of which action was taken;
- the number of matters which led to an application to VCAT; and
- the outcome of each action or application.

Issues:

s153
(3)

An issue can arise if an application is made to VCAT to hear a dispute but the mandatory dispute process has not been complied with. Section 153(3) states an OC must not take action under Part 10 or apply to VCAT unless it has followed the dispute resolution process required by the OC Rules and is satisfied that the process has not resolved the matter.

s164

Furthermore Section 164 enables VCAT to dismiss an application if the mandatory complaints procedure has not been complied with.

s18

An OC also needs to be aware that a special resolution is required if the OC wishes to issue legal proceedings for any reason other than the recovery of fees or to enforce rules; s18.

s163
(1A)

In addition to the OC applying to VCAT to have a dispute heard, changes introduced to the OC Act by the *Consumer Affairs Amendment Act 2011*, provides the power for an individual lot owner to have standing and apply to VCAT on behalf of an OC to resolve an OC dispute; s163(1A)

This provision under the OC Act may permit an application to be made to VCAT by an individual owner on behalf of the OC in limited circumstances. This course of action may alleviate the need for a special resolution where it cannot be achieved.

S165
(1)
(ba)

As a best practice a lot owner who commences a proceeding on behalf of an OC should not be permitted to pursue it without first obtaining an order under section 165(1)(ba) authorising the lot owner to institute or prosecute the claim. The lot owner is required to satisfy VCAT that the proceeding in question, if successful, would benefit the OC or its members and is not just the lot owner's personal frolic or the ventilation of a personal grievance.

SCA
(Vic)
PP

In principle SCA (Vic) does not agree with the individual standing of owners. You can read more about this within the SCA (Vic) Policy Position document.

To assist in the resolution of disputes, it is important to recognise that the issue is of importance to the person(s) who made the complaint. This must be remembered, regardless of one's own individual perception. It is therefore essential, when managing the dispute resolution process, to be respectful and apply good practices that will maximise effective management of the dispute. When applying the process provided for by the OC Act and its Regulations be sure to also incorporate the following for best outcomes:

- understand the issues in dispute;
- gather as much information as possible;
- determine if you, as a manager, are to be involved;
- have parties commit to writing where possible;
- become an active listener; and
- encourage communication.

Some questions that may be of assistance to help you determine this information are provided below:

- What is the issue?
- What makes it an issue now?
- Who owns the issue or problem?
- What would be the implications of doing nothing?
- What has already been tried?
- What is standing in the way of an ideal outcome?
- What is your responsibility for what is happening?
- What are the options for action here?
- What criteria will be used to judge the options?
- Which option seems the best one against those criteria?
- What is the next step?
- When is the next step to be taken?

- Plan the conversation
- Plan the process for resolution
- Have an 'authentic conversation' if required

Remember to – 'stay calm and carry on'.

Resources:

- Owners Corporations Act 2006; Part 10 & Sections 18, 18(1), 139(2), 139(3), 152(1), 152(2), 152(3), 152(4), 153, 153(1)(b), 153(2), 152(4), 153(3), 154, 155, 156, 156(2), 157(1), 157(2), 157(3), 158, 159, 161, 162, 163, 163(1A), 164, 165, 165(1)(ba)
- Owners Corporations Regulations 2007 [OC Regs], Schedule 2 Model Rules – Rule 6
- SCA (Vic) Contract of Appointment (SCA (Vic) CoA) Item 10
- SCA (Vic) Policy Position [SCA (Vic) PP] – Individual Standing

SCA (Vic) has developed this practice guideline in line with content delivered to the SCA (Vic) education seminar in January 2013. SCA (Vic) wish to acknowledge and thank TressCox Lawyers for their contribution.

This publication is only a guide. Readers should make and rely on their own expert enquiries. No warranty is given about the accuracy of the material and no liability for negligence or otherwise is assumed by SCA (Vic), its servants or agents in any way connected with this publication.

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