



VICTORIA
BODY CORPORATE
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Office Bearer's Liability - Protecting your personal liability

The law in Australia is relatively unclear about the liability of Owners Corporation Chairman & Committee Members, however recent litigation confirms comparable liability to that of Company Directors.

The common law standards for Directors requires:

- Fiduciary duties of good faith and loyalty
- Duties of skill and care

In the same instance where Company Directors are jointly and singularly personally liable for managerial conduct of public and private companies, Chairman, Office Bearers & Committee Members (and their agents) are equally personally liable in the management and conduct of Owners Corporations for what is broadly termed "a wrongful act".

Such "wrongful acts" can be any error, misstatement, act or omission, or neglect or breach of a duty, made, committed, or allegedly made by a serving Office Bearer or Committee Member of an Owners Corporation where any such "wrongful act" results in a claim, which can be brought by a written or verbal allegation of any "wrongful act" or a civil proceeding commenced by the service of a complaint, summons, Statement of Claim or similar pleading alleging such.

The incidence of litigation against Committee Members has recently increased. Matters that previously would have "gone by the wayside", are now finding their way into courts and ironically, in most instances these problems are not caused by intentional misconduct or negligence, but by oversight or an "honest mistake".

Take these scenarios for example:

- During the transfer of a retirement village unit, the Owners Corporation Secretary advised there were no outstanding funds and issued the Section 70 Certificate necessary to allow settlement. It was later discovered that about \$100 was outstanding however the new proprietor, citing the Section 70 Certificate, legally refused to pay the amount. He was subsequently refused entry to the Annual General Meeting on the basis of being 'non-financial'. This caused acute embarrassment in front of his peers and in response he sought legal assistance. Realising the situation was getting out of hand, it was determined the Secretary had erred and the matter was settled by the Owners Corporation making a public apology and the legal expenses being paid by the insurer.
- Following continued excess water rates caused by the 'overuse' of a garden hose, the Secretary of an Owners Corporation removed the garden tap (which was located outside the claimant's unit) together with the hose which was owned by the unit owner. The unit owner engaged solicitors to demand restitution of the hose and tap, together with legal costs, these collective costs were met under the Office Bearers Liability policy.



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- Following storm damage, the Chairman arranged for a quotation to carry out repairs, the total cost of repairs exceeded his authority under the legislation but, because of the perceived emergency, he authorised the repairer to proceed. When the invoice was received, the Owners Corporation collectively refused to pay the bill. The repairer issued a summons claiming a \$25,000 breach of contract against both the Owners Corporation and the Chairman. Because the Owners Corporation received benefit from the repairs, it arranged to settle the matter for approximately half of that claimed, but this left the Chairman with a bill of legal costs for his defence, these costs formed the basis for an Office Bearers' liability claim.
- On 27 July 2004, a Gold Coast high-rise Body Corporate pleaded guilty to failing to replace faulty fire hydrant pipes, in a major test case, the Queensland Fire and Rescue Service (QFRS) prosecuted the Body Corporate after five years of wrangling about faulty hydrant pipes. A Gold Coast magistrate condemned the Body Corporate for jeopardising public safety and ordered it to pay more than \$40,000 in fines and costs. The Body Corporate was one of 200 Gold Coast high-rises found to have sub-standard pipes in a 1999 fire service check, which followed a fire in Victoria in which two fire-fighters were seriously hurt after defective hydrant pipes burst. The prosecution was an important test case for the fire service because the ability of fire hydrant pipes to fight high-rise fires is critical to public safety and subsequently, the QFRS fears more high-rises could have sub-standard pipes and has launched an investigation.

An innocent action or an "honest mistake" can land a Committee Member in hot water, even though most Committee Members are careful in the way they carry out their duties, it does not prevent an aggrieved third party from suing. The risk of exposure still exists, despite the appointment of a Owners Corporation Manager, the simplest way to protect Committee Members is to effect an Owners Corporation Office Bearer's Liability Policy, which is integral to all correctly structures Owners Corporation insurance programs, as Committee members voluntarily carry out duties on behalf of all the owners, it is reasonable for the Owners Corporation as a whole to ensure they are protected and this policy will ensure (at the very least) that legal defence costs are paid.