

Setting Levels of Client Expectations + Penalties to Lot Owners for Poor Communication

By Wal Dobrow, Director, BIV Reports



I wrote earlier on the [Communicating with your strata manager Guide created by SCA \(WA\)](#) and provided to me to expand on the WHS and other issues relating to this topic and I have completed my research to date, and extracts of my draft Communications Guide is set out below. My conclusion is that an Order from the Fair Work Commission (FWC) is an important avenue for strata management companies to develop so to minimise bullying in the strata work place. This also reinforces the importance of the Contract of Appointment (or Agency Agreement). The new Federal Online Safety Act 2021 may also assist.

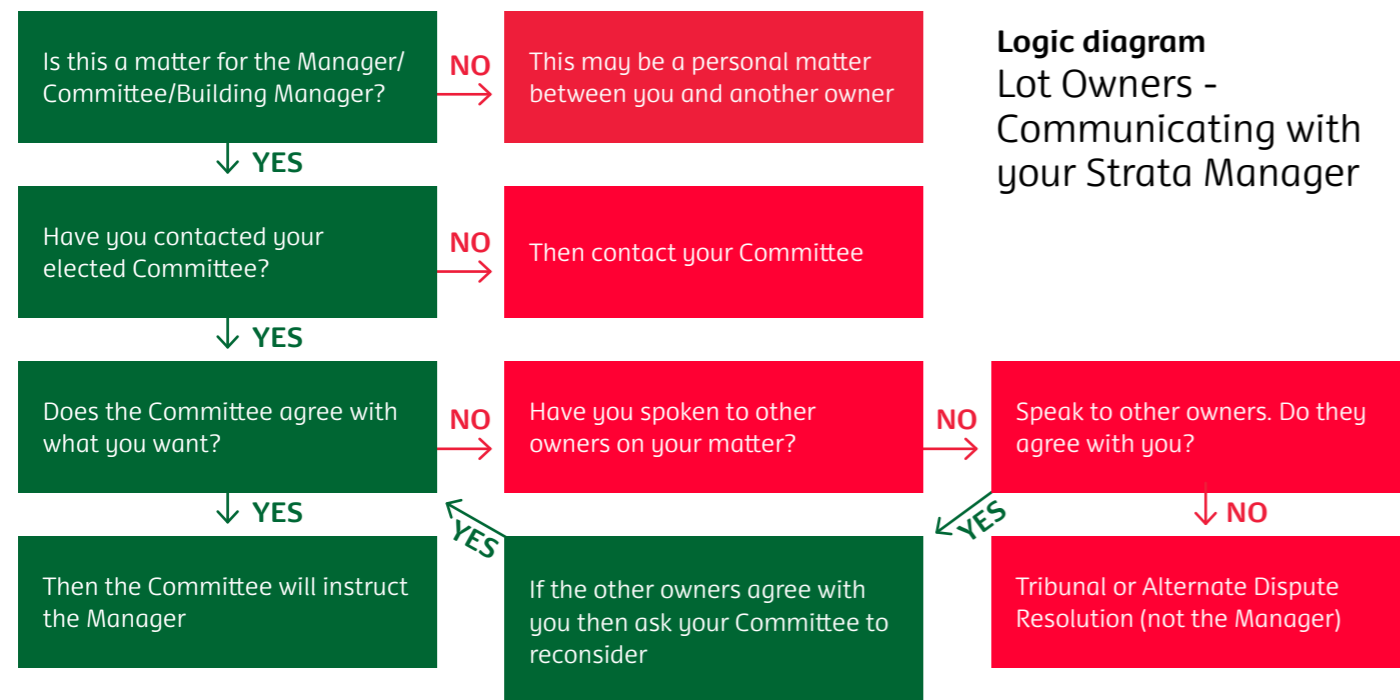
Bullying in the work place (Application by Ms A [2018] FWC 4147 (13 July 2018))

This case dealt with the unreasonable frequency of emails in a strata complex (Chairman to the building manager), and included sarcastic and derogatory language within those emails, 'the manner in which those issues were raised is [not reasonable](#)'. The salient conclusions and Order of the FWC limited the frequency, subject matter and content of any future emails to the building manager.

Communications Guide extract

Typical problems in communicating with your Committee and your fellow Owners and residents

The role of the Manager is not to resolve political or personal issues between owners and their elected Committee. The Act provides a process for resolution through the Tribunal, and other Alternate Dispute Resolution (ADR) avenues including Community or Neighbourhood Justice Centres, Mediation, Conciliation, and Neutral Evaluation are available. The Strata Manager is not a formal avenue for these disputes.



¹Application by Ms A [2018] FWC 4147 (13 July 2018)

²Raynor v Murray [2019] NSWDC 189 (17 May 2019)

³Moumoutzakis v Carpino [2008] NSWDC 168 (15 August 2008)

⁴Matthews v Pigram [2020] NSWDC 526 (10 September 2020)

Levels of Expectation (after the Committee instructs the Manager)

Emergency

PHONE your Manager. i.e key damage, major water leaks, etc. ALWAYS call emergency services first if appropriate Fire, Police, Ambulance.

Response is immediate

Urgent

EMAIL as 'urgent' matter. INCLUDE photos + details. i.e. lift outages, hot water failure, security issues, minor water leaks etc.

Response in 1-2 days

Non-Urgent

EMAIL most matters. INCLUDE photos + details. i.e. account enquiries, access device orders (fobs), cleaning, gardening, etc.

Response 3-7 days

Lot Owners Penalties for poor communication and conduct

Civil penalties

There are numerous examples of keyboard warriors, and disgruntled and typically ill informed people who have been dealt with by the Courts. Some of these penalties for defamation using emails in strata properties include \$120,000 awarded (but set aside on appeal), \$50,000 and \$20,000 standing, and these are just the reported cases, not the settled out of Court matters. Common law claims for damages can be much higher, **particularly when mental health** becomes an issue.

VIC - OHS Act 2004 penalties

Bullying and harassment in the Strata Managers workplace carries fines in excess of \$327,000 and five years imprisonment.

32 Duty not to recklessly endanger persons at workplaces

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an indictable offence and liable to - (a) in the case of a natural person, a term of imprisonment not exceeding 5 years, or a fine not exceeding 1800 penalty units, or both.

Other States - WHS Act penalties

29 Duties of other persons at the workplace

A person at a workplace must take reasonable care for his or her own health and safety, and that his or her acts or omissions do not adversely affect the health and safety of other persons, and comply, so far as the person is reasonably able, with any reasonable instruction that is given. Penalties range up to 5 years imprisonment or a fine of over \$381,000, or both.

Fair Work Act 2009 (cth) penalties - FWC Order to stop bullying

789FC Application for an FWC order to stop bullying or sexual harassment

(1) A worker who reasonably believes that he or she has been bullied or sexually harassed at work may apply to the FWC for an order under section 789FF.

What is unacceptable behaviour

Firstly, if you are an owner and you are NOT on the Committee, your direct line of communication within your scheme is to your Committee who will decide what action they would like to take. If your Committee chooses not to take your advice or follow what you want, your next path for resolution is by obtaining other owners thoughts on that particular issue, and if that is unsuccessful, then through the Tribunal, or other ADR.

Sending multiple repeat emails to your Strata Manager demanding that they respond to you immediately; using demeaning, threatening, or defamatory language in an email, letter or social media account **is not acceptable** and will not achieve your objective.

Remember the Act states that your Strata Manager is engaged by the Committee and has to follow the decisions and instructions of that Committee. Your Strata Manager is not a Lot Owner's personal secretary or repairs coordinator or an internal political lobbyist, as disappointing as that may be.

Your Strata Manager is here to help and appreciates your patience when dealing with your concern that has been raised, thank you!

Helpful Tips

A good mnemonic is H A L T. That is, do not write when you are Hungry, Angry, Lonely or Tired.

The above can be used during phone calls to help all parties get to the heart of an issue.

People may not be happy but at least they will be content.

Some of the above comments have been reviewed by various people in strata, and I acknowledge their contribution.