

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**OWNERS CORPORATIONS LIST**

VCATREFERENCE NO. OC2108/2021

**CATCHWORDS**

Jurisdiction – review of rejection of application – no jurisdiction under the *Owners Corporations Act 2006* (Vic) or under the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

**APPLICANT**

Lynne Holloway

**RESPONDENT**

Play It Forward Australia Ltd (ABN: 96 629 116 230)

**WHERE HELD**

Melbourne

**BEFORE**

Senior Member A Vassie

**HEARING TYPE**

Hearing

**DATE OF HEARING**

16 March 2022

**DATE OF ORDER**

16 March 2022

**DATE OF REASONS**

7 April 2022

**CITATION**

Holloway v Play It Forward Australia Ltd (Owners Corporations) [2022] VCAT 380

**ORDER**

1. The principal registrar's rejection of the application is confirmed.

A Vassie  
**Senior Member**

**APPEARANCES:**

For Applicant:

In person

Order made ex parte.

## REASONS

- 1 The principal registrar rejected an application which Ms Holloway attempted to file. The application was in a form appropriate for entry into VCAT's Owners Corporations List. The principal registrar rejected it on the ground that she was not entitled to make it because it was not an owners corporation dispute within the meaning of the *Owners Corporations Act 2006* (Vic). As she was entitled to do, Ms Holloway applied under s 71 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), for a review of the rejection. I heard her application on 16 March 2022 and confirmed the principal registrar's rejection. I gave oral reasons. Ms Holloway has requested written reasons.
- 2 Her application arises from her membership of a choir called the Voices of Casey Choir. Apparently a corporation, Play It Forward Australia Ltd., operated the choir. Ms Holloway named that corporation as the respondent to her application.
- 3 In an attachment to her application Ms Holloway alleged that by an email to her dated 12 November 2020 the respondent terminated her membership of the choir, "made false accusations and trashed my reputation". Her application stated that she sought from VCAT an order that the respondent make "a formal apology, retracting each and every libellous statement made... with a copy of said apology sent to all".
- 4 Ms Holloway told me that she made her application in a form appropriate for entry into the Owners Corporations List because Play It Forward Australia Ltd is a "body corporate". She has misunderstood the legal significance of that expression. What used to be called a "body corporate" within the meaning of the *Subdivision Act 1988* (Vic) became known as an "owners corporation" once the *Owners Corporations Act 2006* (Vic) commenced operation. That Act, in s 3 defines "owners corporation" as meaning a body corporate which is incorporated by registration of a plan of subdivision or a plan of strata or cluster subdivision. The owners corporation has various functions including the repair and maintenance of common property within the subdivision.
- 5 Although Play It Forward Australia Ltd is a corporate entity, it is incorporated under the *Corporations Act 2001* (Cth) not by registration of any plan of subdivision. It is not a "body corporate" in the special sense of that expression used in the *Subdivision Act 1988* (Vic) or in the definition of "owners corporation". Ms Holloway's dispute with the corporate entity is not an owners corporation dispute and the principal registrar was right to say so.
- 6 The fact that the application did not give rise to an owners corporation dispute would not matter if VCAT had jurisdiction under some other enactment to hear and decide Ms Holloway's claim. But there is no such enactment that could assist her.

- 7 The *Australian Consumer Law and Fair Trading Act 2012* (Vic) confers upon VCAT a jurisdiction to decide a “consumer and trader dispute”, which includes a dispute between a supplier of service and a purchaser of services. It picks up the definition of “services” in the Australian Consumer Law (Vic): “services” includes any rights, benefits, privileges or facilities that are provided, granted or conferred “in trade or commerce”, or a contract for or in relation to the use or enjoyment of facilities for amusement, entertainment, recreation or instruction.
- 8 Most people who join a choir do so for pleasure. Ms Holloway told me that that was why she joined. She paid a fee when she joined. By no stretch of the imagination, however, could benefits that the choir provided for her be classed as having been provided “in trade or commerce” or as “facilities” provided to her under any contract between her and the respondent. It would be hopeless to contend that VCAT has jurisdiction under the *Australian Consumer Law and Fair Trading Act 2012* (Vic) or under the Australian Consumer Law (Vic), to hear and determine her application.
- 9 Because VCAT has no jurisdiction to hear and determine Ms Holloway’s application, she was not entitled to make it and it was rightly rejected by the principal registrar.

A Vassie  
**Senior Member**