

Office of the Commissioner for Body Corporate and Community Management

Practice Directions



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Practice directions are guides made by the Commissioner for Body Corporate and Community Management to help explain the rules for body corporate disputes and the steps you must follow.

The practice directions give more information about the [Body Corporate and Community Management Act 1997](#). They do not replace the Act or the ability of the Commissioner to decide what is required for a particular dispute.

Click on the title of each practice direction and you will be taken to that document.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 1

Evidence of a dispute

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. An applicant must demonstrate the existence of a current dispute with the named respondent.
2. To demonstrate the existence of a dispute, the applicant must provide evidence of their attempts to communicate with the respondent to resolve each of the outcomes sought in the application. *Practice Direction 23: Internal Dispute Resolution* explains the obligation on an applicant to make reasonable attempts to resolve a dispute before lodging an application with the Commissioner's Office.
3. The Commissioner's Office also provides specific information on internal dispute resolution (sometimes referred to as self-resolution) online at www.qld.gov.au/bodycorporate.
4. The requirement for an applicant to demonstrate the existence of a dispute does not apply to adjudication applications seeking a declaratory order where there is no dispute and no respondent. This includes applications by a body corporate and accompanied by a resolution authorising the lodgment of the application, to:
 - a. change the financial year for the scheme; or
 - b. hold a general meeting more than 3 months after the scheme's end of financial year; or
 - c. authorise emergency expenditure by a body corporate.
5. An applicant must also demonstrate that the subject matter of the dispute is within the scope of the dispute resolution provisions of the Act. The fact that the applicant and respondent are both involved in a body corporate does not of itself bring the dispute within the scope of the Act. An applicant should demonstrate that their dispute relates to a contravention of the Act or community management statement; or the exercise or rights powers or duties under the Act or community management statement.



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COMMISSIONER

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 2

Representation

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1. The following sets out the requirements for a person, including a body corporate, to authorise a representative or agent to act on their behalf in a dispute resolution application.
2. A separate approval is required from a department conciliator in order for a party's representative or agent to participate in a conciliation session. This is explained further in *Practice Direction 11: Representation at conciliation*.

Authorisation of a representative

3. Where an applicant is represented by a third party, the applicant should clearly identify this in their application form. The representative cannot be named in place of the applicant.
4. The application form must be signed by each applicant. The only exception is where the application form is signed by an applicant's authorised representative.
5. Where the applicant is a body corporate, a copy of a committee or general meeting resolution authorising lodgment of the application must be supplied.
6. Where the applicant is a company who is represented by an officer or nominee of that company, the application must be accompanied by a statement or appropriate documentation identifying the representative and confirming their authority to act on behalf of the company. For example, a general manager of the company may be authorised to act by a letter, on company letterhead, signed by a company director. Alternatively, a director seeking to act on behalf of the company may provide an ASIC search showing their full name and position in respect of the company.
7. Where an applicant is represented by a power of attorney, the application must be accompanied by a copy of the power of attorney. The power of attorney instrument should be clear about the representative's ability to commence a proceeding on behalf of the other person.
8. Where an applicant is represented by a person other than a solicitor or a power of attorney, the application must be accompanied by a statement signed by the applicant and which specifically authorises the representative to act on their behalf in respect of the application.



9. Where appropriate, the Commissioner's Office may request evidence of the authority of a person to make a submission or otherwise act on behalf of a respondent or other affected person. An example of the evidence might be a certified copy of the instrument appointing the power of attorney.
10. At all times, it is the responsibility of the applicant to keep the Commissioner's Office advised of any change in circumstances related to their representative. For example, where an applicant changes legal representation.

Communication with applicants

11. The Commissioner's Office will communicate directly with an applicant unless that applicant has authorised a representative.
12. The Commissioner's Office will use the contact details supplied on the application form unless an applicant advises otherwise.
13. Where there are multiple applicants for an application, the applicants must nominate one person to act as the applicants' point of contact with the Commissioner's Office. The nominated contact will be responsible for relaying any relevant notice, information or request from the Commissioner's Office to each of the named applicants.
14. The Commissioner's Office retains discretion to contact a party directly regarding an application, or to decline to communicate to a representative, where, in the Commissioner's view:
 - a. the urgency of the circumstances requires the party to be contacted directly in order to either be notified of, or requested to provide, information relevant to the dispute;
 - b. the representative has failed to provide information about an application in response to a request by the Commissioner or an adjudicator; or
 - c. for another reason, it would be inappropriate to communicate via the nominated representative.



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Practice Direction 3

Communication and document management

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1. The following sets out information relating to communication and document management of dispute resolution applications with the Commissioner's Office.
2. All communication sent to the Commissioner's Office relating to a dispute resolution application should include the file reference number.
3. Only one copy of any application, correspondence or other document should be provided to the Commissioner's Office, unless the Office requests otherwise.

Mode of communication

4. Dispute resolution applications, submissions, requested documents and all other communication relating to an application will be accepted by mail, email or facsimile. Documents can also be hand-delivered to the Commissioner's Office at Level 4, 363 George Street, Brisbane, during building hours.
5. Where correspondence or documents are provided by email or facsimile, it is not necessary to also provide the original hard copy, unless the electronic form is not fully legible or if otherwise requested.
6. Where a signature is required on a document, such as an application form or the authorisation of a representative, an electronic version of the document will be sufficient if it includes a scanned or facsimile copy of the signature. If not, a signed hard copy must also be provided.
7. Email communications must be directed to the Commissioner's Office general email address (bccm@justice.qld.gov.au).
8. *Practice Direction 33: Electronic communication* provides specific requirements for electronic communications.



Response to correspondence

9. All emails received at bccm@justice.qld.gov.au will receive an automated email acknowledging receipt. The Commissioner's Office staff will not personally acknowledge the receipt of all correspondence to the Office. If a party would like acknowledgement of receipt of a particular item of correspondence, the correspondence must clearly state that.
10. Where correspondence requests a response, a response will be provided as soon as practical having regard to the urgency of the matter and the resources of the Office.
11. Where a correspondent has a specific request regarding the mode of response (for example, by email, post, facsimile or telephone) or preferred contact times, these should be clearly specified. The Commissioner's Office will endeavour to meet to such requests, if reasonably practical.

Access to documents

12. Applications, submissions and replies to submissions provided for the consideration of the Commissioner or an adjudicator are not confidential. The Commissioner's Office is unable to 'redact' or otherwise alter a document to omit particular information. Such information is entitled to be accessed by interested persons for a dispute resolution application [Act, section 246].
13. Parties should also be aware that all correspondence and documents sent to the Commissioner's Office may also be publicly accessible pursuant to the provisions of the *Right to Information Act 2009*.

Communication assistance

14. The Commissioner's Office can, on request, arrange communication through the National Relay Service, a sign language interpreter or organise a telephone or face-to-face interpreter through the Translating and Interpreter Service National.



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Practice Direction 4

Fees and charges for dispute resolution applications

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. This practice direction provides information about fees and charges for dispute resolution applications.

Application fees

2. The Act requires that a dispute resolution application must be accompanied by the prescribed fee [Act, *section 239*]. The current application fees are available online at www.qld.gov.au/bodycorporate. A separate fee is payable for each application for conciliation or adjudication.
3. Applications which are not accompanied by the prescribed fee may not be actioned until the payment is received. If the prescribed fee for an application is not received the Commissioner may reject the application.
4. The prescribed fee for making an application is generally not refundable, regardless of whether the application is later withdrawn by the applicant; rejected by the Commissioner; or unsuccessful.
5. The prescribed fee may be paid in cash or EFTPOS at the Commissioner's Office, by cheque or money order, or by credit card (Visa and Mastercard only). Cheques and money orders should be made payable to the 'Office of the Commissioner for Body Corporate and Community Management'.
6. Credit card payments can be accepted through the mail or fax by completing BCCM Form 21: Credit Card Payment Authorisation. To ensure the security of details, this form should not be emailed. Credit card payments can also be processed online at www.qld.gov.au/bodycorporatepayments or over the telephone.



Fee waiver and related

7. The Commissioner may waive the fee for lodging an application where payment of the fee would cause an applicant financial hardship [Act, section 239(3)]. Applicants seeking a waiver of the fee must complete *BCCM Form 23: Application – Waiver of Application Fee*. Completion of the Form 23 does not of itself mean the fee will be waived and the Commissioner may request the applicant to provide further evidence of financial hardship.
8. In considering ‘financial hardship’, the Commissioner may consider whether the applicant has a Commonwealth concession card.
9. If an application for conciliation has been rejected by the Commissioner as not suitable for conciliation, the applicant is not required to pay a further fee for making an adjudication application for substantially the same dispute.
10. If an application for adjudication has been rejected by the Commissioner on the basis that the applicant should attempt conciliation for the dispute, the Commissioner may waive the application fee for a conciliation application for the same dispute.
11. If an applicant requests it in their application, an adjudicator may consider making an order that a respondent to an application pay the fees associated with making conciliation and adjudication applications but only where the Commissioner has ended the conciliation application because the respondent failed, without reasonable excuse, to participate in conciliation.

Search and copy fees

12. An interested person may ask the Commissioner to provide them with copies of application documents, or to inspect application documents, if they have paid the prescribed fee. [Act, section 246].
13. The application documents include the application, a submission or the applicant’s reply to submission.
14. An interested person for an application includes the applicant, respondent, an affected person, the body corporate, a committee member, or a person who made a submission on the application. Contact the Commissioner’s Office for more details of the current fees.
15. The Commissioner has no power to waive the fees payable to inspect or obtain copies of documents, even if the Commissioner has waived the application fee.



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Practice Direction 5

Awarding costs

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1. The parties to a dispute resolution application are generally required to meet their own costs. This includes the application fee, the fee for inspecting or obtaining copies of any submission or reply, any personal costs incurred to attend a conciliation session, and any legal costs incurred in making or responding to an application.
2. Neither the Commissioner nor a conciliator have the legislative power to award costs against a party.
3. An adjudicator has no general powers to award costs. If an adjudicator dismisses an application for adjudication because it is frivolous, vexatious, misconceived or without substance, the adjudicator may order costs against the applicant for loss resulting from the application to the respondent, the body corporate or another affected person under the Act. This can include legal expenses. The costs awarded must not be more than \$2,000.
4. If asked by an applicant, an adjudicator may make an order that a respondent pay the prescribed application fees paid by an applicant for the adjudication and conciliation applications. This order could only be made where the:
 - a. two applications are about the same dispute; and
 - b. two applications have the same respondent; and
 - c. the Commissioner ended the conciliation application because the respondent failed, without reasonable excuse, to participate in conciliation.



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Practice Direction 6

By-law enforcement applications

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1. The legislation sets out preliminary procedures for applications seeking to enforce body corporate by-laws [Act, *sections 184-186*]. These preliminary procedures are the requirements that must be met before an application seeking the enforcement of by-laws can be lodged with the Commissioner's Office.
2. Applications that do not comply with the preliminary procedures may be rejected by the Commissioner or dismissed by an adjudicator for not meeting the jurisdictional requirements of the legislation.

Applications by the body corporate

3. Where a body corporate has concerns that an owner or occupier has not complied with the by-laws, they may firstly consider making informal contact with the person involved to raise their concerns.
4. The first formal step a body corporate must take is to issue a future or continuing by-law contravention notice. A contravention notice can be issued if the body corporate reasonably believes that an owner or occupier has breached a by-law.
5. A contravention notice must specify in a single document:
 - a. That the body corporate believes the person is breaching a provision of the by-laws; and
 - b. The by-law provision the body corporate believes is being breached; and
 - c. Sufficient details to identify the contravention; and
 - d. That the person must not repeat the contravention, or a reasonable period in which the person must remedy the contravention; and
 - e. That if the person fails to comply with the notice the body corporate may, without further notice, start proceedings in the Magistrates Court or lodge a dispute resolution application.



6. The Commissioner's Office provides BCCM Forms 10 and 11 which set out all the requirements for a contravention notice. The use of these forms is not mandatory but if a form is not used, the body corporate must ensure that the notice includes all five elements outlined above.
7. The contravention notice must name and be sent to the person who the body corporate believes is contravening the by-law. The body corporate must specifically identify the individual/s on the contravention notice. If the person contravening the by-law is an occupier, the body corporate must also provide a copy of the notice to the lot owner.
8. If the person breaches the by-law again following receipt of the contravention notice, the body corporate may lodge an application with the Commissioner's Office.
9. The person named in the contravention notice must be named as the respondent in the application.

Applications by an owner or occupier against the body corporate

10. Where an owner or occupier (the 'complainant') is concerned that another owner or occupier has not complied with the by-laws, they may firstly consider making informal contact to raise their concerns.
11. The first formal step the complainant must take is to issue a notice to the body corporate advising that they reasonably believe the by-laws are being breached. The complainant must use BCCM Form 1, which is a prescribed form.
12. The notice must name the person who the complainant believes is breaching the by-law (the 'accused person'), and clearly identify both the by-law being contravened and how the by-law is being contravened. The complainant must specifically identify the individual/s on the contravention notice.
13. It is advisable that the complainant also give a copy of the notice to the person who the complainant believes is breaching the by-law.
14. On receipt of the BCCM Form 1 the body corporate should notify the complainant within 14 days after receiving the request of whether a contravention notice has been given to the person allegedly breaching the by-law.
15. If the body corporate notifies the complainant that it has issued a contravention notice, the body corporate is then responsible for taking action if the contravention notice is not complied with.
16. If the accused person continues to contravene the by-law and the body corporate does not enforce the by-law, the complainant may lodge an application to require the body corporate to take enforcement action. The complainant would name the Body Corporate as the respondent and the accused person as the affected person.

Applications by an owner or occupier against the accused person

17. If the body corporate does not notify the complainant that it has issued a contravention notice or it resolves not to issue a contravention notice, the complainant may lodge an application directly against the accused person, seeking compliance with the by-law.

18. Before making an application directly against the owner or occupier breaching a by-law, the complainant must show that, in addition to the BCCM Form 1 served on the body corporate, the complainant has also attempted internal dispute resolution with the accused person. In particular, the application should demonstrate that the complainant has notified the accused person of their complaint and given that person an opportunity to rectify the complaint before lodging an application with the Commissioner's Office.

Dispensing with preliminary procedures

19. In some limited circumstances, a body corporate or any owner or occupier may bring an application to enforce a by-law without having complied with the applicable preliminary procedures if:
- a. The by-law contravention is incidental to an application for an adjudicator's order [under Act, *section 281(1)*] to repair damage or reimburse an amount paid for carrying out repairs; or
 - b. The application is for an interim order of an adjudicator and the applicant reasonably believes that special circumstances apply which make it necessary for the dispute to be resolved urgently.
20. Special circumstances may apply if the by-law contravention is:
- a. Likely to cause injury to people or serious damage to property; or
 - b. A risk to people's health or safety; or
 - c. Is causing a serious nuisance to people; or
 - d. Otherwise gives rise to an emergency.

Other relevant information

21. Refer to the attached by-law enforcement process flowchart which has been provided as a guide only.

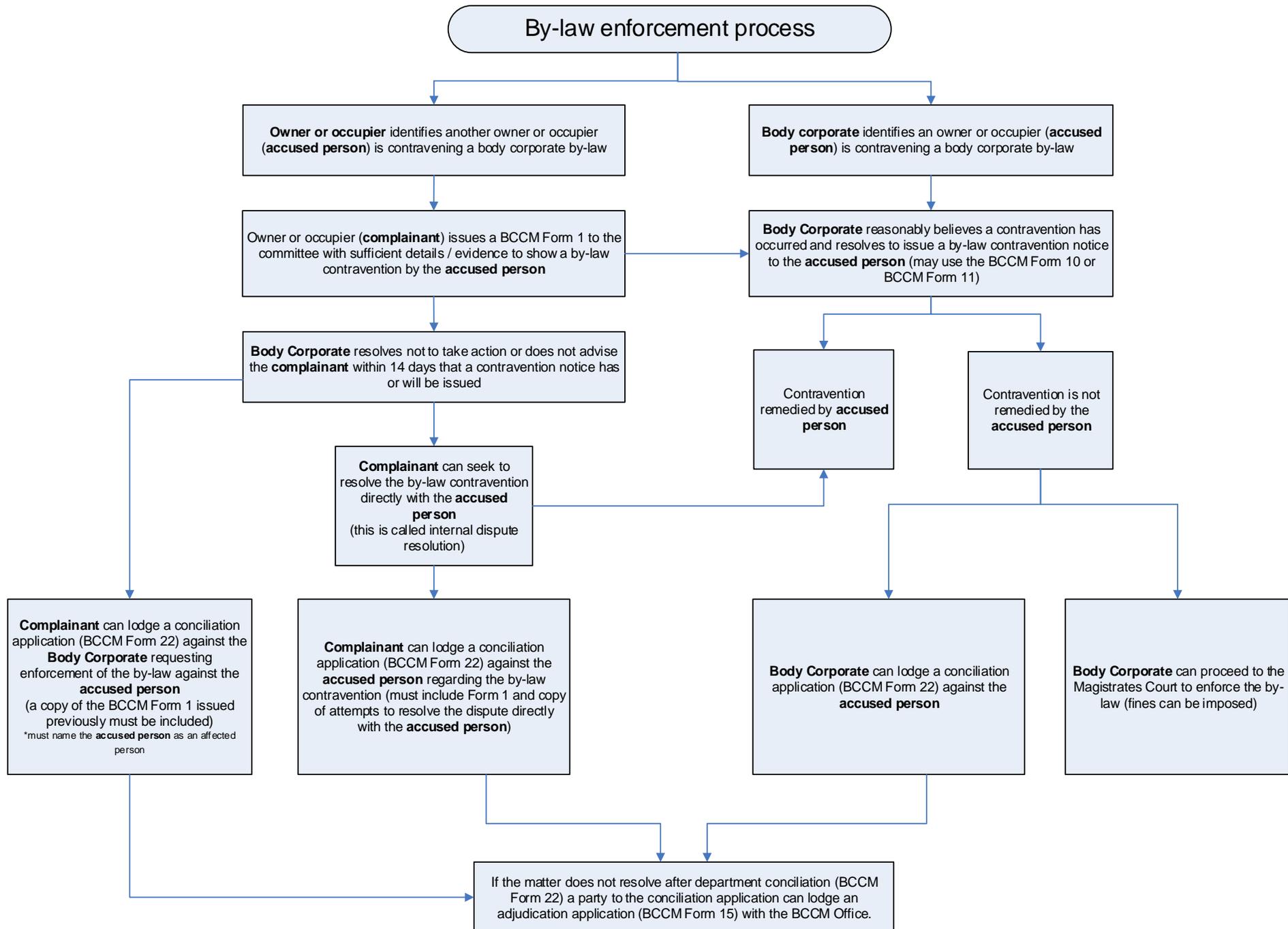


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Practice Direction 7

Conciliation process

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1. The following summarises the process for conciliation applications lodged with the Commissioner's Office.
2. The Commissioner's Office is impartial in relation to all applications lodged. Parties seeking advice on whether they should lodge an application and how to lodge an application should seek appropriately qualified advice (for example, legal advice).

Case management

3. As soon as an application is received by the Commissioner's Office a new file is opened and allocated a unique file reference number.
4. The applicant is sent a letter acknowledging receipt of the application and any application fee paid (if applicable). This letter includes the file reference number which must be included by the applicant in all communication with the Commissioner's Office about the application.
5. The application is then assessed by the Commissioner or a delegate. Generally, a case manager will act as a delegate of the Commissioner in determining whether the application complies with the legislative requirements and Practice Directions. In particular, the case manager will assess whether the dispute falls within the jurisdiction of the Commissioner's Office.
6. Where necessary, the case manager will contact the applicant to request clarification of the application or additional information or documentation to satisfy the requirements of the legislation and Practice Directions.
7. The Commissioner may reject an application that fails to comply with the requirements of the legislation or a practice direction about internal dispute resolution (refer to *Practice Direction 23: Internal dispute resolution*).

Referral to conciliation

8. Once the Commissioner has decided that the matter should be referred to conciliation, the application is referred to a conciliator.
9. In certain circumstances the Commissioner or a delegate may determine that a dispute is not appropriate for conciliation. This issue is further explained in *Practice Direction 9: Matters not appropriate for conciliation* and further information is provided in *Practice Direction 10: Preparing for conciliation*.



10. If the parties reach agreement at conciliation on any of the issues in dispute, the parties can choose to sign a written agreement documenting the terms of their agreement. It should also be noted that parties can also negotiate a settlement leading up to a scheduled conciliation session.

Ending conciliation

11. At the end of the conciliation process the parties will be issued with a conciliation certificate to inform them that the conciliation process has concluded. A copy of this certificate should be retained as it must be lodged with any future adjudication application about the same dispute.
12. Once the conciliation process has concluded, the conciliator has no further involvement in the dispute or any subsequent adjudication application about the dispute.

After conciliation

13. An applicant may lodge an adjudication application on the same dispute if conciliation was not able to resolve the dispute, providing the applicant has made a reasonable attempt to conciliate.
14. If a respondent does not make a reasonable attempt to conciliate the dispute, an applicant may request that an adjudicator order the respondent to reimburse the applicant for the conciliation and adjudication application fees.



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Practice Direction 8

Conciliation applications

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1. Applicants must complete the *Conciliation Application Form* [BCCM Form 22].
2. Applicants are encouraged to complete the application form online at www.qld.gov.au/bodycorporatedisputes and then post, email or facsimile the completed form to the Commissioner's Office.
3. Alternatively, a hardcopy of the application form, to be completed manually, can be downloaded from the above website or obtained from the Commissioner's Office. The hardcopy includes a guide to completing the application form.
4. At all times the onus is on the applicant to 'make their case', in other words, to ensure their application form is correctly completed and meets legislative requirements. The Commissioner's Office cannot complete application forms for applicants and nor can the Commissioner's Office instruct applicants on how to complete their application form.
5. Applications must be lodged with the prescribed fee.
6. In addition to the information in the online form and guide, applicants should note the following.

Applications must be clear and legible

7. The application form and any attachments should preferably be typed, in a clear font. Handwritten applications must be clear and legible.
8. If an application is not clear and legible, whether typed or handwritten, the applicant will be requested to submit a revised application that is clear and legible.

Applicant and respondent

9. The applicant is the person who is making the application. The respondent is the other person or party with whom the applicant has a dispute.
10. If the applicant has disputes against separate respondents, generally separate applications will be required (each accompanied by the prescribed fee).
11. Where the applicant is a body corporate, a copy of a committee or general meeting resolution authorising lodgment of the application must be supplied.
12. A dispute can only be between certain combinations of parties [Act, *section 227*]. For example, an owner or occupier can only bring an application naming the body corporate or another owner or occupier as a respondent. An owner or occupier cannot lodge an application against the body corporate manager, the committee or a caretaker (refer to the online form or guide for full details).



13. If an owner has a dispute about a decision made, or the failure to make a decision at a general meeting or committee meeting, the respondent to the dispute would normally be the body corporate.

Outcome sought

14. The applicant must provide a short statement of what outcome they believe would resolve the matter. Generally, the outcome should clearly identify the action that the applicant wants the respondent to take, or to cease, in order to resolve the dispute.
15. Information included in the application assists the conciliator, the respondent and any affected party to understand what the applicant is seeking and the reasons why the application has been made.

Background

16. The applicant must provide a brief summary of the background to the dispute. This should summarise what has occurred and explain what rights, powers and responsibilities which arise under the BCCM Act that obligates the respondent to comply with the outcome sought.

Internal dispute resolution

17. Refer to *Practice Direction 23: Internal dispute resolution* for further details.

Amendment or withdrawal of application

18. An applicant can request to amend their application or provide additional information prior to the referral to conciliation.
19. An applicant may withdraw an application in writing at any time before the conciliation application is finalised. Once an application is withdrawn, the Commissioner's Office will take no further action in relation to the application.

Privacy and confidentiality

20. Certain provisions of the body corporate legislation authorise a department conciliator to disclose the contents of a conciliation application to the respondent, the body corporate and other interested persons for the application.
21. An applicant completing a conciliation application is therefore responsible to ensure the application and any supporting material contain only information which the applicant is prepared to have made available to all other parties to the dispute.



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COMMISSIONER

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 9

Matters not appropriate for conciliation

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. Generally, all applicants must attempt to resolve the dispute through conciliation with the Commissioner's Office before seeking adjudication. A conciliation application is a BCCM Form 22.
2. The Commissioner may reject an application for conciliation if the Commissioner considers the dispute is not appropriate for conciliation. This Practice Direction describes some of the factors which the Commissioner may take into account in deciding whether a dispute is not appropriate for conciliation. It is not an exhaustive list.
3. The Commissioner will consider the particular facts and circumstances of each dispute before deciding whether conciliation is appropriate.
4. The Commissioner may request the applicant or another person to provide information about the dispute, to assist in deciding whether to refer the application to conciliation or to reject the application. [*Sections 240 or 251* of the Act].
5. Factors the Commissioner may take into account include:
 - a. any circumstance or aspect of urgency associated with the issues in dispute, including whether an interim or emergency order is being sought;
 - b. whether the application seeks an adjudicator's order and where there is no respondent and no dispute, such as a request for a change of financial year;
 - c. whether the application is seeking the return of body corporate property, such as records, necessary for the operation of the body corporate;
 - d. whether the respondent to the application cannot be otherwise determined. For example: where a body corporate has no functioning committee and is not able to appoint representatives to act on its behalf at conciliation;
 - e. whether the application involves numerous applicants and respondents, making conciliation impractical;



- f. where there are related legal proceedings arising from the same set of facts in dispute;
 - g. where the particular history and nature of the dispute cannot be accommodated by the conciliation process. For example, where a party alleges that threats of violence have been made by another party to the dispute; or
 - h. where there has been a past unsuccessful attempt at conciliating another dispute involving either the applicant and/or the respondent, the circumstances of which indicate that conciliation of the new dispute is not likely to result in a quick and efficient resolution.
6. A previous failure by the parties to resolve the dispute through internal dispute resolution does not, of itself, make a matter inappropriate for conciliation.
7. If the Commissioner decides to reject an application, the Commissioner will inform the applicant in writing of the reasons for the decision and the applicant's right to seek a review of the decision by the Queensland Civil and Administrative Tribunal.
8. Where an application for conciliation is rejected on the basis that the dispute is not appropriate for conciliation, the applicant may lodge an application for adjudication providing the dispute is within the jurisdiction of a dispute resolution officer. Generally, the Commissioner will waive the prescribed fee for an adjudication application lodged in these circumstances.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 10

Preparing for conciliation

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1. The Commissioner's Office provides a conciliation service through the use of trained conciliators to assist parties to resolve a wide range of issues in a constructive and non-confrontational manner. The following information provides a guide to assist parties in preparing for conciliation.

The role of the conciliator

2. The role of the conciliator is to facilitate discussions and assist parties to resolve issues that they are unable to resolve themselves. Conciliators may also assist parties in discussing how to resolve any future disputes which may arise between them.
3. Conciliators are trained to provide general information on the legislation relevant to the issues in dispute and to discuss possible resolution with the parties. Conciliators may also refer parties to previous decisions of adjudicators, tribunals and courts which have interpreted and applied provisions of the body corporate legislation relevant to the current issues in dispute.
4. Conciliators do not provide legal advice or make a decision about who is right, who is wrong or what the outcome of the dispute should be.
5. Conciliation in the Commissioner's Office is not the same as mediation which is commonly used in commercial arbitration or some other dispute resolution forums (for example, in the Courts).

Preparing for the conciliation session

6. The conciliator will contact each of the parties prior to the conciliation session. The conciliator may seek further information from the parties to assist the conciliator's understanding of the dispute and how each of the parties would like the dispute to be resolved.
7. Parties should advise the conciliator of any special needs prior to the session. This may include interpreting services and physical access requirements to attend the session.



8. Parties can prepare for conciliation by:
 - a. identifying the issues of concern to them that relate to the dispute and being prepared to give a brief description of the situation;
 - b. considering what the issues may be for the other parties to the dispute and how these issues may affect them;
 - c. bringing or making available any relevant documents, plans or photographs that might assist the other party to better understand the opposing point of view;
 - d. contacting the Information Service of the Commissioner's Office (1800 060 119; or www.qld.gov.au/bodycorporatequestion) to get general information on the legislation that may help them understand rights and responsibilities;
 - e. considering what might be their acceptable outcomes to the dispute; and
 - f. being prepared to listen to other points of view.

9. If parties have additional information to add to the dispute, the conciliator will allow this material only if the conciliator believes it is relevant and will assist in resolving the dispute.

The conciliation session

10. The conciliator will decide on the type of conciliation session to be held. Generally, conciliation is jointly conducted with all parties and the conciliator via either a face-to-face or telephone conference. However, in some circumstances, the conciliator may conduct a shuttle conference consisting of a series of one-on-one telephone conversations with each party to the dispute.
11. Conciliation may take up to 3 hours and parties are requested to set aside this time for a possible resolution.
12. Parties are encouraged to represent themselves in the conciliation session and actively contribute towards discussions to resolve the dispute. Parties seeking to be represented at conciliation should read *Practice Direction 11: Representation at conciliation*.
13. The Commissioner's Office notifies parties in writing of the time of a conciliation session. Parties may request a more suitable time but should be aware that a re-scheduled session will depend on the availability of the conciliator and the other parties to the dispute. The legislation requires conciliation to be conducted as quickly as possible.



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Practice Direction 11

Representation at conciliation

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1. This Practice Direction sets out requirements for representation and attendance at conciliation sessions.

Attendance

2. The conciliator makes the final decision as to who is permitted to attend the conciliation session.
3. In most cases, only the parties directly involved in the dispute are permitted to attend and take part in the conciliation session. The parties who attend the session are expected to have the authority to negotiate and enter into an agreement to resolve the dispute.
4. The conciliator may allow a person who is not a party to attend the conciliation session if the conciliator believes it may help resolve the dispute. If the conciliator allows a person who is not a party to the dispute to attend, the conciliator may impose conditions or limitations on the person's attendance and involvement in the conciliation session.
5. If a party requires an interpreter in the conciliation session the Commissioner's Office will arrange an interpreter. A party requiring an interpreter is requested to advise the Commissioner's Office as soon as possible on receipt of the invitation to attend conciliation, to ensure the availability of an interpreter at the session.

Representation by an agent

6. An agent may represent a party to an application at the conciliation session with the permission of the conciliator. The conciliator may impose conditions on the agent's attendance at the session. A party's entitlement to be represented by an agent is subject to the agent complying with any conditions imposed by the conciliator.
7. If the party is a corporation under the *Corporations Act*, an authorised officer of the corporation may represent the party. Refer to *Practice Direction 2: Representation*.



8. If the party is the body corporate for the community titles scheme, not more than 2 individual lot owners or committee voting members can represent the body corporate.

Representation by committee voting members as an agent of a body corporate

9. It can be useful for the body corporate to be represented by voting committee members if the resolution sought by the conciliation application is not a restricted issue. That is, where the committee has the power under the legislation to make a decision about the issue.
10. The legislation provides that a committee voting member may be appointed as an agent for the body corporate if authorised in writing by a majority of the committee voting members. The authorisation can limit the representative from making certain decisions.
11. In acting as agent for the body corporate, the committee voting member may do anything the committee may do according to the authorisation provided for under the regulation module applying to the community titles scheme.
12. The committee voting member is not able to make a decision on a restricted issue under the regulation module applying to the scheme. These issues must be decided by the body corporate at general meeting.

Legal representation

13. The nature of conciliation is non-adversarial, and provides an environment which encourages parties to openly talk to one another and work together to resolve their dispute. As such, legal representation is generally not permitted in conciliation. However, a conciliator may, for exceptional reasons, allow a legal representative to attend conciliation. The attendance of a legal representative at the session is subject to any conditions imposed by the conciliator.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 12

Admissibility of information from conciliation

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1. The following is a guide to the confidentiality and admissibility of information arising out of department conciliation.

Conciliators and confidentiality

2. A conciliator must not disclose any information about a person that the conciliator acquired in conciliation to anyone else, unless one or more of the following circumstances apply [Act, *section 252L*):
 - a. with the person's consent;
 - b. for statistical purposes such as departmental reporting, which does not disclose the identity of a party;
 - c. for the purpose of conducting the conciliation session during which the information was provided;
 - d. where the disclosure is reasonably necessary because there is a serious threat to personal property or safety;
 - e. for a proceeding for an offence under the Act; or
 - f. if the disclosure is required under law.
3. Information about a person includes any opinion, admission or offer made by the person in a conciliation session, or the personal circumstances of a person involved in the dispute.
4. Once the conciliator has ended the conciliation process, the conciliator has no further legislative role in relation to the dispute. Unless one of the above conditions applies, the conciliator is unable to enter into any discussion about what was said or done in conciliation with any person – even with a named party or another person who took part in the conciliation – once the certificate has issued.



Admissibility

5. Evidence of anything said or done about a dispute in conciliation is inadmissible in an adjudication process or another legal proceeding outside of the Commissioner's Office [Act, section 252E(5)].
6. This requirement exists to encourage an open flow of information between the parties and assist resolving the dispute in a way that satisfies the parties.



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Practice Direction 13

Adjudication process

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1. The following summarises the process for adjudication applications lodged with the Commissioner's Office.
2. The Commissioner's Office is impartial in relation to all applications lodged. Parties seeking advice on whether they should lodge an application and how to lodge an application should seek appropriately qualified advice (for example, legal advice).

Case management

3. As soon as an application is received by the Commissioner's Office a new file is opened and allocated a unique file reference number.
4. The applicant is sent a letter acknowledging receipt of the application and any application fee paid (if applicable). This letter includes the file reference number which must be included by the applicant in all communication with the Commissioner's Office about the application.
5. The application is then assessed by the Commissioner or a delegate. Generally, a case manager will act as a delegate of the Commissioner in determining whether the application complies with the legislative requirements and practice directions. In particular, the case manager will assess whether the dispute falls within the jurisdiction of the Commissioner's Office.
6. Where necessary, the case manager will contact the applicant to request clarification of the application or additional information or documentation to satisfy the requirements of the legislation and Practice Directions.

Submissions

7. Subject to the circumstances of the dispute and the named parties, the Commissioner will generally invite submissions on the application from the respondent, body corporate committee and all owners.
8. Submissions may also be invited from persons not named in the application, such as an occupier, body corporate manager, or caretaking service contractor, where the Commissioner considers that the person either could be materially affected by the outcome sought by the application, or that the person may be able to help resolve the issues raised by the application.



9. The invitation to make a submission is an opportunity for those persons to 'have their say'. A submission may support, oppose or comment generally on the application. It is not compulsory to make a submission. All information and evidence that a party seeks to rely on should be included in their written submission. Parties may not be provided with a further opportunity to comment on the application.
10. Parties invited to make a submission may request an extension of time to make a submission. This request must be in writing, set out the period of extension requested and provide good reason for the extension. If a lengthy extension is sought, the Commissioner may seek comment from the other party before deciding on the request.
11. The Commissioner retains discretion to approve or refuse an extension request or approve a different (shorter) period of extension to that requested. The Commissioner will consider extension requests on a case-by-case basis, taking into account the particular circumstances.
12. The applicant is entitled to inspect or obtain copies of all submissions received, for the prescribed fee.
13. If the applicant inspects or obtains copies of the submissions, they may make a written reply limited to responding to issues in the submissions. The applicant should not include new information in the reply.
14. If an applicant includes new issues or information in their reply to submissions, the adjudicator may, in the interests of natural justice, disregard the new material or may require its distribution to other parties (at the applicant's cost) with an invitation to make a further submission about the new material.
15. Submissions and replies to submissions cannot be kept confidential. Any party to the application is entitled to obtain copies of these documents, for the prescribed fee.
16. The submissions process will generally differ for interim order applications [see *Practice Direction 16: Interim order applications*].

Referral to adjudication

17. Once the submissions process is completed, and any reply received from the applicant, the Commissioner will assess the application and make a dispute resolution recommendation. In most cases the Commissioner will refer the application to department adjudication.
18. Applications are generally allocated to adjudicators in chronological order from the date of the referral to adjudication.
19. The adjudication process does not include a hearing. The application will generally be determined 'on the papers'. In some cases the adjudicator may determine that it is appropriate to conduct a teleconference or face-to-face meeting with the parties.
20. Adjudicators have broad powers of investigation. As well as reviewing the application, submissions, reply to submissions and scheme documentation (such as the community management statement and plan), the adjudicator may request additional information from any party or from any other person that they consider may be able to assist. In addition, the adjudicator may undertake a site inspection or request copies of body corporate records.

21. While adjudicators may investigate a dispute, they cannot meet with or speak to parties individually due to the need to ensure natural justice for all parties.
22. Once the adjudicator has completed their investigation, they will publish a written order with a full statement of reasons for their decision. A copy of the order and statement of reasons will be sent to all parties, including all persons who made a written submission, and published to the Australasian Legal Information Institute website at www.austlii.edu.au.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 14

Adjudication applications

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1. Applicants for the order of an adjudicator must complete the *Adjudication Application Form* [BCCM Form 15].
2. Applicants are encouraged to complete the application form online at www.qld.gov.au/bodycorporate and then post, email or facsimile the completed form to the Commissioner's Office. The online version of the form includes explanations and information that may assist an applicant in understanding how to complete the application.
3. Alternatively, a hardcopy of the application form, to be completed manually, can be downloaded from the above website or obtained from the Commissioner's Office. The hardcopy includes a guide to completing the application form.
4. At all times the onus is on the applicant to 'make their case', in other words, to ensure their application form is correctly completed and meets legislative requirements. The Commissioner's Office cannot complete application forms for applicants and nor can the Commissioner's Office instruct applicants on what action they should take in relation to their application.
5. In addition to the information set out in the online form and guide, applicants should note the following.

Applications must be clear and legible

6. The application form and any attachments should preferably be typed, in a clear font. Handwritten applications must be clear and legible.
7. If an application is not clear and legible, whether typed or handwritten, the applicant will be requested to submit a revised application that is clear and legible.

Applicant and Respondent

8. The applicant is the person who is making the application. The respondent is the other person or party with whom the applicant has a dispute.



9. If the applicant has separate disputes against separate respondents, about different issues, separate applications (each accompanied by the prescribed fee) will generally be required.
10. Where the applicant is a body corporate, a copy of a committee or general meeting resolution authorising lodgment of the application must be supplied.
11. There are specific legislative provisions guiding the different categories of person that an applicant can bring an application against (refer to the online form or guide for full details). For example, an owner or occupier can only bring an application naming the body corporate or another owner or occupier as a respondent. An owner or occupier cannot lodge an application against the body corporate manager, the committee or a caretaker.
12. If an owner has a dispute about a decision made, or the failure to make a decision at a general meeting or committee meeting, the respondent to the dispute would normally be the body corporate.

Affected person

13. An affected person means a person, other than the applicant or respondent, who would be directly and materially affected by the outcome sought by the application.
14. Common examples of an affected person for an application include:
 - a. an application by an owner of a lot against the body corporate seeking the body corporate to enforce a by-law, the person allegedly contravening the by-law would be an affected person;
 - b. an application by an occupier of a lot against the body corporate for permission to keep a pet, the owner of the occupier's lot (if not the occupier) would be an affected person; or
 - c. an application by the body corporate against an occupier of a lot for contravening a by-law, the owner of the occupier's lot (if not the occupier) may be an affected person.

Outcomes Sought

15. The applicant must clearly and concisely set out the outcome or outcomes sought by the application. Generally, the outcome should clearly identify the action that the applicant wants the respondent to take, or to cease, in order to resolve the dispute.
16. If an applicant is seeking multiple outcomes, each outcome should be separately numbered.

Supporting grounds and attachments

17. It is the applicant's responsibility to provide all information and supporting evidence necessary to prove the applicant's case for each outcome sought.
18. To do this, the applicant must provide a statement of grounds setting out the full circumstances of the dispute and all of the reasons why the applicant believes the adjudicator should order each of the outcomes sought by the applicant. The statement of grounds should generally comprise a single document (excluding attachments).

19. The statement of grounds must:
 - a. be specific, concise and to the point, ensuring that all details relevant to the outcomes sought are included;
 - b. demonstrate that there is a genuine dispute: that is, a disagreement between the parties over an issue that the applicant has been unable to resolve by internal dispute resolution with the respondent. The statement should describe what actions the applicant has taken in an attempt to resolve the dispute;
 - c. set out how the issue in dispute amounts to a claimed or anticipated breach of the body corporate legislation or the community management statement for the scheme, or relates to the exercise of rights and powers under the legislation or community management statement. In doing so, the applicant should demonstrate that there is some legal basis for each outcome sought; and
 - d. set out the history or background to the dispute including, where appropriate, a chronology of the events and circumstances leading up to the lodgement of the application. Consider questions relating to who, what, when, where, why and how of each circumstance.
20. If multiple outcomes are sought, separate grounds should be set out in respect of each outcome. The grounds for each outcome should be easily identifiable, either with a clear heading or else numbered to correspond with the numbering of the outcomes.
21. In order to prove their case, applicants should attach duplicates (not originals) of supporting documentation and material relevant to the dispute, such as:
 - a. Full copies of the minutes of committee and general meetings;
 - b. The full notice for general meetings;
 - c. Correspondence;
 - d. Witness statements, statutory declarations or affidavits;
 - e. Quotes, invoices, receipts, calculations, financial statements or other relevant financial documentation;
 - f. Contracts and agreements;
 - g. Photographs, plans, sketches and diagrams; and
 - h. Reports from qualified persons.
22. Each attachment must be numbered and referenced in the statement of grounds, with an explanation of the relevance of the attachment. Ideally, applicants will provide a schedule listing all attachments.
23. The inclusion of information, arguments and attachments that are not directly relevant to the outcomes sought should be avoided.
24. Where a conciliation application has been made and finalised, a copy of the conciliation certificate must be attached to the application.
25. Information included in a conciliation application will not be transferred to the adjudication application by the Commissioner's Office. It is the responsibility of the applicant to resubmit any information from the conciliation application that remains relevant.

Amendment or withdrawal of application

26. An applicant can request to amend their application or provide additional information at any time before the Commissioner has made a dispute resolution recommendation on the application (for example, referring the application to an adjudicator).
27. If amendments or additional information are provided by the applicant after the Commissioner has sought submissions about the application, the Commissioner will generally require the applicant to distribute the amendments or additional information to those parties who have been invited to make submissions, at the applicant's expense, and provide a statutory declaration confirming the distribution has occurred.
28. An applicant may withdraw an application in writing at any time before a final order is made. Once an application is withdrawn, the Commissioner's Office will take no further action in relation to the application.

Privacy and confidentiality

29. The Commissioner will be required to disclose the contents of an adjudication application to those parties from whom submissions are sought and disclose the contents of the application, submissions and the reply to submissions to interested persons who request access.
30. An adjudicator may disclose information acquired while investigating an application in the interests of natural justice. Information provided to the Commissioner or an adjudicator may be referred to in the adjudicator's order and statement of reasons, which will be published online.
31. Parties should ensure that any material provided to the Commissioner or adjudicator is information that they are prepared to have made publically available.



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Practice Direction 15

Application time limits

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1. For most types of disputes there is no time limit on the lodging of a dispute resolution application with the Commissioner.
2. However, where a lengthy period of time has elapsed between the 'dispute' and lodgement of the application, the Commissioner may invite the applicant to demonstrate the dispute is still ongoing.
3. A lengthy delay in pursuing a dispute may also be a factor considered by an adjudicator when determining an application. An applicant may wish to explain the reasons for a delay in the statement of grounds supporting their application.

Time limit for meeting disputes

4. Certain applications relating to body corporate meetings must be lodged within three months of the meeting in question [Act, *section 242*]. Applications covered by this time limit are an application to invalidate:
 - a. a general meeting;
 - b. a resolution at a general meeting;
 - c. the election of a committee member;
 - d. a committee meeting; or
 - e. a committee resolution.
5. The time limit does not apply in relation to a motion that failed to pass.
6. The time limit will have been complied with if a conciliation application for the same dispute is lodged within the time limit.
7. The basis for the time limit for meeting decisions is to give a body corporate certainty in its actions.



Waiver of the time limit for meeting disputes

8. An adjudicator may waive the requirement to lodge a meeting application covered by the time limit within three months for “good reason” [Act, section 242(4)(b)].
9. Where a meeting application is lodged outside the time limit, the Commissioner will treat the application as if it were lodged in time. It will, in due course, be for the adjudicator to determine whether to waive the time limit.
10. Applicants should include the reasons the application was not lodged within the time limit in the statement of grounds for their application for the adjudicator to consider.
11. There are a range of factors an adjudicator will weigh up when deciding whether to waive the non-compliance with the time limit. These include the:
 - a. length of the delay;
 - b. reasons for the delay;
 - c. effect of the delay on other parties affected by the disputes; and
 - d. whether, apart from the non-compliance with the time limit, the applicant would have been entitled to the outcome sought.



Chris Irons
COMMISSIONER

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 16

Interim order applications

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. The legislation provides that the Commissioner *may* refer an application for an interim order immediately to an adjudicator [Act, *section 247*].
2. An interim order can be thought of as providing a form of injunctive relief. An interim order is distinct from both an application seeking an order for emergency expenditure [refer *Practice Direction 18: Emergency expenditure applications*] and an application suitable to be expedited [refer *Practice Direction 19: Expeditable applications*].
3. Applicants should apprise themselves of the differences amongst these types of applications before lodging their application. It is not the role of the Commissioner's Office to suggest to an applicant the type of application they should lodge.
4. While a party may apply for interim orders, the Commissioner may refuse to refer an application to an adjudicator for consideration of an interim order, and instead proceed only with the application for final outcomes, if:
 - a. the Commissioner does not reasonably consider that the nature or urgency of the circumstances described in the application warrant referral;
 - b. the only reason for the claimed urgency is the applicant's preference for a prompt resolution of the dispute; or
 - c. the interim order would have the effect of determining the final outcome or give a final ruling on a substantive issue in dispute.
5. A decision by the Commissioner to refer an application for an interim order to an adjudicator does not guarantee that the adjudicator will make the interim order sought. An adjudicator will only grant an interim order if satisfied that the order is necessary due to the nature and urgency of the circumstances to which the application relates [Act, *section 279*].
6. The onus is on an applicant to demonstrate that there is genuine urgency or other circumstances that warrant an interim order being made.
7. In considering whether to make an interim order sought, an adjudicator must be satisfied that the application raises serious legal questions and that the balance of convenience between the parties justifies injunctive relief. The adjudicator must balance the inconvenience of granting relief now if final orders are ultimately refused against the inconvenience of refusing relief now if final orders are ultimately granted.
8. An interim order is temporary. It has effect only until a final order is made, or the interim order is revoked or varied, or the application is withdrawn. It seeks to maintain the status quo,



or preserve the rights and interests of the parties until the final outcomes can be investigated and determined.

9. Examples of circumstances where an interim order may be warranted include:
 - a. A lot owner disputes the decision of a body corporate to cut down a tree. An interim order may be granted to prevent the tree being cut down until the adjudicator can determine whether the decision to cut down the tree was valid; and
 - b. A body corporate has removed a fence that forms part of the pool fencing. A lot owner is concerned about the safety risk and the legal consequences of the non-compliant fencing. An adjudicator may order the body corporate install temporary fencing or drain the pool until the dispute about permanent fencing can be resolved.

Interim submissions

10. An interim order may be made by an adjudicator without any submission being sought from the respondent or any affected person [Act, *section 247*].
11. As part of the adjudicator's investigation of the interim order application, the respondent and any affected person will, where possible, be provided with a limited opportunity to make a submission in response to the interim orders sought.
12. Due to the urgency of many interim applications, the time provided for interim submissions is often very limited. This means there may also be a limited opportunity to grant an extension to the period provided for interim submissions. Depending on the nature of the order sought, a party seeking an extension may wish to consider whether they are able to provide a written undertaking to the adjudicator that they will not perform the disputed action which the interim order seeks to put on hold.
13. Unlike adjudication orders more generally, the applicant has no right of reply to interim submissions before the interim order is made, but may obtain copies on request. The applicant may comment on the interim submissions when making a reply to the final outcome submissions.

Effect of an interim order

14. An interim order has effect for the period (not longer than one year) specified in the order.
15. An interim order may be extended, varied, renewed or cancelled by the adjudicator until a final order is made.
16. An interim order lapses when it expires, it is cancelled by the adjudicator, the application is withdrawn or rejected, or when a final order is made.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 17

Administrator appointments

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. An adjudicator may make an order appointing an administrator to perform the obligations of the body corporate, the committee or a member of a committee [Act, *section 278* and *301*].
2. An administrator has the powers given to them under the order.
3. An administrator's remuneration must be paid by the body corporate [Act, *section 301(5)*].
4. Appointing an administrator is a significant and serious action, as it effectively takes responsibility and control away from the body corporate, committee or member of a committee. Adjudicators must be satisfied the circumstances warrant taking such a step. For these reasons, owners should carefully consider lodging an application for the appointment of an administrator.

Term of appointments

5. Administrators are often appointed for a period of up to three months to enable them to call and convene a general meeting for a body corporate.
6. Such orders may be appropriate where a body corporate has failed to hold its annual general meeting within three months of the end of the financial year applying to the scheme. In some cases a body corporate may not have held an annual general meeting for many years or at all.
7. In these circumstances there may be no-one in the scheme who is authorised to convene a general meeting and an adjudicator's order is necessary to authorise a person to convene the meeting.
8. In certain circumstances, an adjudicator may consider it appropriate to appoint an administrator to administer a scheme for a longer period of time.

Requirements for nomination

9. An applicant who seeks an order to appoint an administrator must nominate a person who they seek to have appointed as administrator. The applicant may choose to nominate multiple alternative administrators.



10. The person nominated may be a member of the body corporate or an external person, as appropriate. Often administrators are (but not always) body corporate managers. The Commissioner's Office cannot nominate, recommend or suggest an administrator to an applicant.
11. A nomination should include the following information:
 - a. the name and contact details of the nominee;
 - b. a statement from the nominee consenting to the appointment;
 - c. details of the nominee's qualifications, experience or other basis for appointment;
 - d. if the nominee will seek remuneration from the body corporate for the appointment, full details of the remuneration sought;
 - e. details of any possible or perceived conflict of interest in relation to the appointment of the nominee, including in relation to the purpose of the appointment, any power to be exercised by the nominee under the appointment, or the proposed remuneration for the appointment; and
 - f. any other terms and conditions which the nominee may have in relation to the appointment (such as an administration agreement).
12. The respondent and other affected persons may raise reasonable objections in their submission either to the appointment of an administrator or to the specific nominee proposed by an applicant.
13. If an applicant seeks the appointment of an administrator with the consent of other owners in the scheme, the applicant should include the signed agreement of each owner with the application. If the owners of all lots in the scheme consent in writing to the appointment, the application may be able to be expedited.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 18

Emergency expenditure applications

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. The legislation sets limits on the amount that a body corporate committee can spend without the body corporate first resolving at a general meeting to authorise the specific expenditure. An exception exists when an adjudicator is satisfied that the spending is required to meet an emergency and makes an order authorising the expenditure [for example, the *Body Corporate and Community Management Act (Standard Module) Regulation 2008, section 151*].
2. A body corporate may lodge an application seeking the authorisation of an adjudicator for emergency expenditure.
3. An emergency expenditure order is distinct from both an application seeking an interim order [refer *Practice Direction 16: Interim order applications*] and an application suitable to be expedited [refer *Practice Direction 19: Expeditable applications*].
4. Applicants should apprise themselves of the differences amongst these types of applications before lodging their application. It is not the role of the Commissioner's Office to suggest to an applicant the type of application they should lodge.
5. The applicant must demonstrate that there is a current, genuine emergency requiring the body corporate to immediately take the action sought in the application. Importantly, emergency expenditure applications are not a means of circumventing the normal processes for approving expenditure or for expediting authorisation of expenditure when there is no genuine emergency.
6. The grounds of the application should include details of whether:
 - a. any circumstance or aspect of urgency associated with the issues in dispute, including whether an interim or emergency order is being sought;
 - b. there is an immediate and serious health or safety risk;
 - c. the failure to act immediately may result in the body corporate incurring significant additional costs; or
 - d. there is an urgent need to act to protect the body corporate's rights or interests.



7. The fact that the body corporate has failed to take appropriate or necessary action to address an issue over time does not necessarily create emergency circumstances. The lodgement of an application for an order approving emergency expenditure does not of itself guarantee the order will be made.
8. An application for authorisation of emergency expenditure should include at least one written quote for the proposed expenditure, with detail sufficient to identify the work proposed to be carried out. The application should also detail the expected timeframe for the work, including when contractors are able to commence.
9. Where the Commissioner reasonably considers that an application should be referred to an adjudicator immediately, because it relates to emergency circumstances, the Commissioner may refer the application without seeking submissions from all affected parties [Act, section 243A].



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 19

Expeditable applications

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1. This practice direction describes certain types of dispute resolution applications which may be expedited by the Commissioner and adjudicators because of their routine or urgent nature.
2. An expeditable application is distinct from both an application seeking an interim order [refer *Practice Direction 16: Interim order Applications*] and an order for emergency expenditure [refer *Practice Direction 18: Emergency expenditure applications*].
3. Applicants should apprise themselves of the differences amongst these types of applications before lodging their application. It is not the role of the Commissioner's Office to suggest to an applicant the type of application they should lodge.
4. The decision whether to expedite an individual application will depend on the nature and circumstances of the application.
5. An application may be expedited in one or more ways. For example:
 - a. referring an application for a declaratory order, where there is no dispute, directly to an adjudicator without seeking submissions;
 - b. while still ensuring procedural fairness to all parties, the Commissioner may limit the period for the respondent and affected persons to make a submission, or for the applicant to reply to submissions;
 - c. the Commissioner may limit or refuse an extension to the submission or reply period where such a request, or the proposed duration of the request, are not supported by strong reasons; or
 - d. following referral to department adjudication, an adjudicator may prioritise the investigation and determination of the application over other, longer-standing applications.
6. The following sections describe some of the more common types of application where it may be suitable to expedite the application. It should be noted that the Commissioner retains discretion as to whether an application is expedited and that an applicant's wish for an order to be made quickly does not of itself warrant an expeditable application.

Return of body corporate property

7. A body corporate can issue a prescribed notice to a person associated with the body corporate which requires the person to return any body corporate property (including assets, records, documents and the body corporate seal) in their possession. If the property is not



returned as requested, the body corporate may lodge an application for the return of the property.

8. The application must include a copy of the prescribed notice issued requesting the property [*Body Corporate and Community Management (Standard Module) Regulation 2008, section 206*].

Access to body corporate records

9. An interested person may access body corporate records, including by inspecting or obtaining a copy of a record [for example, Act, *section 205*].
10. If the body corporate fails to provide access to its records, the person requesting access may lodge an application against the body corporate.
11. The application must include a copy of the applicant's correspondence requesting access to the records and, if applicable, which included payment to the body corporate of the prescribed fee.

Change of financial year

12. An adjudicator may make an order to change the financial year end date for a scheme if the body corporate consents to the change [Act, *section 283*].
13. An application seeking to change the scheme's financial year should be lodged by the body corporate and, as it seeks a declaratory order, need not name a respondent.
14. The application must be accompanied by the full minutes of the general meeting which passed a resolution to change the financial year.

Annual general meetings out of time

15. A body corporate may unavoidably be unable to convene its annual general meeting within the required time frame. In such cases the body corporate may apply for an order of an adjudicator that the annual general meeting is not void simply for being held out of time.
16. Generally, the application should be lodged by the body corporate and, as it seeks a declaratory order, need not name a respondent [Standard Module, *section 64*].
17. The application grounds should specify the end of financial year for the scheme, when the annual general meeting is proposed to be held, the reason for the delay, and include a copy of the notice of meeting (if the meeting has already been called).



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 20

Specialist adjudication

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1. This practice direction specifies additional content requirements for applications for specialist adjudication.
2. The legislation provides that a 'complex dispute' must be determined either by a specialist adjudicator or by the Queensland Civil and Administrative Tribunal (QCAT). Refer to *Practice Direction 25: Complex disputes*.
3. A specialist adjudicator is normally a legally qualified person of senior standing, with experience in the area of law in which the dispute relates and who has demonstrated capacity to determine disputes.
4. The Commissioner's Office does not maintain a list of specialist adjudicators or make recommendations to applicants about potential nominees for appointment as a specialist adjudicator. An applicant seeking the appointment of a specialist adjudicator to determine their dispute may instead wish to contact the Queensland Law Society, or the Queensland Bar Association or the Institute of Arbitrators & Mediators Australia for potential nominees.
5. An application for specialist adjudication is commenced by lodging an *Adjudication Application Form* [BCCM Form 15], accompanied by the prescribed fee, with the Commissioner's Office.
6. The application must include the following information:
 - a. the name and contact details of the nominee for appointment as the specialist adjudicator for the dispute;
 - b. a statement from the nominee consenting to the appointment;
 - c. a statement from the nominee confirming they have no prior knowledge or involvement with any party to the dispute that could give rise to a possible or perceived conflict of interest in determining the dispute;
 - d. details of the nominee's qualifications, experience and standing to determine the dispute;



- e. written agreement from the respondent to the nomination and to the remuneration of the nominee; and
 - f. written confirmation from the nominee of their agreement to the amount of remuneration.
7. The Commissioner may only refer the application to the specialist adjudicator for determination if the Commissioner is satisfied that:
 - a. the applicant and the respondent, agree on the person to be nominated as the specialist adjudicator for the dispute;
 - b. the parties and the nominee agree on the amount the nominee is to be paid as the specialist adjudicator;
 - c. the parties agree how and by whom the amount is to be paid, or agree that the amount is to be paid in the way decided by the specialist adjudicator; and
 - d. the nominee has the qualifications, experience or standing appropriate to be appointed as the specialist adjudicator for the dispute.
8. If the named respondent to the adjudication application does not agree to the appointment of a specialist adjudicator for the dispute, then the application will not be able to proceed in the Commissioner's Office.
9. Where a body corporate is a party to an application for specialist adjudication, a committee resolution is sufficient to demonstrate the body corporate's agreement with the nominee for appointment as specialist adjudicator and the arrangements for payment of the nominee's remuneration, provided that the potential remuneration for the specialist adjudicator is within the committee's spending limit.
10. Parties wishing to pursue a complex dispute in QCAT should contact the QCAT registry regarding the relevant application requirements at www.qcat.qld.gov.au, on telephone 1300 753 228 or by email to enquiries@qcat.qld.gov.au.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 21

Adjudicator's orders

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Role of the Commissioner's Office

1. Once a final order is made by an adjudicator to determine a dispute resolution application, the file is closed by the Commissioner's Office. Staff of the Commissioner's Office, including the Commissioner and the adjudicator, have no further legislative role in relation to the dispute after the order has been given to the parties.
2. The statement of reasons for the order is the full explanation for, and basis of, the adjudicator's order. The Commissioner's Office cannot further explain or interpret an adjudicator's order or the adjudicator's reasoning, or advise on how the order is to be applied or complied with.
3. An adjudicator generally has no capacity to review or amend a final order once it has been issued, other than where later directed by a court or tribunal of competent jurisdiction in the event of a successful appeal.
4. Parties seeking legal advice about the terms, reasons for or effect of an order should direct their enquiries to an appropriately qualified person, such as a legal practitioner.

Appeal of orders

5. Adjudicators are independent decision-makers and not subject to direction by the Commissioner in making their orders. The Commissioner has no capacity to review an adjudicator's investigation, findings or order, or to direct an adjudicator to re-open or re-investigate an application.
6. A person [defined in Act, *section 289*] who is aggrieved by a departmental adjudicator's order or a specialist adjudicator's order may appeal the order to the Queensland Civil and Administrative Tribunal (QCAT).
7. An appeal must be lodged with the QCAT within six weeks of the aggrieved person receiving a copy of the order, unless the QCAT allows the appeal to be started later.
8. An aggrieved person may appeal only on a question of law.



9. An aggrieved person who lodges an appeal may also apply to the QCAT for a stay (a stop) on the adjudicator's order pending the outcome of the appeal.
10. There is no right to appeal a consent order.

Enforcement of orders

11. The Commissioner has no legislative role in the enforcement of adjudicator's orders.
12. An adjudicator's order, including a consent order, may be enforced in the Magistrates Court as if it were a judgment handed down by the court.
13. To enforce an order, the person in whose favour the order is made must file with the Registrar of the Magistrates Court:
 - a. a copy of the adjudicator's order certified by the Commissioner as a true copy;
 - b. any relevant form/s required by the Magistrates Court to be completed;
 - c. a sworn statement stating the amount outstanding under the order (for orders requiring payment of a monetary amount); and
 - d. a sworn statement stating that the specific action imposed in the order has not been undertaken (for orders requiring action other than payment of a monetary amount).
14. A certified copy of an order can be supplied by the Commissioner's Office on request.
15. An application for enforcement lodged with the Magistrates Court is not an appeal or a re-hearing of the merits of the original application.

Contravention of orders

16. The Commissioner has no legislative role in respect to the contravention of adjudicator's orders.
17. A person who contravenes an adjudicator's order (other than an order for the payment of money) commits an offence, which can attract a penalty of up to 400 penalty units.
18. Certain persons related to a dispute [detailed in Act, *section 288*] may commence proceedings for an offence in the Magistrates Court.
19. To commence a proceeding for an offence, a complaint must be completed and filed with the Magistrates Court, together with any prescribed fee.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 22

Standing of parties

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1. Standing, in the context of this practice direction, refers to the legal ability of a person to be named as the applicant or respondent for a dispute resolution application.

General

2. An application may only be filed by a person who is directly involved in a dispute. The legislation restricts the permitted combinations of parties for a dispute resolution application [Act, *section 227*]. It is the responsibility of the person lodging the application to ensure that they have standing to be named as the applicant and that the person with whom they have a dispute has standing to be named as the respondent.
3. The application must identify the capacity in which the particular applicant and respondent have been named. For example, a dispute about a person's performance as a caretaker cannot be brought against that person in their capacity as an owner.

Former parties

4. The standing of a party to be named as an applicant or respondent in an application is determined as at the time the application is filed with the Commissioner's Office.
5. If a person held one of the specified capacities to be named as a party at one time, but ceased to hold that capacity as at the time the dispute resolution application is lodged, the person would ordinarily not have standing to be a party to the dispute. For example, a lot owner cannot lodge an application after ceasing to be the owner of a lot.
6. An exception exists in regard to a person who formerly held the position of body corporate manager. A body corporate may bring an application against a former body corporate manager in relation to a dispute about the return of body corporate property by the former body corporate manager to the body corporate.
7. If a person's loss of position is in dispute, the person may still have capacity to bring an application about that issue. For example, a person disputing a body corporate decision to remove that person from the position of committee member, would have standing to lodge an application challenging that decision in the capacity of a committee member.



Changes to the standing of parties

8. An applicant who had standing to lodge an application may be entitled to pursue the application even if they cease to have standing before the matter is finalised [Act, *section 239C(2)*].
9. Where a party ceases to have standing before the application is finalised, the Commissioner may substitute another person with standing as the relevant party [Act, *section 239C(3)*]. For example, if a respondent lot owner sells their lot, the new owner may be substituted as the respondent.
10. If the Commissioner allows a party to be substituted, the Commissioner will give notice of the substitution to all parties.
11. If there is a substitution, the Commissioner may require evidence of attempts at internal dispute resolution with the new parties before proceeding with the application.
12. The Commissioner may reject an application if a party no longer has standing and the outcome sought by the application is no longer relevant or required [Act, *section 241(1)(f)*]. In deciding whether to reject an application, the Commissioner will consider whether the applicant has a significant or continuing interest in the relief being sought.
13. In addition, an adjudicator may dismiss an application if a party no longer has standing and the outcome sought in the application is no longer relevant or required.



Chris Irons
COMMISSIONER

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 23

Internal dispute resolution

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. Attempts by an applicant to resolve a dispute directly with the respondent are referred to as *internal dispute resolution* under the Act [refer *Schedule 6* of the Act]. This is sometimes also referred to as 'self-resolution'.
2. Internal dispute resolution is a mandatory step in trying to resolve a dispute. The obligation to attempt internal dispute resolution is consistent with the legislative responsibility for self-management as an essential aspect of living in a community titles scheme.
3. The Commissioner may reject a conciliation application where internal dispute resolution has not been attempted. The Commissioner may reject an adjudication application where internal dispute resolution and department conciliation have not been attempted (unless the Commissioner decides the dispute is not appropriate for department conciliation).
4. Internal dispute resolution includes any reasonable endeavour or step taken to attempt to resolve a dispute, before a conciliation or adjudication application is lodged.

Specific steps

5. Although not an exhaustive list, the following are examples of internal dispute resolution steps that may be required:
 - a. if an issue requires a committee decision, the applicant will normally be required to demonstrate that they have made a written request to the committee and that the committee has either unreasonably refused or failed to consider the request. This request can be in the form of a motion for the committee to vote on at its next meeting;
 - b. if an issue requires a general meeting resolution, the applicant will normally be required to demonstrate they have submitted a motion to the body corporate for inclusion on the agenda of a general meeting specifically addressing the issue and that the motion failed or the body corporate unreasonably failed to consider the motion;
 - c. for a dispute between owners or occupiers, the applicant will normally be required to document the verbal and written attempts to resolve the matter with the other party;
 - d. where an owner is challenging a general meeting decision, the applicant may be required to demonstrate where they have challenged the decision (for example, by submitting an appropriate motion);



- e. if a dispute relates to an alleged breach of the by-laws, the legislation sets out the preliminary procedures the applicant must follow [see *Practice Direction 6: By-law enforcement applications.*];
- f. if an applicant seeks to overturn the decision of a body corporate not to pass a resolution without dissent, the applicant will normally be required to demonstrate that the dissenting voters have been contacted to ascertain their objections to the motion and to explore whether their concerns are able to be accommodated in some way that would support a reversal of their objection;
- g. if an applicant disputes the validity of a by-law, the applicant may be required to demonstrate that they have submitted an appropriate motion to the body corporate for inclusion on the agenda of a general meeting specifically proposing a new community management statement incorporating a change to the by-laws and that the motion failed or the body corporate unreasonably failed to consider the motion; or
- h. if an issue relates to a claim for payment of an amount, the applicant will normally be required to demonstrate that a written request for the amount has been made to the other party and that any relevant quote/s have also been provided to the other party.

Body corporate processes

- 6. Bodies corporate are encouraged to establish internal dispute resolution processes to assist in resolving disputes within the scheme.
- 7. A body corporate's internal dispute resolution process may be approved by an ordinary resolution at a general meeting.
- 8. Without limiting what a body corporate may choose to include, internal dispute resolution processes could encompass steps such as:
 - a. identifying a committee member as a first point of contact for concerns;
 - b. establishing reasonable timeframes for a committee to respond to written and verbal requests and queries, noting that there are prescribed periods under the legislation to call and hold general meeting and committee meetings to make decisions; and
 - c. the use of informal and formal meetings or mediation between the disputing parties.
- 9. Any internal dispute resolution process established by a body corporate should be fair and transparent to all parties.
- 10. Evidence that a party has followed an internal dispute resolution process adopted by a body corporate will be accepted as evidence of attempted internal dispute resolution prior to lodging a dispute resolution application.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 24

Debt disputes

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. This practice direction provides information about making a dispute resolution application to resolve a *debt dispute* or *related dispute* [Act, *section 229A*].

Debt dispute

2. A *debt dispute* is a dispute about the recovery of a debt under the Act by a body corporate from an owner.
3. Debts claimed by a body corporate from an owner may include:
 - a. outstanding contributions;
 - b. penalties for the late payment of contributions;
 - c. costs reasonably incurred in recovering unpaid contributions;
 - d. amounts incurred by a body corporate in repairing damage caused by an owner or in carrying out work which was the obligation of the owner;
 - e. agreed charges for the supply of services by the body corporate; or
 - f. amounts an owner is required to pay under an exclusive use by-law.
4. An adjudicator does not have jurisdiction to determine a *debt dispute*. There is therefore no capacity under the Act to apply for adjudication of a *debt dispute*.
5. A body corporate may commence a proceeding to recover the debt through the Queensland Civil and Administrative Tribunal (QCAT) or a court of competent jurisdiction. QCAT publishes information on taking action to recover a debt at www.qcat.qld.gov.au.
6. Alternatively, a body corporate or lot owner may apply for conciliation of a *debt dispute*, if proceedings about the *debt dispute* have not already commenced in QCAT or a court.
7. If a proceeding for a debt dispute is commenced in QCAT or a court at any time after a conciliation application has been lodged, then the conciliation process will immediately end. The Commissioner has no discretion to allow a conciliation application to continue once a proceeding has commenced in QCAT or a court.



8. The parties to an application are therefore required to inform the Commissioner immediately if the party becomes aware that a proceeding has been commenced in QCAT or a court regarding a debt that is the subject of a current conciliation application
9. The grounds in support of an application for conciliation of a *debt dispute* should include:
 - a. a summary of the background to the dispute and the steps taken to recover the debt;
 - b. the total amount currently claimed by the body corporate;
 - c. the basis for calculating the amount claimed by the body corporate, including a breakdown of which amounts are, for example, unpaid contributions, penalties and debt recovery costs;
 - d. where the amount claimed includes penalty interest, a copy of the general meeting minutes at which the imposed penalty interest was approved;
 - e. evidence of requests to the lot owner for the amount claimed, such as contribution notices;
 - f. copies of any communication from the lot owner regarding the body corporate's requests for payment;
 - g. for applications by a body corporate - the grounds on which the body corporate maintains each amount is payable; and
 - h. for applications by a lot owner - the grounds on which the lot owner maintains that the amounts claimed by the body corporate are either not payable at all or only partially payable.

Related dispute

10. A body corporate or lot owner may apply for either conciliation or adjudication of a dispute that is related to the subject matter of a *debt dispute*, whether or not a proceeding to recover the debt has been commenced in QCAT or a court.
11. Generally, conciliation should be attempted first before applying for adjudication, unless the Commissioner has waived the requirement to conciliate [see *Practice Direction 9: Matters not appropriate for conciliation*].
12. Despite the above, a dispute resolution application which is related to a *debt dispute* may be rejected by the Commissioner [Act, *section 241*], or dismissed by an adjudicator [Act, *section 270*], if satisfied that:
 - a. the subject matter of the dispute set out in the dispute resolution application is related to the subject matter of a *debt dispute*;
 - b. there are proceedings in QCAT or a court to recover the debt that is the subject of the *debt dispute*; and
13. The Commissioner considers the dispute in the application and the *debt dispute* before QCAT or a court are connected in a way that makes it inappropriate for the dispute to be dealt with under a dispute resolution process.

14. In deciding whether to reject or dismiss the application, the Commissioner or adjudicator may exercise their respective powers [Act, sections 240 and 271] to request information from the body corporate or lot owner about the dispute set out in the dispute resolution application or the debt dispute before QCAT or a court, including by requesting the parties to provide a copy of material filed in the debt dispute proceeding.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 25

Complex disputes

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. This practice direction identifies certain types of disputes which are defined by the Act as a *complex dispute* or a *contractual matter* [refer Act, *schedule 6*] and explains how those disputes are able to be resolved under the Act.
2. If the subject matter of an application comprises a *complex dispute*, there is no jurisdiction for the matter to be referred to department conciliation or department adjudication.
3. The legislation provides that a *complex dispute*, including about a *contractual matter*, must be determined either by a specialist adjudicator or by the Queensland Civil and Administrative Tribunal (QCAT). It is up to the applicant to choose which forum they wish to lodge their *complex dispute* [Act, *section 229(2)*].
4. A *complex dispute* includes the following:
 - a. an application to adjust the lot entitlement schedule for a community titles scheme [Act, *section 48*];
 - b. a dispute arising out of a review carried out, or required to be carried out, of the terms of service contracts, brought by a reviewing party [Act, *section 133*];
 - c. a dispute about the transfer of a letting agent's management rights, brought by a party to the dispute [Act, *section 149A*];
 - d. a dispute about a claimed or anticipated contractual matter about the engagement of a person as a body corporate manager or a caretaking service contractor or the authorisation of a person as a letting agent, brought by a party to the dispute [Act, *section 149B*]; or
 - e. a dispute about whether an exclusive use by-law should continue in force, where the owner of the lot to which the exclusive use by-law attaches stops being a body corporate manager, service contractor or letting agent for the scheme and the exclusive use by-law is not for the continuing engagement of the lot owner as a body corporate manager, service contractor or letting agent for the scheme, brought by the body corporate [Act, *section 178*].



5. A *contractual matter* about the engagement or authorisation of a person as a body corporate manager, caretaking service contractor or letting agent means the following:
 - a. a contravention of the terms of the engagement or authorisation;
 - b. the termination of the engagement or authorisation;
 - c. the exercise of rights or powers under the terms of the engagement or authorisation; or
 - d. the performance of duties under the terms of the engagement or authorisation.
6. If an adjudication application seeks orders to resolve both a complex dispute and other matters, the entire application must be determined by QCAT or specialist adjudication. An applicant may elect to remove outcomes about the complex dispute so that the remaining dispute may be resolved by departmental conciliation or adjudication. The applicant could then separately pursue the complex dispute either in QCAT or through specialist adjudication.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 26

False or misleading information or documents

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. The integrity of the dispute resolution processes provided by the Commissioner's Office relies upon the truthfulness and accuracy of information and documents supplied by the parties.
2. The legislation protects the integrity of the dispute resolution process by providing that a person who submits false or misleading information or documents to the Commissioner or an adjudicator commits an offence [Act, *sections 297 and 298*].
3. These offences may apply to an applicant, a person making a submission, or any other person required, or invited, to provide information or documents to the Commissioner or an adjudicator.
4. In regard to false or misleading information, the relevant considerations are that the statement made by the person was false or misleading to the person's knowledge, and that the statement was false or misleading in a material particular.
5. In regard to false or misleading documents, the relevant consideration is that the document contained information that was false or misleading to the person's knowledge. There is no offence if the person, when giving the document, informs the Commissioner or adjudicator to the best of the person's ability how the document is false or misleading, and gives the correct information if the person has or can reasonably obtain the correct information.
6. Allegations that information or documents submitted in relation to a dispute resolution application are false or misleading may be considered by an adjudicator when determining the application, including in regard to the weight to be given to the disputed evidence.
7. The Commissioner and adjudicators have no authority to impose a penalty in regard to false or misleading information or documents.
8. The Commissioner and adjudicators have no authority to prosecute a complaint in regard to false or misleading information or documents.



9. Alternatively, a party to a dispute may file a private complaint in the Magistrates Court in regard to false or misleading information or documents, pursuant to the *Justices Act 1886*. The *Justices Act 1886* provides that a complaint must be commenced in the appropriate Court jurisdiction within one year from the time the matter of the complaint arose.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 27

Dismissal of applications by the Commissioner

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. This Practice Direction concerns the Commissioner's ability to dismiss an application and in that respect it is distinct from the Commissioner's rejection of an application [refer, for example *Practice Direction 14: Adjudication applications*].
2. The Commissioner may dismiss an application in its entirety if satisfied that the dispute the subject of the application should be dealt with in a court or tribunal of competent jurisdiction, or by another process capable of dealing with the dispute and binding the parties [Act, *section 250*].
3. An application must be dismissed in its entirety. There is no capacity for the Commissioner to only dismiss part of an application and then allow the remainder to proceed in a dispute resolution process in the Commissioner's Office.
4. The question of whether an application should be dismissed by the Commissioner may be raised by any party to the dispute, or initiated by the Commissioner.
5. If a party to the dispute raises the issue of the dismissal of an application, then that party is required to provide a statement explaining why the application should be dealt with by an alternative process, such as a court or tribunal.
6. The Commissioner may seek submissions from parties who may be affected by the application before deciding whether to dismiss the application.
7. Without limiting the Commissioner's discretion in deciding whether to dismiss an application, factors that the Commissioner may consider include:
 - a. the nature and history of the dispute;
 - b. whether the parties agree to the dismissal of the application;
 - c. whether the dispute can be adequately dealt with by the alternative process;
 - d. the quantum in dispute, including whether it is above the monetary jurisdiction of the Magistrates Court;
 - e. whether the applicant seeks remedies that are beyond the power of an adjudicator to award;



- f. whether the evaluation of evidence in the dispute would require the taking of evidence on oath; or
 - g. whether the subject matter of the dispute is part of, or closely related to, existing proceedings in a court or tribunal.
8. A decision by the Commissioner to accept, rather than dismiss, an application does not affect the power of an adjudicator to later dismiss the application if satisfied that the dispute should be dealt with in a court or tribunal of competent jurisdiction [Act, *section 270(1)(b)*].



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 28

Approval of alternative insurance

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1. The legislation sets out the requirements for bodies corporate to obtain insurance.
2. *Section 179* of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (and equivalent provisions in the other regulation modules) establish the insurance requirements for buildings that include lots in a community titles scheme created under a building format plan or volumetric format plan of subdivision.
3. *Section 179(4)* of the Standard Module, and equivalent provisions in the other regulation modules, provide that if the body corporate cannot comply with the required level of insurance, it may apply in writing to the Commissioner for authorisation to put in place alternative insurance in a form approved by the Commissioner.
4. The Commissioner must be satisfied that the alternative insurance provides cover that is as close as practicable to the cover required under the section.
5. A written request for authorisation of alternative insurance is not a dispute resolution application under Chapter 6 of the Act. However, in making a written request the following steps must be followed:
 - a. the request must be made using the adjudication application form [BCCM Form 15];
 - b. the request must be accompanied by the prescribed fee for a dispute resolution application;
 - c. the applicant must be the body corporate;
 - d. no respondent should be named; and
 - e. the request must be accompanied by a committee resolution authorising the making of the written request.



6. The grounds supporting the written request, and the accompanying documentation, should demonstrate:
 - a. why the body corporate is unable to obtain the required level of insurance;
 - b. the attempts made to obtain the required level of insurance;
 - c. the proposed alternative insurance;
 - d. how the proposed alternative insurance is as close as practical to the required level of insurance;
 - e. whether the period for which the alternative insurance is proposed is only the current financial year for the scheme, or whether the body corporate proposes to continue the alternative insurance arrangements for future financial years;
 - f. that the proposed alternative insurance has been submitted to a general meeting as a motion for approval as an ordinary resolution by owners or that the body corporate has obtained the written agreement of all owners of the lots to which the alternative insurance arrangement are proposed to apply; and
 - g. if the proposed alternative insurance has been submitted to a general meeting but not approved by ordinary resolution, why the proposed alternative insurance should be authorised by the Commissioner in the absence of a body corporate resolution to adopt the alternative insurance.
7. The Commissioner may make further investigations and seek submissions from affected parties to determine whether the proposed alternative insurance is appropriate and is as close as practicable to the required cover.
8. The Commissioner will provide a written decision outlining whether the proposed alternative insurance is authorised or not and giving reasons for the decision.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 29

Legal and other assistance

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1. The Commissioner's Office provides a quasi-judicial dispute resolution service and is impartial in its dealings between the parties.
2. Information about the dispute resolution processes and the body corporate legislation is available on the Commissioner's Office website [www.qld.gov.au/bodycorporate]. Case management staff [(07) 3227 7654] can provide information about the procedures and requirements for current dispute resolution applications. Information Service staff can provide general information about the body corporate legislation [1800 060 119].
3. While the Commissioner's staff may provide legislative or procedural information, the Commissioner's Office is **not** able to:
 - a. give legal advice to a party about what steps they should take in relation to the dispute or the conduct of the application;
 - b. guide a person in how to construct their application or submission (including the wording of the application or submission); or
 - c. comment or speculate on the strength of the person's case or the likelihood of success.
4. Parties seeking legal advice should direct their enquiries to an appropriately qualified person, such as a legal practitioner.
5. The following are some possible sources of information, advice and assistance. The Commissioner's Office does not endorse or recommend any particular organization or service.

Community titles industry organisations

Unit Owners Association of Queensland

GPO Box 2359, Brisbane Q 4001; (07) 3220 0959; www.uoaq.org.au

Body Corporate Owners Network

PO Box 59, The Gap Q 4061; (07) 3300 5858; www.bodycorporatematters.com.au



Strata Community Australia (QLD) Limited
PO Box 1280, Spring Hill Q 4004; (07) 3839 3011; www.stratacommunityqld.org.au

Australian Resident Accommodation Managers Association Queensland Inc
PO Box 2477, Fortitude Valley Q 4006; (07) 3257 3927; www.arama.com.au

Courts and tribunals

Queensland Civil and Administrative Tribunal
GPO Box 1639, Brisbane 4001; 1300 753 228; www.qcat.qld.gov.au

Magistrates Courts
Contact details are provided at:
www.courts.qld.gov.au/contact-us/courthouses

District & Supreme Courts
QEII Courts of Law Complex, 415 George Street, Brisbane; (07) 3247 4313
For regional courthouses see: www.courts.qld.gov.au/contact-us/courthouses

Alternative dispute resolution

Dispute Resolution Centres
GPO Box 149, Brisbane 4001; (07) 3239 2518 and 1800 017 288
For your nearest Dispute Resolution Centre see: www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/setting-disputes-out-of-court/dispute-resolution-centres

Institute of Arbitrators and Mediators Australia (Incorporating LEADR Association of Dispute Resolvers)
Freecall 1800 651 650; www.iama.org.au

Legal information and referrals

Queensland Law Society
GPO Box 1785, Brisbane Q 4001; 1300 367 757; www.qls.com.au

Legal Aid Queensland
GPO Box 2449, Brisbane Q 4001; 1300 651 188; www.legalaid.qld.gov.au

Queensland Public Interest Law Clearing House
Facilitates referrals to solicitors who may provide free or reduced fee legal assistance for individuals and community groups in civil law cases
PO Box 3631, South Brisbane Q 4141; (07) 3846 6317; www.qpilch.org.au

Community Legal Centres Queensland
PO Box 119, Stones Corner Q 4120; (07) 3392 0092
For details of over 30 community legal centres around Queensland see:
www.communitylegalaid.org.au

Australian College of Community Association Lawyers
PO Box 182 Moorooka Qld 4105, (07) 3848 2328; www.accal.org.au

Other information and assistance

Justices of the Peace

Find a Justice of the Peace or Commissioner for Declarations at

www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/about-justice-of-the-peace/find-a-justice-of-the-peace/search-for-your-nearest-jp-or-cdec/

or 1300 301 147

Department of Natural Resources and Mines – Titles Registry

13 74 68; www.dnrm.qld.gov.au/land/titles-valuations/titles-public/titles-registry-contacts

Residential Tenancies Authority

GPO Box 390, Brisbane QLD 4001; 1300 366 311; www.rta.qld.gov.au

Office of Fair Trading

GPO Box 149, Brisbane QLD 4001; 13 74 68; www.fairtrading.qld.gov.au



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Practice Direction 30

Material submitted in relation to an application

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1. This Practice Direction provides information concerning evidence submitted in respect of a dispute resolution application [See also *Practice Direction 25: False or misleading information or documents*].

General

2. At all times the onus is on the applicant to 'make their case'. This also means that all information and supporting documents should be relevant to the issue in dispute.
3. An adjudicator is not bound by the rules of evidence and has broad investigative powers [Act, *sections 269 and 271*].
4. A conciliator, as the conciliator considers appropriate, may accept written material from any person and distribute written material to any person for the purpose of the conciliation [Act, *section 252E*].
5. Information and documents included in an application, submission or reply to submissions cannot be kept private or confidential. Pursuant to the principles of natural justice, any material considered by an adjudicator in making a decision must be available to the other parties to the dispute. Information provided to the adjudicator may also be referred to in the adjudicator's decision, which will be published online.
6. The Commissioner has no capacity to remove information or documents from an application, submission or reply, or to redact information, because of objections about its content, including in response to allegations that the information is defamatory or has been improperly obtained.
7. The Commissioner, adjudicator or conciliator cannot investigate or prosecute objections relating to material submitted by a party. However an adjudicator may give consideration to such allegations when determining what weight should be given to disputed evidence.
8. Where a party objects to material submitted by another party, and the matter is relevant to the issues in dispute, the appropriate course of action is to outline the concerns in a submission or the reply to submissions or, in the case of conciliation, to inform the conciliator of the person's concerns.



9. The legislation provides that the same privilege exists with respect to defamation for adjudication and conciliation processes as for a Supreme Court proceeding [Act, section 296]. A person does not incur liability for defamation by publishing any defamatory material in the course of a proceeding in a court or tribunal [*Defamation Act 2005, section 27*].

Expert evidence

10. Pursuant to the investigative powers provided in the Act, an adjudicator may invite a party to obtain and submit expert evidence. This is in addition to any expert evidence a party may wish to provide.
11. Expert evidence should normally comprise a written report. It should include details of any information, tests or sources which the report is based on, any assumptions relied upon in making the report, and the reasons for any stated opinions.
12. Expert evidence should be accompanied by the expert's contact details, and their qualifications and experience relevant to the area of expertise.
13. A party will normally be liable for the cost of expert evidence obtained by them in support of their claims.
14. An expert is expected to assist the adjudicator in preference to any party to the application or any party who is liable for the expert's fees or expenses. An expert is not an advocate for a party.
15. Where the parties submit conflicting expert evidence, the adjudicator may require the experts to meet to identify and clarify areas of agreement and disagreement between the experts and the reasons for any disagreement. Alternatively, the adjudicator may require the parties to jointly select a third expert to provide a further opinion.
16. Expert evidence may assist in the conduct of a conciliation session by providing the parties with information relevant to the issues in dispute. If a person is in possession of expert evidence, or intends to obtain expert evidence, this should be disclosed to the conciliator prior to the conduct of the conciliation session.



Chris Irons
COMMISSIONER

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 31

Consent orders

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. If the parties to an adjudication application agree to the terms of a proposed order, the adjudicator may, in his or her discretion, issue a consent order.
2. If the parties to a conciliation application reach an agreement at a departmental conciliation session, and the parties consent to the agreement being formalised as a consent order, the Commissioner must refer the agreement to an adjudicator for a consent order. The adjudicator may, in his or her discretion, issue a consent order.
3. If one of the parties to the conciliation agreement is a body corporate which has a committee voting member appointed as an agent for the body corporate, the Commissioner cannot refer the agreement to an adjudicator for a consent order unless, within 30 days after the agreement is made, the body corporate gives the department conciliator written notice stating that the committee has:
 - a. ratified the agreement; and
 - b. given a copy of the agreement to each lot owner; and
 - c. not received a notice of opposition to the agreement signed by or for the owners of at least one-half of the lots included in the scheme.
4. A consent order may only include matters that may be dealt with under the Act and must not include matters that are inconsistent with the legislation or another Act. There is no right to appeal a consent order.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 32**Supplementary orders**

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. An adjudicator generally has no capacity to review or amend a final order or the accompanying statement of reasons once issued, except where directed to by a court or tribunal of competent jurisdiction.
2. Where an order or a statement of reasons contains an accidental slip or omission, such as a typographical or clerical error, an adjudicator has an inherent power to issue a further order correcting the error.
3. The capacity to correct accidental errors is limited to correctly stating what was decided and intended at the time of the original judgment. It does not extend to a reconsideration of the substantive issues of fact or legal interpretation and is not a mechanism to re-open an application to consider further evidence.
4. If a party to the dispute or a person affected by the order believes that the order or statement of reasons contains an accidental slip or omission, the person may make a written request to the adjudicator to issue a supplementary order.
5. It is a matter for the adjudicator's discretion whether a supplementary order is warranted in the circumstances. Without limiting this discretion, adjudicators may have regard to the nature of the error; whether the error appears in the order or the statement of reasons; and whether the error has any effect on the meaning, comprehension or enforcement of the order.
6. Other parties to the application would not normally be invited to make submissions in respect of the proposed correction.
7. Unless otherwise stated in the order, a supplementary order will have effect from the date that it is issued.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 33

Electronic communication

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 6 of the Act.

1. This practice direction provides information relating to electronic communication for dispute resolution applications, having regard to the *Acts Interpretation Act 1954* and the *Electronic Transactions (Queensland) Act 2001*.

Transmission of documents to the Commissioner's Office

2. Dispute resolution applications, submissions, correspondence, requested documents, media (such as video or audio files) and all other communication relating to an application will be accepted by email or other readily accessible means of electronic communication.
3. The Commissioner's Office will not download a party's documents from a nominated portal, cloud-based server or other internet source. Rather, it is the party's responsibility to provide electronic information in a file format that is able to be directly used by the Commissioner's Office. If a party is uncertain whether a particular file format is appropriate, the party should contact the Commissioner's Office prior to sending the file.
4. Where correspondence or documents are provided electronically, it is not necessary to also provide a hard copy, unless the electronic form is not fully legible or if otherwise requested.
5. Where a signature is required on a document, such as an application form or the authorisation of a representative, an electronic copy of an original signature will be sufficient.
6. Email communications must be directed to the Commissioner's Office general email address (bccm@justice.qld.gov.au), unless otherwise directed by the Commissioner or a dispute resolution officer. Emails should ideally, in their subject line, contain the reference number (if known) for the application in question.
7. If information is being emailed to the Commissioner's Office in a sequence of related emails, the subject line of each email should also identify the number of that email as part of the sequence, and the total number of emails to be received.

Example: *0909/2015 Email 1 of 5*

8. Where documents or media are sent as email attachments, the file name for each attachment should clearly identify the content. In addition, where an email has multiple attachments, each file name should include an identifying number or letter to show the order in which the attachment is to be read.

Examples: *Attachment 1 – Minutes of AGM 01/01/2015; Attachment 2 – Photograph of damage to internal wall; Attachment 3 – Letter from applicant to body corporate 01/01/2015*



9. Emails sent to the Commissioner's Office must not exceed 15MB (including attachments). Very large email attachments or large numbers of attachments that would cumulatively exceed 15MB must be:
 - a. sent as multiple emails; or
 - b. reduced in size; or
 - c. sent through alternative means.
10. The Commissioner may take steps to block an email sender where the sender has sent junk or mass advertising emails, social media communications or other unsolicited emails which do not relate to the legislative role of the Commissioner's Office.

Transmission of documents from the Commissioner's Office

11. The Office of the Commissioner for Body Corporate and Community Management will routinely communicate with parties via email, where an email address has been provided for a party, unless that party has asked not to receive communication by email.

Distribution of notices by a body corporate

12. Where a body corporate has been requested to distribute a *Notice of application and invitation to make a submission*, or a *Notice of extension of time for making submissions* to specified persons (such as all owners), it will be sufficient for the body corporate to email the notice and any attachments.
13. That said, the notice and any attachments may only be emailed to a person who has given the body corporate a current email address and who has not instructed the body corporate that they do not wish to receive communications by email.

Distribution of notices by an applicant

14. Where an applicant has been requested to distribute a notice of further material submitted on an application to specified persons (such as all owners), it will be sufficient for the applicant to email the notice and any attachments.
15. As is the case with (13) above, the notice and any attachments may only be emailed to a person who has given the applicant or the body corporate a current email address and who has not instructed the applicant or the body corporate that they do not wish to receive communications by email.



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