

Office of the Commissioner for Body Corporate and Community Management

Practice Directions

Disputes



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Practice Directions - Disputes

These Practice Directions detail the requirements for specific types of disputes.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 6

By-law enforcement 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 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.

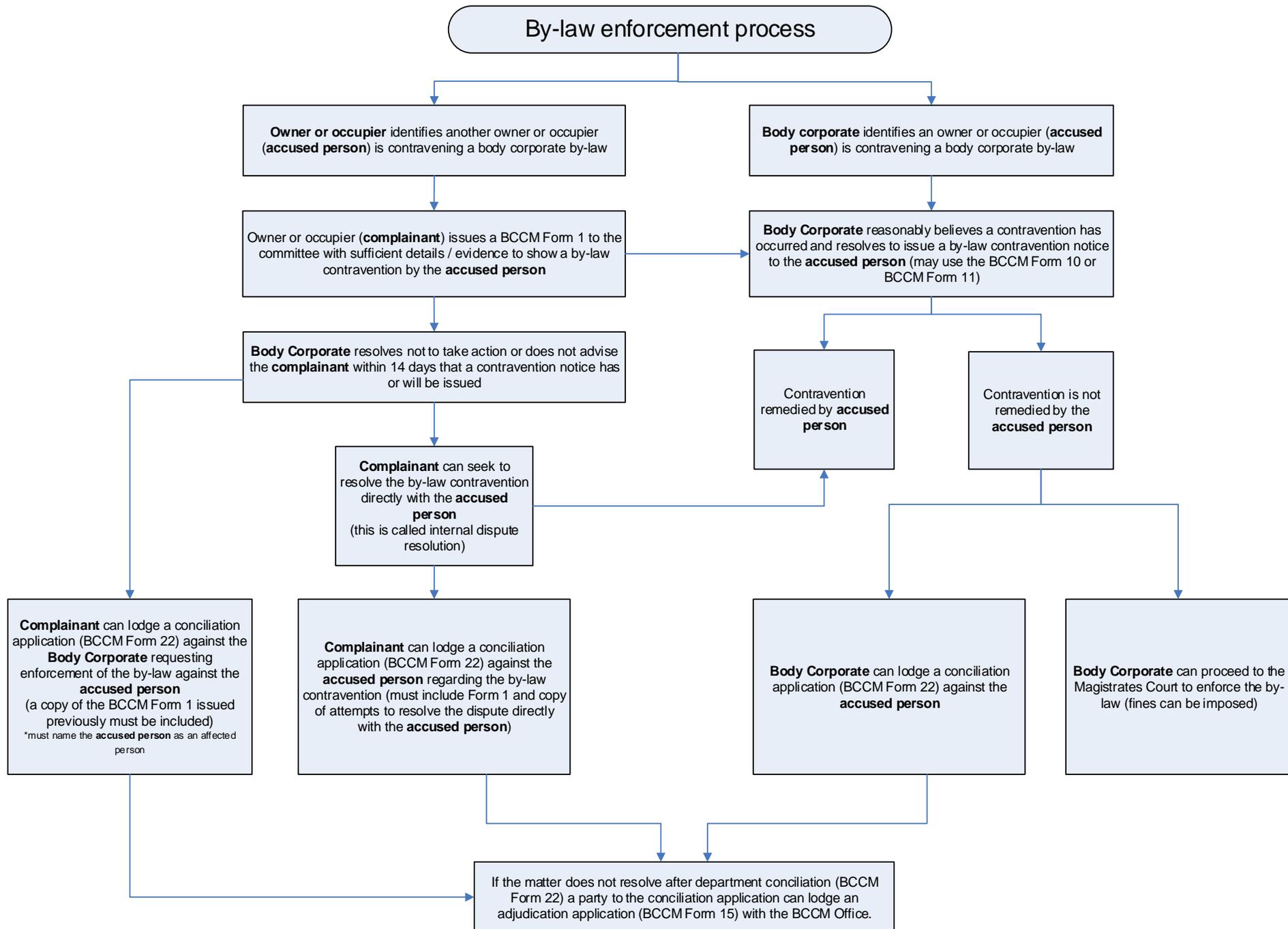


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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 17

Administrator appointments

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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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Practice Direction 18

Emergency expenditure applications

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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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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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Practice Direction 24

Debt disputes

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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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Practice Direction 25

Complex disputes

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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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Practice Direction 27

Dismissal of applications

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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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Practice Direction 28

Approval of alternative insurance

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 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.



Chris Irons
COMMISSIONER

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 34**Disputing a motion which requires a resolution without dissent, on the basis of unreasonable opposition**

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 a dispute resolution application 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 an individual dispute resolution application as provided under Chapter 6 of the Act.

1. The following sets out the requirements for lodging a dispute resolution application with the Commissioner's Office in which the applicant is seeking an order under Schedule 5, Item 10 of the *Body Corporate and Community Management Act 1997* (the Act), disputing a motion which requires a resolution without dissent, on the basis that the opposition to the motion was unreasonable in the circumstances.

Resolution without dissent

2. Under the Act and its regulation modules, a body corporate may decide certain matters only by a resolution without dissent at a general meeting.
3. An applicant may seek an order to have a resolution without dissent ruled as passed, on the basis that the opposition to the motion was unreasonable in the circumstances. An adjudicator may make an order giving effect to the motion as proposed, or a variation of the motion as proposed.
4. The Commissioner may require an applicant to provide additional information where an applicant seeks an order under Schedule 5, Item 10 and argues that the opposition to the motion was unreasonable in the circumstances.

Requirement for self-resolution

5. Each applicant must provide their evidence of having made a reasonable attempt to resolve the dispute before making the application. The Act refers to this as 'internal dispute resolution'. It may also be referred to as 'self-resolution'. See also Practice Direction 1: *Evidence of a dispute* and 23: *Internal dispute resolution*. This requirement will apply to an application seeking an order under Schedule 5, Item 10.
6. For such an application, the Commissioner's Office will normally expect the applicant to:
 - a. Identify the lots for which votes were cast against the motion and include the owners of those lots as affected parties on the application; and
 - b. Provide evidence of self-resolution attempts with those who oppose the motion, not just self-resolution with the body corporate, for example by contacting the dissenting voters and seeking their reasons for opposing the motion and if reasons are provided, responding to them.



7. If an applicant does not know who voted against the motion and the motion was not decided by secret ballot, the onus would be on the applicant to make attempts to identify the dissenting voters (i.e., by seeking a copy of the voting tally sheet) and then provide evidence of self-resolution with them.
8. It is acknowledged that these steps may not always be possible or practical. For example:
 - a. If the motion in question was decided by secret ballot, an applicant might not be able to identify the dissenting voters; or
 - b. If there were a large number of dissenting votes, it might not be practical to try and contact each dissenting voter and ascertain the reasons for each vote.
9. This is not an exhaustive list and there may be other instances applicable. Each application will be considered on its merits. That said, the Commissioner's Office will consider the approach outlined in paragraph 6 to be the norm in the majority of applications.

Submissions process

10. For adjudication applications seeking an order under Schedule 5, Item 10 of the Act to pass a motion requiring a resolution without dissent, the Commissioner's Office will normally invite submissions specifically from the dissenting voters if they are able to be individually identified.



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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 35**Parties residing or travelling overseas**

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*(Act). Its purpose is to provide further information on the procedures and content requirements for a dispute resolution application 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 an individual dispute resolution application as provided under Chapter 6 of the Act.

22. The following sets out considerations for communication when one or more parties to a dispute resolution application with the Commissioner's Office resides overseas or will be travelling overseas during any part of a dispute resolution process.
23. Generally the Commissioner's office will only communicate with parties who are overseas by email, mail or facsimile. Alternatively, a party could nominate someone located in Australia to communicate with the office on their behalf.
24. If a party who is overseas wishes to speak directly to a member of the Commissioner's office by telephone, they may call the office at their own cost. It is advisable to contact the office by email to determine the most appropriate telephone number and an agreed time to call.

Conciliation application

25. The Commissioner's Office will not incur the cost of international telephone calls to conduct pre-conference calls or conciliation.
26. A party to a conciliation who is overseas at the time of the scheduled session may nominate one of the following processes in order to participate:
 - a. Telephone the office on a nominated telephone number at the designated time.
 - b. Nominate a representative located within Australia to act on their behalf. Written authorisation stating the name and contact details of the representative must be provided to the conciliator prior to the scheduled session.
 - c. Video conference using Skype for Business. The conciliator will discuss this option with all parties prior to the scheduled session.
27. Parties are required to inform the Commissioner's Office of the preferred method and availability for the conciliation session by:
 - a. Emailing the completed paperwork to conciliationbccm@justice.qld.gov.au
 - b. Fax +617 3006 2551, or
 - c. Phone +617 3109 1647.
28. The conciliator will conduct the session in the way the conciliator considers appropriate in the circumstances.

Adjudication application

29. In the first instance, a case manager will contact an applicant who is overseas by email with respect to any requests for information or clarification about an application.



30. Refer to [Practice Direction 13: Adjudication process](#) for more information about the adjudication process.



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