Office of the Commissioner for Body Corporate and Community Management

Practice Directions

General

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General

These practice directions relate to most dispute resolution applications.

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* (the Act). 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 of rights, powers, or duties under the Act or community management statement.

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Version 4
Effective 11 June 2024

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* (the Act). 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 Act, Schedule 6]. 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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Version 3
Effective 11 June 2024

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Practice Direction 22

Standing of parties

This practice direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997* (the Act). 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. 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.

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Version 3
Effective 11 June 2024

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Practice Direction 2

Representation

This practice direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997* (the Act). 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 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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Effective 11 June 2024

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Practice Direction 3

Communication and document management

This practice direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997* (the Act). 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 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. This also includes where correspondence or documents are provided by email, unless the electronic form is not fully legible or if otherwise requested.

Mode of communication

4. Dispute resolution applications, submissions, requested documents and all other communication relating to an application will be accepted by mail, or email. Documents can also be hand-delivered to the Commissioner's Office at Level 4, 154 Melbourne Street, South Brisbane.
5. Where a signature is required on a document, such as the authorisation of a representative, an electronic version of the document will be sufficient if it includes a scanned copy of the signature. If not, a signed hard copy must also be provided.
6. Email communications must be directed to the Commissioner's Office general email address (bccm@justice.qld.gov.au).
7. Practice Direction 33: Electronic communication provides specific requirements for electronic communications.

Response to correspondence

8. 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 unless clearly requested in the correspondence.
9. 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.
10. Where a correspondent has a specific request regarding the mode of response (for example, by email, post 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

11. 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*].

12. 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

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

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Version 5
Effective 11 June 2024

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* (the Act). 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 gives information about electronic communication for dispute resolution applications, having regard to the *Acts Interpretation Act 1954* and the *Electronic Transactions (Queensland) Act 2001*.

Transmission of information 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.

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 used by the Commissioner's Office. If a party is uncertain whether a particular file format is appropriate, they should contact the Commissioner's Office prior to sending the file.

4. Due to the security risks associated with data storage devices (such as a USB or external drive) and writable media (such as a DVD or Blu-Ray disc), acceptance of material submitted by these methods will generally not be accepted unless approved by or at the discretion of the Commissioner or a dispute resolution officer.

5. 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.

6. 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.

7. 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.

8. 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

9. 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

10. 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 by post or else delivered to the Commissioner's Office.

11. 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 information from the Commissioner's Office

12. The Commissioner's Office 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.

13. Where the Commissioner's Office corresponds with a party by email, a hard copy of the correspondence will not be sent to the party unless approved by or at the discretion of the Commissioner or a dispute resolution officer.

14. The Commissioner's Office may distribute audio, video or multimedia content on writable media, such as on DVD or Blu-Ray disc, as required in relation to a dispute resolution application.

Distribution of notices by a body corporate

15. 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.

16. The notice and any attachments should 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

17. 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.

18. As is the case with (16) 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 they do not wish to receive communications by email.

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Effective 11 June 2024

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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* (the Act). 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. 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 close 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'.

   Credit card payments can be processed online at www.qld.gov.au/bodycorporatepayments.

Search and copy fees

6. 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*].
7. The application documents include the application, a submission or the applicant's reply to submission.
8. 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. Details of the current fees can be found on the Commissioner's webpage 'Fees for body corporate dispute applications'.

Fee waivers and related

9. 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)*].
10. Applicants seeking a waiver of the fee must complete BCCM Form 23: Application – Waiver of Fee. Completion of the BCCM 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.
11. In considering 'financial hardship', the Commissioner may consider whether the applicant has a Commonwealth concession card.

12. 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.

13. 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.

14. 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.

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Version 7
Effective 11 June 2024

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* (the Act). 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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Practice Direction 30

Material submitted in relation to an application

This practice direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997* (the Act). 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 concerning evidence submitted in respect of a dispute resolution application [see also Practice Direction 26: 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.

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Effective 11 June 2024

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Practice Direction 37

Privacy

This practice direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997* (the Act). Its purpose is to provide further information on the procedures and content requirements for dispute resolution applications lodged with the Commissioner's Office[1]. 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.

BCCM dispute resolution functions and the IP Act

1. The Commissioner's Office collects and discloses personal information in the course of providing its dispute resolution services.
2. The Information Privacy Act 2009 (**IP Act**) imposes obligations on Queensland government agencies in respect of the collection, storage, use and disclosure of personal information.
3. The IP Act provides a right for individuals to have their personal information collected and handled in accordance with certain rules or 'privacy principles'. An agency which holds an individual's personal information must not disclose that information unless one of the exceptions in the IP Act applies.[2]
4. However, the IP Act provides that the functions of a judicial or quasi-judicial entity[3] and a member of, or the holder of an office connected with a function of a quasi-judicial entity,[4] are *excluded* from the operation of the privacy principles in the IP Act.[5]
5. The IP Act does not prescribe what a judicial or quasi-judicial function is. The Office of the Information Commissioner considers that, in so far as its adjudication functions are concerned, the Commissioner's Office is a quasi-judicial entity. And, to the extent that a person is acting as an adjudicator, that person is a quasi-judicial officer connected with a function of a quasi-judicial entity.
6. In addition, the conciliation process is also likely to be a quasi-judicial function.
7. Personal information managed as part of an adjudication or conciliation application, is therefore not likely to be subject to the requirements of the IP Act.
8. To the extent the Commissioner's Office is ***not*** exercising its quasi-judicial functions, it is bound by the information privacy principles in the IP Act.[6]
9. Where the IP Act applies, it allows for disclosure of personal information if it is authorised or required under a law.[7] Accordingly, where information is required to be provided to specified parties or persons under the BCCM Act - including personal information - the disclosure will be permitted under the IP Act.

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1 Office of the Commissioner for Body Corporate and Community Management
2 See IPP 11 at Schedule 3 of the IP Act
3 In relation to its quasi-judicial functions
4 In relation to its quasi-judicial functions
5 See section 19 and Schedule 2, Part 2 of the IP Act
6 See Schedule 3 of the IP Act
7 IPP 11(1)(d) at Schedule 3 of the IP Act

10. Please refer to the relevant privacy statements which contain more detailed information about the authorised disclosure of personal information:

    a) adjudication: Form 15 Privacy Statement

    b) conciliation: Form 22 Privacy Statement

11. For further information about whether the IP Act applies to personal information held by the Commissioner's Office, please contact Right to Information and Privacy, Department of Justice and Attorney-General. You can contact them here.

Our commitment to privacy

12. Regardless of whether the IP Act applies, the Commissioner's Office is committed to the responsible management of all personal information it holds, including personal information obtained, used, stored and disclosed as part of a dispute resolution application.

13. Individuals also have the right to privacy under the Human Rights Act 2019 (**HR Act**). The HR Act requires **public entities** performing a public function to act compatibly with human rights, including the right to privacy and reputation.[8] These rights protect the privacy of individuals from 'unlawful' or 'arbitrary' interference.

14. The HR Act came into force on 1 January 2020 and applies to all acts and decisions made by public entities on or after this date. The Commissioner's Office is mindful of its obligations to act in accordance with the HR Act.

Distribution and publication of orders

15. Adjudicators are required to give a copy of an order they make deciding an adjudication application to the parties, body corporate, and any persons who made submissions about the application.[9]

16. Additionally, in accordance with the fundamental principle of open justice,[10] the Commissioner publishes adjudicators' orders online on the publicly available database, Australasian Legal Information Institute, which can be accessed for free here.

17. In appropriate situations, where an adjudicator considers it necessary, they may omit personal, identifying, or confidential information from an order. Similarly, the Commissioner may redact personal, identifying, or confidential information from orders published online.

18. If a person wants certain information omitted from an order, they should request this in writing as early as possible in the dispute resolution process. The onus is on the person requesting the information be omitted to establish that it is necessary and in the interests of justice to do so.

19. For the avoidance of doubt, it is generally desirable and in the interests of justice for adjudicator's orders and reasons for decisions to be made available in their entirety. The adjudicator or Commissioner will have regard to the circumstances in deciding whether it is necessary and in the interests of justice for the information to be omitted or redacted, including the reason for the request; any evidence supporting the request; and the significance of the information to the meaning of the order. Without limiting the discretion of the adjudicator or the Commissioner, relevant circumstances could include whether a person's safety is at risk or a suppression order has been made by another court, tribunal, or authority.

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8 Section 25 of the HR Act
9 Section 274 of the BCCM Act
10 As provided for under section 299 of the BCCM Act

Other legislation requiring disclosure of information

20. Parties should also be aware that correspondence and documents sent to the Commissioner's Office may be publicly accessible pursuant to the provisions of the *Right to Information Act 2009*. You can find out more about Right to Information here.

COMMISSIONER
FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

Version 2
Effective 11 June 2024