

## 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* (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 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\(1\)\(b\)](#)].

## COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

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