

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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COMMISSIONER

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