

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 18

Emergency expenditure applications

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

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



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



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COMMISSIONER

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