

## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 19

## Expeditable 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. 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).



Chris Irons  
**COMMISSIONER**

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