

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 24

Debt disputes

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 provides information about making a dispute resolution application to resolve a *debt dispute* or *related dispute* [Act, *section 229A*].

Debt dispute

2. A *debt dispute* is a dispute about the recovery of a debt under the Act by a body corporate from an owner.
3. Debts claimed by a body corporate from an owner may include:
 - a. outstanding contributions;
 - b. penalties for the late payment of contributions;
 - c. costs reasonably incurred in recovering unpaid contributions;
 - d. amounts incurred by a body corporate in repairing damage caused by an owner or in carrying out work which was the obligation of the owner;
 - e. agreed charges for the supply of services by the body corporate; or
 - f. amounts an owner is required to pay under an exclusive use by-law.
4. An adjudicator does not have jurisdiction to determine a *debt dispute*. There is therefore no capacity under the Act to apply for adjudication of a *debt dispute*.
5. A body corporate may commence a proceeding to recover the debt through the Queensland Civil and Administrative Tribunal (QCAT) or a court of competent jurisdiction. QCAT publishes information on taking action to recover a debt at www.qcat.qld.gov.au.
6. Alternatively, a body corporate or lot owner may apply for conciliation of a *debt dispute*, if proceedings about the *debt dispute* have not already commenced in QCAT or a court.
7. If a proceeding for a debt dispute is commenced in QCAT or a court at any time after a conciliation application has been lodged, then the conciliation process will immediately end. The Commissioner has no discretion to allow a conciliation application to continue once a proceeding has commenced in QCAT or a court.



8. The parties to an application are therefore required to inform the Commissioner immediately if the party becomes aware that a proceeding has been commenced in QCAT or a court regarding a debt that is the subject of a current conciliation application
9. The grounds in support of an application for conciliation of a *debt dispute* should include:
 - a. a summary of the background to the dispute and the steps taken to recover the debt;
 - b. the total amount currently claimed by the body corporate;
 - c. the basis for calculating the amount claimed by the body corporate, including a breakdown of which amounts are, for example, unpaid contributions, penalties and debt recovery costs;
 - d. where the amount claimed includes penalty interest, a copy of the general meeting minutes at which the imposed penalty interest was approved;
 - e. evidence of requests to the lot owner for the amount claimed, such as contribution notices;
 - f. copies of any communication from the lot owner regarding the body corporate's requests for payment;
 - g. for applications by a body corporate - the grounds on which the body corporate maintains each amount is payable; and
 - h. for applications by a lot owner - the grounds on which the lot owner maintains that the amounts claimed by the body corporate are either not payable at all or only partially payable.

Related dispute

10. A body corporate or lot owner may apply for either conciliation or adjudication of a dispute that is related to the subject matter of a *debt dispute*, whether or not a proceeding to recover the debt has been commenced in QCAT or a court.
11. Generally, conciliation should be attempted first before applying for adjudication, unless the Commissioner has waived the requirement to conciliate [see *Practice Direction 9: Matters not appropriate for conciliation*].
12. Despite the above, a dispute resolution application which is related to a *debt dispute* may be rejected by the Commissioner [Act, *section 241*], or dismissed by an adjudicator [Act, *section 270*], if satisfied that:
 - a. the subject matter of the dispute set out in the dispute resolution application is related to the subject matter of a *debt dispute*;
 - b. there are proceedings in QCAT or a court to recover the debt that is the subject of the *debt dispute*; and
13. The Commissioner considers the dispute in the application and the *debt dispute* before QCAT or a court are connected in a way that makes it inappropriate for the dispute to be dealt with under a dispute resolution process.

14. In deciding whether to reject or dismiss the application, the Commissioner or adjudicator may exercise their respective powers [Act, sections 240 and 271] to request information from the body corporate or lot owner about the dispute set out in the dispute resolution application or the debt dispute before QCAT or a court, including by requesting the parties to provide a copy of material filed in the debt dispute proceeding.



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COMMISSIONER

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