

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

# Practice Direction 25

## Complex 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 identifies certain types of disputes which are defined by the Act as a *complex dispute* or a *contractual matter* [refer Act, *schedule 6*] and explains how those disputes are able to be resolved under the Act.
2. If the subject matter of an application comprises a *complex dispute*, there is no jurisdiction for the matter to be referred to department conciliation or department adjudication.
3. The legislation provides that a *complex dispute*, including about a *contractual matter*, must be determined either by a specialist adjudicator or by the Queensland Civil and Administrative Tribunal (QCAT). It is up to the applicant to choose which forum they wish to lodge their *complex dispute* [Act, *section 229(2)*].
4. A *complex dispute* includes the following:
  - a. an application to adjust the lot entitlement schedule for a community titles scheme [Act, *section 48*];
  - b. a dispute arising out of a review carried out, or required to be carried out, of the terms of service contracts, brought by a reviewing party [Act, *section 133*];
  - c. a dispute about the transfer of a letting agent's management rights, brought by a party to the dispute [Act, *section 149A*];
  - d. a dispute about a claimed or anticipated contractual matter about the engagement of a person as a body corporate manager or a caretaking service contractor or the authorisation of a person as a letting agent, brought by a party to the dispute [Act, *section 149B*]; or
  - e. a dispute about whether an exclusive use by-law should continue in force, where the owner of the lot to which the exclusive use by-law attaches stops being a body corporate manager, service contractor or letting agent for the scheme and the exclusive use by-law is not for the continuing engagement of the lot owner as a body corporate manager, service contractor or letting agent for the scheme, brought by the body corporate [Act, *section 178*].



5. A *contractual matter* about the engagement or authorisation of a person as a body corporate manager, caretaking service contractor or letting agent means the following:
  - a. a contravention of the terms of the engagement or authorisation;
  - b. the termination of the engagement or authorisation;
  - c. the exercise of rights or powers under the terms of the engagement or authorisation; or
  - d. the performance of duties under the terms of the engagement or authorisation.
6. If an adjudication application seeks orders to resolve both a complex dispute and other matters, the entire application must be determined by QCAT or specialist adjudication. An applicant may elect to remove outcomes about the complex dispute so that the remaining dispute may be resolved by departmental conciliation or adjudication. The applicant could then separately pursue the complex dispute either in QCAT or through specialist adjudication.



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**COMMISSIONER**

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