

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

**Practice Direction 30****Material submitted in relation to an application**

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 concerning evidence submitted in respect of a dispute resolution application [See also *Practice Direction 25: False or misleading information or documents*].

**General**

2. At all times the onus is on the applicant to 'make their case'. This also means that all information and supporting documents should be relevant to the issue in dispute.
3. An adjudicator is not bound by the rules of evidence and has broad investigative powers [Act, *sections 269 and 271*].
4. A conciliator, as the conciliator considers appropriate, may accept written material from any person and distribute written material to any person for the purpose of the conciliation [Act, *section 252E*].
5. Information and documents included in an application, submission or reply to submissions cannot be kept private or confidential. Pursuant to the principles of natural justice, any material considered by an adjudicator in making a decision must be available to the other parties to the dispute. Information provided to the adjudicator may also be referred to in the adjudicator's decision, which will be published online.
6. The Commissioner has no capacity to remove information or documents from an application, submission or reply, or to redact information, because of objections about its content, including in response to allegations that the information is defamatory or has been improperly obtained.
7. The Commissioner, adjudicator or conciliator cannot investigate or prosecute objections relating to material submitted by a party. However an adjudicator may give consideration to such allegations when determining what weight should be given to disputed evidence.
8. Where a party objects to material submitted by another party, and the matter is relevant to the issues in dispute, the appropriate course of action is to outline the concerns in a submission or the reply to submissions or, in the case of conciliation, to inform the conciliator of the person's concerns.



9. The legislation provides that the same privilege exists with respect to defamation for adjudication and conciliation processes as for a Supreme Court proceeding [Act, section 296]. A person does not incur liability for defamation by publishing any defamatory material in the course of a proceeding in a court or tribunal [Defamation Act 2005, section 27].

### **Expert evidence**

10. Pursuant to the investigative powers provided in the Act, an adjudicator may invite a party to obtain and submit expert evidence. This is in addition to any expert evidence a party may wish to provide.
11. Expert evidence should normally comprise a written report. It should include details of any information, tests or sources which the report is based on, any assumptions relied upon in making the report, and the reasons for any stated opinions.
12. Expert evidence should be accompanied by the expert's contact details, and their qualifications and experience relevant to the area of expertise.
13. A party will normally be liable for the cost of expert evidence obtained by them in support of their claims.
14. An expert is expected to assist the adjudicator in preference to any party to the application or any party who is liable for the expert's fees or expenses. An expert is not an advocate for a party.
15. Where the parties submit conflicting expert evidence, the adjudicator may require the experts to meet to identify and clarify areas of agreement and disagreement between the experts and the reasons for any disagreement. Alternatively, the adjudicator may require the parties to jointly select a third expert to provide a further opinion.
16. Expert evidence may assist in the conduct of a conciliation session by providing the parties with information relevant to the issues in dispute. If a person is in possession of expert evidence, or intends to obtain expert evidence, this should be disclosed to the conciliator prior to the conduct of the conciliation session.



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**COMMISSIONER**

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