

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 9

Matters not appropriate for conciliation

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. Generally, all applicants must attempt to resolve the dispute through conciliation with the Commissioner's Office before seeking adjudication. A conciliation application is a BCCM Form 22.
2. The Commissioner may reject an application for conciliation if the Commissioner considers the dispute is not appropriate for conciliation. This Practice Direction describes some of the factors which the Commissioner may take into account in deciding whether a dispute is not appropriate for conciliation. It is not an exhaustive list.
3. The Commissioner will consider the particular facts and circumstances of each dispute before deciding whether conciliation is appropriate.
4. The Commissioner may request the applicant or another person to provide information about the dispute, to assist in deciding whether to refer the application to conciliation or to reject the application. [*Sections 240 or 251* of the Act].
5. Factors the Commissioner may take into account include:
 - a. any circumstance or aspect of urgency associated with the issues in dispute, including whether an interim or emergency order is being sought;
 - b. whether the application seeks an adjudicator's order and where there is no respondent and no dispute, such as a request for a change of financial year;
 - c. whether the application is seeking the return of body corporate property, such as records, necessary for the operation of the body corporate;
 - d. whether the respondent to the application cannot be otherwise determined. For example: where a body corporate has no functioning committee and is not able to appoint representatives to act on its behalf at conciliation;
 - e. whether the application involves numerous applicants and respondents, making conciliation impractical;



- f. where there are related legal proceedings arising from the same set of facts in dispute;
 - g. where the particular history and nature of the dispute cannot be accommodated by the conciliation process. For example, where a party alleges that threats of violence have been made by another party to the dispute; or
 - h. where there has been a past unsuccessful attempt at conciliating another dispute involving either the applicant and/or the respondent, the circumstances of which indicate that conciliation of the new dispute is not likely to result in a quick and efficient resolution.
6. A previous failure by the parties to resolve the dispute through internal dispute resolution does not, of itself, make a matter inappropriate for conciliation.
7. If the Commissioner decides to reject an application, the Commissioner will inform the applicant in writing of the reasons for the decision and the applicant's right to seek a review of the decision by the Queensland Civil and Administrative Tribunal.
8. Where an application for conciliation is rejected on the basis that the dispute is not appropriate for conciliation, the applicant may lodge an application for adjudication providing the dispute is within the jurisdiction of a dispute resolution officer. Generally, the Commissioner will waive the prescribed fee for an adjudication application lodged in these circumstances.



Chris Irons
COMMISSIONER

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