

**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 policies and procedures applying to dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation and the Commissioner retains the discretion provided for in the legislation in the case management of dispute resolution applications.

1. The Commissioner may reject an application for conciliation if the Commissioner considers the dispute is not appropriate for conciliation.
2. If the Commissioner decides to reject an application, the Commissioner will provide a written notice stating the reasons for the decision and the applicant's right to seek a review of the decision.
3. If an application for conciliation is rejected, the applicant may lodge an application for adjudication providing the dispute is within the jurisdiction of a dispute resolution officer.
4. The following information describes the factors which the Commissioner may take into account in deciding whether the matter is not appropriate for conciliation. It is not an exhaustive list.
5. The Commissioner is committed to offering a responsive conciliation service and the existence of one or more of the following factors will not necessarily lead to a determination that the matter is not appropriate for conciliation. The particular facts and circumstances of each dispute must be considered and the Commissioner may make an appropriate level of enquiry before making a decision.
6. Factors which the Commissioner may take into account include:
 - a. The urgency of the issues in dispute, including whether an emergency order is required.
 - b. Whether the application seeks an adjudicator's order where there is no respondent and no dispute, for example 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 can not 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.
- e. Whether the application involves numerous applicants and respondents, making conciliation impractical.
- f. Where there are issues or factors likely to adversely impact on the parties including the special needs of the parties which cannot be accommodated for example, through the appointment of a representative in the process.
- g. Where there is related legal proceedings arising from the same set of facts in dispute.
- h. Whether the history and nature of dispute, including threats of violence that cannot be accommodated by the conciliation process or previous unsuccessful attempts at conciliation, indicate that the matter is not suitable for conciliation.



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