

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 28**Approval of alternative insurance**

This Practice Direction is issued pursuant to *section 198(4) of the Body Corporate and Community Management (Standard Module) Regulation 2020; section 188(4) of the Body Corporate and Community Management (Accommodation Module) Regulation 2020; section 145(4) of the Body Corporate and Community Management (Commercial Module) Regulation 2020 ; section 117(4) of the Body Corporate and Community Management (Small Schemes Module) Regulation 2020 and section 49(4) of the Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011*. Its purpose is to provide information on the procedures and requirements for requests for authorisation of alternative insurance. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about requests for authorisation of alternative insurance.

1. The legislation sets out the requirements for bodies corporate to obtain insurance.
2. *Section 198* of the *Body Corporate and Community Management (Standard Module) Regulation 2020* (and equivalent provisions in the other regulation modules) establish the insurance requirements for buildings that include lots in a community titles scheme created under a building format plan or volumetric format plan of subdivision.
3. *Section 198(4)* of the Standard Module, and equivalent provisions in the other regulation modules, provide that if the body corporate cannot comply with the required level of insurance, it may apply in writing to the Commissioner for authorisation to put in place alternative insurance in a form approved by the Commissioner.
4. In approving alternative insurance, the Commissioner must be satisfied that the required level of insurance cannot be obtained, and that the alternative insurance provides cover that is as close as practicable to the required cover.
5. A body corporate seeking approval of alternative insurance should be aware that:
 - a. a proposal for a body corporate to 'self insure' does not constitute alternative insurance and cannot be approved by the Commissioner,
 - b. the fact that the required level of insurance coverage is expensive does not of itself mean the body corporate cannot obtain that insurance, and
 - c. the approval of a request for alternative insurance does not constitute a ruling that the insurance is adequate or appropriate.
6. A written request for authorisation of alternative insurance is not a dispute resolution application under Chapter 6 of the Act. However, in making a written request the following steps must be followed:
 - a. the request must be made using the adjudication application form [BCCM Form 15],
 - b. the request must be accompanied by the prescribed fee for a dispute resolution application,



- c. the applicant must be the body corporate,
 - d. no respondent should be named, and
 - e. the request must be accompanied by a committee resolution authorising the request.
- 7. The request should be accompanied by:
 - a. a copy of the proposed insurance policy, and
 - b. evidence of the full replacement value for the scheme (for example, from previous insurance policies).
- 8. The grounds supporting the request, and the accompanying documentation, should demonstrate:
 - a. why the body corporate is unable to obtain the required level of insurance,
 - b. the proposed alternative insurance,
 - c. how the proposed alternative insurance is as close as practical to the required level of insurance,
 - d. the attempts made to obtain the required level of insurance,
 - e. detailed information about any insurance alternatives available or considered by the body corporate,
 - f. if alternative insurance is sought because of the cost of available insurance, why the required level of insurance is so prohibitively expensive that the body corporate could not, in practice, afford to pay for it,
 - g. whether the period for which the alternative insurance is proposed is only the current policy term or whether the body corporate proposes to continue the alternative insurance arrangements for future terms,
 - h. that the proposed alternative insurance has been submitted to a general meeting as a motion for approval as an ordinary resolution by owners or that the body corporate has obtained the written agreement of all owners of the lots to which the alternative insurance arrangement are proposed to apply, and
 - i. if the proposed alternative insurance has not been approved at a general meeting or otherwise by all owners, why the proposed alternative insurance should be authorised by the Commissioner in the absence of that approval.
- 9. The Commissioner may make further investigations and seek submissions from affected parties to determine whether the proposed alternative insurance is appropriate and is as close as practicable to the required cover.
- 10. The Commissioner will not approve a request for alternative insurance if:
 - a. the body corporate has not demonstrated that it cannot obtain the required level of cover,
 - b. the alternative insurance has exclusions that result in a significant departure from the required level of insurance,
 - c. The alternative insurance is inadequate or inappropriate, or
 - d. The alternative insurance provides a level of cover that is significantly inadequate compared to the replacement value of the scheme.

11. The Commissioner will provide a written decision outlining whether the proposed alternative insurance is authorised or not and giving reasons for the decision.
12. Unless otherwise specified in the approval, any approval will only apply for the particular policy approved and for the period of the insurance policy. If the approved policy is changed or renewed, a further authorisation will be required.
13. The Commissioner may review, amend or revoke a decision to authorise alternative insurance if satisfied it is appropriate to do so having regard to all the circumstances.

COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

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