

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 22

Standing of parties

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. Standing, in the context of this practice direction, refers to the legal ability of a person to be named as the applicant or respondent for a dispute resolution application.

General

2. An application may only be filed by a person who is directly involved in a dispute. The legislation restricts the permitted combinations of parties for a dispute resolution application [Act, *section 227*]. It is the responsibility of the person lodging the application to ensure that they have standing to be named as the applicant and that the person with whom they have a dispute has standing to be named as the respondent.
3. The application must identify the capacity in which the particular applicant and respondent have been named. For example, a dispute about a person's performance as a caretaker cannot be brought against that person in their capacity as an owner.

Former parties

4. The standing of a party to be named as an applicant or respondent in an application is determined as at the time the application is filed with the Commissioner's Office.
5. If a person held one of the specified capacities to be named as a party at one time, but ceased to hold that capacity as at the time the dispute resolution application is lodged, the person would ordinarily not have standing to be a party to the dispute. For example, a lot owner cannot lodge an application after ceasing to be the owner of a lot.
6. An exception exists in regard to a person who formerly held the position of body corporate manager. A body corporate may bring an application against a former body corporate manager in relation to a dispute about the return of body corporate property by the former body corporate manager to the body corporate.
7. If a person's loss of position is in dispute, the person may still have capacity to bring an application about that issue. For example, a person disputing a body corporate decision to remove that person from the position of committee member, would have standing to lodge an application challenging that decision in the capacity of a committee member.

Changes to the standing of parties

8. An applicant who had standing to lodge an application may be entitled to pursue the application even if they cease to have standing before the matter is finalised [Act, *section 239C(2)*].



9. Where a party ceases to have standing before the application is finalised, the Commissioner may substitute another person with standing as the relevant party [Act, *section 239C(3)*]. For example, if a respondent lot owner sells their lot, the new owner may be substituted as the respondent.
10. If the Commissioner allows a party to be substituted, the Commissioner will give notice of the substitution to all parties.
11. If there is a substitution, the Commissioner may require evidence of attempts at internal dispute resolution with the new parties before proceeding with the application.
12. The Commissioner may reject an application if a party no longer has standing and the outcome sought by the application is no longer relevant or required [Act, *section 241(1)(f)*]. In deciding whether to reject an application, the Commissioner will consider whether the applicant has a significant or continuing interest in the relief being sought.
13. In addition, an adjudicator may dismiss an application if a party no longer has standing and the outcome sought in the application is no longer relevant or required.

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