

Referee Guideline 3

Interim order applications

Referee Guidelines are educational tools designed to assist parties in understanding the processes and requirements of an application for an order of a referee. For any given application, the referee may exercise discretion in the case management of the application according to its circumstances and as provided for in Part 5 of the *Building Units and Group Titles Act 1980* (BUGT Act).

1. This guide provides information on applying for an interim order.

What is an interim order?

2. An interim order is a temporary order, made in an application for final orders.
3. An interim order may have effect only until the application for final orders is decided or the interim order is otherwise revoked. In any event, it ceases to have effect after 3 months, unless extended by the referee. It may have effect for no more than a total of 6 months.
4. Generally, an interim order will only be granted to maintain the status quo (the existing state of affairs) or preserve rights or legitimate interests of the applicant until the matter in dispute can finally be determined.

When can an interim order be made?

5. An interim order can only be granted as part of an application for final orders under section 77(1) of the BUGT Act. Therefore, an interim order cannot be made in respect of disputes to be resolved by orders under sections 78 to 94B of the BUGT Act.
6. An interim order may be made “ex parte”, that is, without the respondent and other parties being notified of the application and being invited to make submissions about it. However, the referee may choose to invite submissions on the interim order application, depending on the circumstances.

What does the applicant need to prove?

7. The applicant will have to satisfy the referee:
 - a. there is an urgent need for the interim order
 - b. there is an arguable case for a final order under section 77(1) of the BUGT Act



- c. the balance of convenience favours the applicant.

These things are explained below.

8. A referee may make an interim order only if satisfied there are urgent circumstances to justify making it. An interim order will not be granted simply because there are urgent circumstances. There must also be a real risk of serious or long-lasting harm or loss to the applicant.
9. The referee will need to be satisfied that the applicant has some prospects of success on the application for final orders – this is sometimes described as having a “prima facie case” or “raising a serious legal question”.
10. The referee may also wish to be satisfied that any inconvenience or harm the applicant would suffer if an interim order were refused would outweigh any inconvenience or harm the respondent would suffer if an interim order were granted – this is sometimes called the “balance of convenience test”.

Examples

18. Examples of circumstances where an interim order may be warranted include:
 - a. A proprietor disputes the validity of a body corporate decision to cut down a tree on common property. An interim order may be granted to stop the tree being cut down until the referee can decide whether the decision was valid.
 - b. A proprietor disputes the validity of a body corporate decision to remove a pool fence and is concerned about the safety risk and the legal consequences. The referee may order the body corporate to reinstate the fence or drain the pool until the referee can decide whether the decision was valid.

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