



Adjudication

This information sheet introduces parties to the adjudication service provided by the Office of the Commissioner for Body Corporate and Community Management (the BCCM Office) under the *Body Corporate and Community Management Act 1997* (the BCCM Act). It is not intended to be an exhaustive guide to the adjudication process. The legislation should be used as the primary reference.

The Commissioner for Body Corporate and Community Management

The Commissioner:

- provides an information service to the public
- manages the dispute resolution service
- has the power to waive conciliation
- has no role in the substance or outcome of the dispute after it has been referred to a dispute resolution officer
- has no power to make or review orders.

What is the role of an adjudicator?

An adjudicator has wide powers under the BCCM Act and may make an order that is just and equitable to resolve a dispute involving a claimed contravention of the BCCM Act or the community management statement for a community titles scheme. Schedule 5 of the BCCM Act gives examples of the orders which an adjudicator may make and includes an order:

- requiring the body corporate to record a new community management statement
- to call a general meeting to deal with stated business
- to increase or reduce contributions
- to declare motions or meetings void.

An adjudicator may also appoint an administrator and authorise the administrator to perform the obligations of the body corporate or the committee.

An adjudicator does not have power to resolve a question about title to land.

Many complex issues must be determined by way of an application to the Commercial and Consumer Tribunal or for specialist adjudication by agreement.

Before making an adjudication application

In most cases before making an application for adjudication, an applicant must have attempted to resolve their dispute by internal dispute resolution (self resolution) and conciliation.

The Commissioner may reject an application for adjudication if the applicant hasn't made a reasonable attempt to conciliate. Please refer to the *Conciliation* factsheet for further information.

However, in some applications conciliation may not be appropriate, for example:

- an application for an interim order
- an application for emergency expenditure
- an application seeking a declaratory order.

The adjudication process

The following five steps take you through the case management process prior to a dispute resolution recommendation being made.

1. Making the application

An application must be in the approved form (BCCM Form 15). If the application does not meet the requirements of the BCCM Act, the applicant may be required to supply further information or material. Please note that the BCCM Act does not authorise the BCCM Office to provide advice on the wording of an application.

Amending the application

An applicant may write to the Commissioner outlining a proposed amendment and the reasons for the amendment. However, if an amendment is received by the Commissioner after the dispute resolution recommendation, the Commissioner may impose conditions when permitting an amendment (e.g. that the amendments be circulated at the applicant's expense for further submissions).

Withdrawing the application

The applicant may withdraw the application by writing to the BCCM Office. The application fee cannot be refunded.

2. Invitation to make a submission

The Commissioner may invite the body corporate and any people affected to make a written submission in response to an application, within a specified time.

3. The right to inspect submissions

The applicant, the body corporate or a member of its committee, or a person who has made a submission on the application may apply to the Commissioner to inspect and obtain copies of the application and all submissions, on payment of the prescribed fee (refer to the 'Guide to completing an Adjudication Application Form'.

4. The applicant's right of reply

After inspecting or obtaining copies of submissions, the applicant may make a written reply to submissions within the time specified by the Commissioner. The reply should not raise new issues. If it does, the resolution of the dispute may be delayed while the reply is circulated for further submissions. Other parties do not have a right of reply.

5. Dispute resolution recommendation

The Commissioner must make an assessment of the most effective way to resolve the dispute after the reply period has expired. The possible dispute resolution recommendations are:

- adjudication
- departmental conciliation
- mediation
- specialist mediation or specialist conciliation.

Adjudication

If a matter is referred to a departmental adjudicator within the BCCM Office, the cost is included in the fee for lodging the application. The Act gives adjudicators broad investigative powers, including the power to:

- request information, such as expert reports
- interview the parties or other people
- inspect body corporate records, lots, or common property in a community titles scheme.

After considering the application, submissions, the applicant's reply to submissions, and any additional information, the departmental or specialist adjudicator will make a formal order determining the dispute. People entitled under the BCCM Act will automatically receive copies of orders.

An adjudicator may dismiss an application considered to be frivolous or vexatious, or if an applicant unreasonably fails to comply with a requirement of an adjudicator. Costs of up to \$2000 can be awarded against an applicant to compensate the other party for loss arising from an application that is considered frivolous or vexatious.

Departmental conciliation

The Commissioner may recommend departmental conciliation. Conciliation encourages open and honest discussion between the parties, with the assistance of an independent third party knowledgeable in the legislation, with a view to entering into an agreement to resolve the dispute. This process may also improve communication and reduce the incidence of future disputes.

Mediation

Dispute Resolution Centre (DRC) mediation is a free service provided by the Department of Justice and Attorney-General. On referral, DRC will arrange a meeting between the parties and a trained mediator. However, parties can use this service at anytime before or after an application is lodged.

Specialist adjudication, specialist mediation or specialist conciliation

This may be appropriate where, for example, the issues are of a complex contractual nature or require the expertise of a qualified person such as an engineer. Before the Commissioner can recommend this option, the parties must agree on the person to be appointed and who will pay the specialist's fees. Usually parties share the cost. The Commissioner must also be satisfied that the nominated person has appropriate qualifications, experience and standing to perform the role.

Possible outcomes from conciliation and mediation

If an agreement is reached, the parties document and sign their own agreement. They can also request that the agreement be formalised. Provided the agreement does not contravene the BCCM Act, an adjudicator may make an enforceable consent order based on the terms of the agreement.

If the dispute is not resolved by mediation or conciliation, the Commissioner can make a further dispute resolution recommendation. Anything said or done at mediation or conciliation is inadmissible in adjudication or other proceedings.

Enforcement of adjudicators orders

An order can be enforced in the Magistrates Court by a person in whose favour the order is made. Please refer to the *Enforcement of adjudicators' orders and penalties* factsheet for further information.

Contravention of orders

A person who contravenes an order commits an offence. The applicant, the body corporate, a person in whose favour the order is made, or an administrator for the scheme may initiate a proceeding for an offence in the Magistrates Court. The maximum penalty is 400 penalty units. One penalty unit currently equals \$100 (*Penalties and Sentences Act 1992*) so the maximum penalty is \$40,000.

Appeal from adjudication

The Commissioner does not have the power to review an adjudicator's decision. An order of an adjudicator can be appealed in the Commercial and Consumer Tribunal on a question of law by an aggrieved person, as per section 289 of the BCCM Act.

An appeal must be started within six weeks of the date of the order, unless a later start is allowed by the court on application by a prospective appellant.

What is the application fee?

The current fee for making an adjudication application is detailed in the 'Guide to completing an Adjudication Application Form'.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

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Copies of the *Body Corporate and Community Management Act 1997*, the regulation modules, and any amendments can be accessed for free via the Office of the Parliamentary Council at: www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm or purchased from SDS, Ground Floor, Mineral House, 41 George Street, Brisbane. SDS Customer Service can be contacted on: 07 3118 6900 or 1800 679 778 or at: www.publications.qld.gov.au.

Disclaimer

The laws referred to in this guide are complex and various qualifications may apply in different circumstances. The information in this factsheet does not constitute legal advice. You are encouraged to obtain independent legal or financial advice if you are unsure of how these laws apply to your situation.

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