Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 14

## Adjudication applications

This practice direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997* (the Act). 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. Applicants for the order of an adjudicator must complete the adjudication application form [BCCM form 15].
2. Applicants are encouraged to complete the application form online at www.qld.gov.au/bodycorporatedisputes and then post or email the completed form to the Commissioner's Office. The online version of the form includes explanations and information that may assist an applicant in understanding how to complete the application.
3. Alternatively, a hardcopy of the application form, to be completed manually, can be downloaded from the above website or obtained from the Commissioner's Office. The hardcopy includes a guide to completing the application form.
4. At all times the onus is on the applicant to 'make their case', in other words, to ensure their application form is correctly completed and meets legislative requirements. The Commissioner's Office cannot complete application forms for applicants and nor can the Commissioner's Office instruct applicants on what action they should take in relation to their application.
5. In addition to the information set out in the online form and guide, applicants should note the following.

**Applications must be clear and legible**

6. The application form and any attachments should preferably be typed, in a clear font. Handwritten applications must be clear and legible.
7. If an application is not clear and legible, whether typed or handwritten, the applicant will be requested to submit a revised application that is clear and legible.

**Applicant and Respondent**

8. The applicant is the person who is making the application. The respondent is the other person or party with whom the applicant has a dispute.
9. If the applicant has separate disputes against separate respondents, about different issues, separate applications (each accompanied by the prescribed fee) will generally be required.
10. Where the applicant is a body corporate, a copy of a committee or general meeting resolution authorising lodgment of the application must be supplied.
11. There are specific legislative provisions guiding the different categories of person that an applicant can bring an application against (refer to the online form or guide for full details). For example, an owner or occupier can only bring an application naming the body corporate or another owner or occupier as a respondent. An owner or occupier cannot lodge an application against the body corporate manager, the committee or a caretaker.
12. If an owner has a dispute about a decision made, or the failure to make a decision at a general meeting or committee meeting, the respondent to the dispute would normally be the body corporate.

**Affected person**

13. An affected person means a person, other than the applicant or respondent, who would be directly and materially affected by the outcome sought by the application.

14. Common examples of an affected person for an application include:
    a) an application by an owner of a lot against the body corporate seeking the body corporate to enforce a by-law, the person allegedly contravening the by-law would be an affected person;
    b) an application by an occupier of a lot against the body corporate for permission to keep a pet, the owner of the occupier's lot (if not the occupier) would be an affected person; or
    c) an application by the body corporate against an occupier of a lot for contravening a by-law, the owner of the occupier's lot (if not the occupier) may be an affected person.

**Outcomes sought**

15. The applicant must clearly and concisely set out the outcome or outcomes sought by the application. Generally, the outcome should clearly identify the action that the applicant wants the respondent to take, or to cease, in order to resolve the dispute.

16. If an applicant is seeking multiple outcomes, each outcome should be separately numbered.

**Supporting grounds and attachments**

17. It is the applicant's responsibility to provide all information and supporting evidence necessary to prove the applicant's case for each outcome sought.

18. To do this, the applicant must provide a statement of grounds setting out the full circumstances of the dispute and all of the reasons why the applicant believes the adjudicator should order each of the outcomes sought by the applicant. The statement of grounds should generally comprise a single document (excluding attachments).

19. The statement of grounds must:
    a) be specific, concise and to the point, ensuring that all details relevant to the outcomes sought are included;
    b) demonstrate that there is a genuine dispute: that is, a disagreement between the parties over an issue that the applicant has been unable to resolve by internal dispute resolution with the respondent. The statement should describe what actions the applicant has taken in an attempt to resolve the dispute;
    c) set out how the issue in dispute amounts to a claimed or anticipated breach of the body corporate legislation or the community management statement for the scheme, or relates to the exercise of rights and powers under the legislation or community management statement. In doing so, the applicant should demonstrate that there is some legal basis for each outcome sought; and
    d) set out the history or background to the dispute including, where appropriate, a chronology of the events and circumstances leading up to the lodgement of the application. Consider questions relating to who, what, when, where, why and how of each circumstance.

20. If multiple outcomes are sought, separate grounds should be set out in respect of each outcome. The grounds for each outcome should be easily identifiable, either with a clear heading or else numbered to correspond with the numbering of the outcomes.

21. In order to prove their case, applicants should attach duplicates (not originals) of supporting documentation and material relevant to the dispute, such as:
    a) full copies of the minutes of committee and general meetings;
    b) the full notice for general meetings;
    c) correspondence;
    d) witness statements, statutory declarations or affidavits;
    e) quotes, invoices, receipts, calculations, financial statements or other relevant financial documentation

f) contracts and agreements;
g) photographs, plans, sketches and diagrams; and
h) reports from qualified persons.

22. Each attachment must be numbered and referenced in the statement of grounds, with an explanation of the relevance of the attachment. Ideally, applicants will provide a schedule listing all attachments.

23. The inclusion of information, arguments and attachments that are not directly relevant to the outcomes sought should be avoided.

24. Where a conciliation application has been made and finalised, a copy of the conciliation certificate must be attached to the application.

25. Information included in a conciliation application will not be transferred to the adjudication application by the Commissioner's Office. It is the responsibility of the applicant to resubmit any information from the conciliation application that remains relevant.

**Amendment or withdrawal of application**

26. An applicant can request to amend their application or provide additional information at any time before the Commissioner has made a dispute resolution recommendation on the application (for example, referring the application to an adjudicator).

27. If amendments or additional information are provided by the applicant after the Commissioner has sought submissions about the application, the Commissioner will generally require the applicant to distribute the amendments or additional information to those parties who have been invited to make submissions, at the applicant's expense, and provide a statutory declaration confirming the distribution has occurred.

28. An applicant may withdraw an application in writing at any time before a final order is made. Once an application is withdrawn, the Commissioner's Office will take no further action in relation to the application.

**Privacy and confidentiality**

29. The Commissioner will be required to disclose the contents of an adjudication application to those parties from whom submissions are sought and disclose the contents of the application, submissions and the reply to submissions to interested persons who request access.

30. An adjudicator may disclose information acquired while investigating an application in the interests of natural justice. Information provided to the Commissioner or an adjudicator may be referred to in the adjudicator's order and statement of reasons, which will be published online.

31. Parties should ensure that any material provided to the Commissioner or adjudicator is information that they are prepared to have made publically available.

**COMMISSIONER**
**FOR BODY CORPORATE AND COMMUNITY MANAGEMENT**

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Version 3
Effective 11 June 2024

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