

**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*. Its purpose is to provide further information on the policies and procedures applying to dispute resolution applications lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation and the Commissioner retains the discretion provided for in the legislation in the case management of dispute resolution applications.

1. Applications for the order of an adjudicator must complete the *Adjudication Application Form* [BCCM Form 15]. In addition to the information set out in the *Guide to completing the Adjudication Application Form* and accompanying checklist, applicants should note the following.

Respondent

2. The respondent is the other person or party to the dispute who the applicant seeks an order against.
3. If different outcomes are sought against different respondents, separate applications will generally be required.
4. There are specific legislative provisions guiding the different categories of person that an applicant can bring an application against (refer to the *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.
5. If an applicant is seeking an order about a decision made, or the failure to make a decision, at a general meeting or a committee meeting the respondent to the dispute should normally be the body corporate.

Outcomes Sought

6. Applicants must clearly and concisely set out the outcome or outcomes sought by the application. This requires a statement of what the applicant would like an adjudicator to order to resolve the dispute. For example, what action would the applicant like the respondent to take or cease taking to address the issue of concern?

Supporting grounds

7. The onus is on the applicant to prove their case. To do this, the applicant must provide a statement of grounds setting out the full circumstances of the dispute and the basis of the outcome sought.
8. The statement of grounds should be specific, concise and to the point, ensuring that all details relevant to the outcomes sought are included.
9. The statement of grounds must 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 self-resolution. The statement should describe what actions the applicant has taken in an attempt to resolve the dispute.
10. The statement of grounds must 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 the outcome sought.
11. The statement of grounds must 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 when, who, what, how, why and where of each circumstance.
12. If multiple outcomes are sought, separate grounds should be set out in respect of each outcome sought.
13. The statement of grounds should generally comprise a single document (excluding attachments).
14. The onus is on the applicant to provide all relevant evidence to support the outcomes they seek. Where applicable, applicants should attach duplicates (not originals) of documentation 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.

15. Each attachment must be numbered and referenced in the statement of grounds, with an explanation of the relevance of attachment. Ideally, applicants will provide a schedule listing all attachments.
16. The inclusion of information, arguments and attachments that are not directly relevant to the outcomes sought should be avoided.
17. Where a conciliation application has been made and finalised, a copy of the conciliation certificate must be attached to the application.
18. 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.

General

19. The application form and attachments should preferably be typed, in a clear font. Handwritten material must be clear and legible.
20. Applications and their contents are not confidential.
21. Applicants 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 it to an adjudicator).
22. If amendments or additional information are provided by the applicant after the Commissioner has sought submissions on 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.
23. 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 respect of the matter.



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