

Office of the Commissioner for Body Corporate and Community Management

Practice Directions

Adjudication



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Practice Directions - Adjudication

These Practice Directions detail the requirements for adjudication.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 13

Adjudication process

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. The following summarises the process for adjudication applications lodged with the Commissioner's Office.
2. The Commissioner's Office is impartial in relation to all applications lodged. Parties seeking advice on whether they should lodge an application and how to lodge an application should seek appropriately qualified advice (for example, legal advice).

Case management

3. When an application is received by the Commissioner's Office, a new file is opened and allocated a unique file reference number.
4. The applicant is sent a letter acknowledging receipt of the application and any application fee paid (if applicable). This letter includes the file reference number which must be included by the applicant in all communication with the Commissioner's Office about the application.
5. The application is then assessed by the Commissioner or a delegate, generally, a case manager. The assessment will determine whether the application complies with the legislative requirements and Practice Directions, including whether the dispute falls within the jurisdiction of the Commissioner's Office.
6. Where necessary, the case manager will contact the applicant and request them to:
 - a) clarify information or documents related to their application, or
 - b) provide additional information or documents

to satisfy the requirements of the legislation and Practice Directions.

The case manager may request that the applicant submit an amended application to clarify or provide the relevant information or documents.

Submissions

7. Subject to the circumstances of the dispute and the named parties, the Commissioner will generally invite submissions on the application from the respondent, body corporate committee and all owners.



8. Submissions may also be invited from persons not named in the application, such as an occupier, body corporate manager, or caretaking service contractor, where the Commissioner considers that the person either could be materially affected by the outcome sought by the application or may be able to help resolve the issues raised by the application.
9. The invitation to make a submission is an opportunity for those persons to 'have their say'. A submission may support, oppose or comment generally on the application. It is not compulsory to make a submission. All information and evidence that a party seeks to rely on should be included in their written submission. Parties may not be provided with a further opportunity to comment on the application.
10. Parties invited to make a submission may request an extension of time to make a submission. This request must be in writing, set out the period of extension requested and provide good reason for the extension. If a lengthy extension is sought, the Commissioner may seek comment from the other party before deciding on the request.
11. The Commissioner retains discretion to approve or refuse an extension request or approve a different (shorter) period of extension to that requested. The Commissioner will consider extension requests on a case-by-case basis, taking into account the particular circumstances.
12. The applicant is entitled to inspect or obtain copies of all submissions received, for the prescribed fee.
13. If the applicant inspects or obtains copies of the submissions, they may make a written reply limited to responding to issues in the submissions. The applicant should not include new information in the reply.
14. If an applicant includes new issues or information in their reply to submissions, the adjudicator may, in the interests of natural justice, disregard the new material or may require its distribution to other parties (at the applicant's cost) with an invitation to make a further submission about the new material.
15. Submissions and replies to submissions cannot be kept confidential. Any party to the application is entitled to obtain copies of these documents, for the prescribed fee.
16. The submissions process will generally differ for interim order applications [[see Practice Direction 16: Interim order applications](#)].

Referral to adjudication

17. Once the submissions process is completed, and any reply received from the applicant, the Commissioner will assess the application and make a dispute resolution recommendation. In most cases the Commissioner will refer the application to department adjudication.
18. Applications are generally allocated to adjudicators in chronological order from the date of the referral to adjudication.
19. The adjudication process does not include a hearing. The application will generally be determined 'on the papers'.
20. Adjudicators have broad powers of investigation. As well as reviewing the application, submissions, reply to submissions and scheme documentation (such as the community management statement and plan), the adjudicator may request additional information from any party or from any other person that they consider may be able to assist. In addition, the adjudicator may undertake a site inspection or request copies of body corporate records.
21. While adjudicators may investigate a dispute, they cannot meet with or speak to parties individually due to the need to ensure natural justice for all parties.

22. Once the adjudicator has completed their investigation, they will publish a written order with a full statement of reasons for their decision. A copy of the order and statement of reasons will be sent to all parties, including all persons who made a written submission, and published to the Australasian Legal Information Institute website at www.austlii.edu.au.

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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 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/bodycorporate and then post, email or facsimile 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.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 15

Application time limits

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. For most types of disputes there is no time limit on the lodging of a dispute resolution application with the Commissioner.
2. However, where a lengthy period of time has elapsed between the 'dispute' and lodgement of the application, the Commissioner may invite the applicant to demonstrate the dispute is still ongoing.
3. A lengthy delay in pursuing a dispute may also be a factor considered by an adjudicator when determining an application. An applicant may wish to explain the reasons for a delay in the statement of grounds supporting their application.

Time limit for meeting disputes

4. Certain applications relating to body corporate meetings must be lodged within three months of the meeting in question [Act, *section 242*]. Applications covered by this time limit are an application to invalidate:
 - a. a general meeting;
 - b. a resolution at a general meeting;
 - c. the election of a committee member;
 - d. a committee meeting; or
 - e. a committee resolution.
5. The time limit does not apply in relation to a motion that failed to pass.
6. The time limit will have been complied with if a conciliation application for the same dispute is lodged within the time limit.
7. The basis for the time limit for meeting decisions is to give a body corporate certainty in its actions.

Waiver of the time limit for meeting disputes

8. An adjudicator may waive the requirement to lodge a meeting application covered by the time limit within three months for "good reason" [Act, *section 242(4)(b)*].



9. Where a meeting application is lodged outside the time limit, the Commissioner will treat the application as if it were lodged in time. It will, in due course, be for the adjudicator to determine whether to waive the time limit.
10. Applicants should include the reasons the application was not lodged within the time limit in the statement of grounds for their application for the adjudicator to consider.
11. There are a range of factors an adjudicator will weigh up when deciding whether to waive the non-compliance with the time limit. These include the:
 - a. length of the delay;
 - b. reasons for the delay;
 - c. effect of the delay on other parties affected by the disputes; and
 - d. whether, apart from the non-compliance with the time limit, the applicant would have been entitled to the outcome sought.

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Practice Direction 16

Interim order applications

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1. The legislation provides that the Commissioner *may* refer an application for an interim order immediately to an adjudicator [Act, *section 247*].
2. An interim order can be thought of as providing a form of injunctive relief. An interim order is distinct from both an application seeking an order for emergency expenditure [refer *Practice Direction 18: Emergency expenditure applications*] and an application suitable to be expedited [refer *Practice Direction 19: Expeditable applications*].
3. Applicants should apprise themselves of the differences amongst these types of applications before lodging their application. It is not the role of the Commissioner's Office to suggest to an applicant the type of application they should lodge.
4. While a party may apply for interim orders, the Commissioner may refuse to refer an application to an adjudicator for consideration of an interim order, and instead proceed only with the application for final outcomes, if:
 - a. the Commissioner does not reasonably consider that the nature or urgency of the circumstances described in the application warrant referral;
 - b. the only reason for the claimed urgency is the applicant's preference for a prompt resolution of the dispute; or
 - c. the interim order would have the effect of determining the final outcome or give a final ruling on a substantive issue in dispute.
5. A decision by the Commissioner to refer an application for an interim order to an adjudicator does not guarantee that the adjudicator will make the interim order sought. An adjudicator will only grant an interim order if satisfied that the order is necessary due to the nature and urgency of the circumstances to which the application relates [Act, *section 279*].
6. The onus is on an applicant to demonstrate that there is genuine urgency or other circumstances that warrant an interim order being made.
7. In considering whether to make an interim order sought, an adjudicator must be satisfied that the application raises serious legal questions and that the balance of convenience between the parties justifies injunctive relief. The adjudicator must balance the inconvenience of granting relief now if final orders are ultimately refused against the inconvenience of refusing relief now if final orders are ultimately granted.
8. An interim order is temporary. It has effect only until a final order is made, or the interim order is revoked or varied, or the application is withdrawn. It seeks to maintain the status quo,



or preserve the rights and interests of the parties until the final outcomes can be investigated and determined.

9. Examples of circumstances where an interim order may be warranted include:
 - a. A lot owner disputes the decision of a body corporate to cut down a tree. An interim order may be granted to prevent the tree being cut down until the adjudicator can determine whether the decision to cut down the tree was valid; and
 - b. A body corporate has removed a fence that forms part of the pool fencing. A lot owner is concerned about the safety risk and the legal consequences of the non-compliant fencing. An adjudicator may order the body corporate install temporary fencing or drain the pool until the dispute about permanent fencing can be resolved.

Interim submissions

10. An interim order may be made by an adjudicator without any submission being sought from the respondent or any affected person [Act, *section 247*].
11. As part of the adjudicator's investigation of the interim order application, the respondent and any affected person will, where possible, be provided with a limited opportunity to make a submission in response to the interim orders sought.
12. Due to the urgency of many interim applications, the time provided for interim submissions is often very limited. This means there may also be a limited opportunity to grant an extension to the period provided for interim submissions. Depending on the nature of the order sought, a party seeking an extension may wish to consider whether they are able to provide a written undertaking to the adjudicator that they will not perform the disputed action which the interim order seeks to put on hold.
13. Unlike adjudication orders more generally, the applicant has no right of reply to interim submissions before the interim order is made, but may obtain copies on request. The applicant may comment on the interim submissions when making a reply to the final outcome submissions.

Effect of an interim order

14. An interim order has effect for the period (not longer than one year) specified in the order.
15. An interim order may be extended, varied, renewed or cancelled by the adjudicator until a final order is made.
16. An interim order lapses when it expires, it is cancelled by the adjudicator, the application is withdrawn or rejected, or when a final order is made.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 20

Specialist adjudication

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. This practice direction specifies additional content requirements for applications for specialist adjudication.
2. The legislation provides that a 'complex dispute' must be determined either by a specialist adjudicator or by the Queensland Civil and Administrative Tribunal (QCAT). Refer to [Practice Direction 25: Complex disputes](#) and [Section 229\(2\) of the Act](#).
3. A dispute about an economic reasons motion as part of the termination process must be determined by a specialist adjudicator. Refer to [Section 81G of the Act](#).
4. A specialist adjudicator is normally a legally qualified person of senior standing, with experience in the area of law in which the dispute relates and who has demonstrated capacity to determine disputes.
5. The commissioner's office does not maintain a list of specialist adjudicators or make recommendations to applicants about potential nominees for appointment as a specialist adjudicator. An applicant seeking the appointment of a specialist adjudicator to determine their dispute can contact the Queensland Law Society, or the Queensland Bar Association or the Institute of Arbitrators & Mediators Australia for potential nominees.
6. An application for specialist adjudication is commenced by lodging an adjudication application form (BCCM Form 15), accompanied by the prescribed fee.
7. For a complex dispute, the following information is required in the application:
 - a. the name and contact details of the nominee for appointment as the specialist adjudicator for the dispute;
 - b. a statement from the nominee consenting to the appointment;
 - c. a statement from the nominee confirming they have no prior knowledge or involvement with any party to the dispute that could give rise to a possible or perceived conflict of interest in determining the dispute;
 - d. details of the nominee's qualifications, experience and standing to determine the dispute;
 - e. written agreement from the respondent to the nomination and to the remuneration of the nominee;



- f. written confirmation from the nominee of their agreement to the amount of remuneration.
8. For an application disputing the outcome of an economic reasons resolution in a termination process, the following information is required in the application:
 - a. the name and contact details of the nominee for appointment as the specialist adjudicator for the dispute;
 - b. a statement from the nominee consenting to the appointment;
 - c. a statement from the nominee confirming they have no prior knowledge or involvement with any party to the dispute that could give rise to a possible or perceived conflict of interest in determining the dispute;
 - d. details of the nominee's qualifications, experience and standing to determine the dispute; and
 - e. evidence from the body corporate that it is understood it is liable to pay for the specialist adjudicator unless the application is deemed frivolous or vexatious.
 9. The commissioner may only refer the application to the specialist adjudicator for determination if the commissioner is satisfied that:
 - a. the applicant and the respondent, agree on the person to be nominated as the specialist adjudicator for the dispute;
 - b. the parties and the nominee agree on the amount the nominee is to be paid as the specialist adjudicator;
 - c. the parties agree how and by whom the amount is to be paid, or agree that the amount is to be paid in the way decided by the specialist adjudicator; and
 - d. the nominee has the qualifications, experience or standing appropriate to be appointed as the specialist adjudicator for the dispute.
 10. If the named respondent to the adjudication application does not agree to the appointment of a specialist adjudicator for the dispute, then the application will not proceed.
 11. Where a body corporate is a party to an application for specialist adjudication, a committee resolution is sufficient to demonstrate the body corporate's agreement with the nominee's appointment and remuneration as specialist adjudicator. However, a general meeting approval may be required if the arrangements for payment of the nominee's remuneration exceeds the committee's spending limit.
 12. Parties wishing to pursue a complex dispute in QCAT should contact the QCAT registry regarding the relevant application requirements at www.qcat.qld.gov.au, on telephone 1300 753 228 or by email to enquiries@qcat.qld.gov.au.

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Practice Direction 21

Adjudicator's orders

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Role of the Commissioner's Office

1. Once a final order is made by an adjudicator to determine a dispute resolution application, the file is closed by the Commissioner's Office. Staff of the Commissioner's Office, including the Commissioner and the adjudicator, have no further legislative role in relation to the dispute after the order has been given to the parties.
2. The statement of reasons for the order is the full explanation for, and basis of, the adjudicator's order. The Commissioner's Office cannot further explain or interpret an adjudicator's order or the adjudicator's reasoning, or advise on how the order is to be applied or complied with.
3. An adjudicator generally has no capacity to review or amend a final order once it has been issued, other than where later directed by a court or tribunal of competent jurisdiction in the event of a successful appeal.
4. Parties seeking legal advice about the terms, reasons for or effect of an order should direct their enquiries to an appropriately qualified person, such as a legal practitioner.

Appeal of orders

5. Adjudicators are independent decision-makers and not subject to direction by the Commissioner in making their orders. The Commissioner has no capacity to review an adjudicator's investigation, findings or order, or to direct an adjudicator to re-open or re-investigate an application.
6. A person [defined in Act, *section 289*] who is aggrieved by a departmental adjudicator's order or a specialist adjudicator's order may appeal the order to the Queensland Civil and Administrative Tribunal (QCAT).
7. An appeal must be lodged with the QCAT within six weeks of the aggrieved person receiving a copy of the order, unless the QCAT allows the appeal to be started later.
8. An aggrieved person may appeal only on a question of law.
9. An aggrieved person who lodges an appeal may also apply to the QCAT for a stay (a stop) on the adjudicator's order pending the outcome of the appeal.
10. There is no right to appeal a consent order.



Enforcement of orders

11. The Commissioner has no legislative role in the enforcement of adjudicator's orders.
12. An adjudicator's order, including a consent order, may be enforced in the Magistrates Court as if it were a judgment handed down by the court.
13. To enforce an order, the person in whose favour the order is made must file with the Registrar of the Magistrates Court:
 - a. a copy of the adjudicator's order certified by the Commissioner as a true copy;
 - b. any relevant form/s required by the Magistrates Court to be completed;
 - c. a sworn statement stating the amount outstanding under the order (for orders requiring payment of a monetary amount); and
 - d. a sworn statement stating that the specific action imposed in the order has not been undertaken (for orders requiring action other than payment of a monetary amount).
14. A certified copy of an order can be supplied by the Commissioner's Office on request.
15. An application for enforcement lodged with the Magistrates Court is not an appeal or a re-hearing of the merits of the original application.

Contravention of orders

16. The Commissioner has no legislative role in respect to the contravention of adjudicator's orders.
17. A person who contravenes an adjudicator's order (other than an order for the payment of money) commits an offence, which can attract a penalty of up to 400 penalty units.
18. Certain persons related to a dispute [detailed in Act, *section 288*] may commence proceedings for an offence in the Magistrates Court.
19. To commence a proceeding for an offence, a complaint must be completed and filed with the Magistrates Court, together with any prescribed fee.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 31

Consent orders

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. If the parties to an adjudication application agree to the terms of a proposed order, the adjudicator may, in his or her discretion, issue a consent order.
2. If the parties to a conciliation application reach an agreement at a departmental conciliation session, and the parties consent to the agreement being formalised as a consent order, the Commissioner must refer the agreement to an adjudicator for a consent order. The adjudicator may, in his or her discretion, issue a consent order.
3. If one of the parties to the conciliation agreement is a body corporate which has a committee voting member appointed as an agent for the body corporate, the Commissioner cannot refer the agreement to an adjudicator for a consent order unless, within 30 days after the agreement is made, the body corporate gives the department conciliator written notice stating that the committee has:
 - a. ratified the agreement; and
 - b. given a copy of the agreement to each lot owner; and
 - c. not received a notice of opposition to the agreement signed by or for the owners of at least one-half of the lots included in the scheme.
4. A consent order may only include matters that may be dealt with under the Act and must not include matters that are inconsistent with the legislation or another Act. There is no right to appeal a consent order.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 32

Supplementary orders

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. An adjudicator generally has no capacity to review or amend a final order or the accompanying statement of reasons once issued, except where directed to by a court or tribunal of competent jurisdiction.
2. Where an order or a statement of reasons contains an accidental slip or omission, such as a typographical or clerical error, an adjudicator has an inherent power to issue a further order correcting the error.
3. The capacity to correct accidental errors is limited to correctly stating what was decided and intended at the time of the original judgment. It does not extend to a reconsideration of the substantive issues of fact or legal interpretation and is not a mechanism to re-open an application to consider further evidence.
4. If a party to the dispute or a person affected by the order believes that the order or statement of reasons contains an accidental slip or omission, the person may make a written request to the adjudicator to issue a supplementary order.
5. It is a matter for the adjudicator's discretion whether a supplementary order is warranted in the circumstances. Without limiting this discretion, adjudicators may have regard to the nature of the error; whether the error appears in the order or the statement of reasons; and whether the error has any effect on the meaning, comprehension or enforcement of the order.
6. Other parties to the application would not normally be invited to make submissions in respect of the proposed correction.
7. Unless otherwise stated in the order, a supplementary order will have effect from the date that it is issued.

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Office of the Commissioner for Body Corporate and Community Management

Practice Direction 5

Awarding costs

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. The parties to a dispute resolution application are generally required to meet their own costs. This includes the application fee, the fee for inspecting or obtaining copies of any submission or reply, any personal costs incurred to attend a conciliation session, and any legal costs incurred in making or responding to an application.
2. Neither the Commissioner nor a conciliator have the legislative power to award costs against a party.
3. An adjudicator has no general powers to award costs. If an adjudicator dismisses an application for adjudication because it is frivolous, vexatious, misconceived or without substance, the adjudicator may order costs against the applicant for loss resulting from the application to the respondent, the body corporate or another affected person under the Act. This can include legal expenses. The costs awarded must not be more than \$2,000.
4. If asked by an applicant, an adjudicator may make an order that a respondent pay the prescribed application fees paid by an applicant for the adjudication and conciliation applications. This order could only be made where the:
 - a. two applications are about the same dispute; and
 - b. two applications have the same respondent; and
 - c. the Commissioner ended the conciliation application because the respondent failed, without reasonable excuse, to participate in conciliation.

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