



PRACTICE DIRECTION 3

Adjudication applications

Practice directions are issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). They provide directions and information about internal dispute resolution processes and the Commissioner's dispute resolution service. Practice directions must be interpreted and applied consistently with the Act. They do not limit the discretion of the Commissioner or dispute resolution coordinators when assessing individual applications. Anything done by a person for internal dispute resolution or the dispute resolution service is subject to any relevant practice direction.

What is department adjudication?

1. Where a dispute about the Act or a community management statement cannot be resolved directly between the parties or through department conciliation, a party may apply for a department adjudicator to make an order to resolve it.
2. An adjudicator's order is a final and legally binding resolution and is appealable except where the order is made by the consent of the parties.
3. See also:
 - if a temporary interim order is requested, [Practice Direction 4 – Interim orders](#)
 - if an emergency order is requested, [Practice Direction 6 – Emergency applications](#)
 - if an administrator is requested, [Practice Direction 5 – Administrator appointments](#)
 - for disputes required by the Act to be decided by a specialist adjudicator, [Practice Direction 12 – Specialist adjudication](#)
 - if the parties request orders made by agreement, [Practice Direction 7 – Consent orders](#)
 - if an alternative insurance order is requested, see instead [Practice Direction 8 – Alternative insurance orders](#).

Making an application

4. An adjudication application must be made on [BCCM form 15](#), with reference to the [Guide to completing the adjudication form](#).
5. The applicant must also immediately pay the prescribed adjudication application fee or apply for a fee waiver. See also [Practice Direction 10 – Application fees and costs orders](#).
6. The application must be:
 - typed or clearly handwritten
 - complete and compliant with the legislation and relevant practice directions
 - compliant with a Commissioner's request to give further information or documents
 - not false or misleading, including by omission, and
 - not made or conducted in a way intended or likely to unreasonably harass, annoy, intimidate, or cause detriment to a person, or is otherwise an abuse of process.

Authority to make the application

7. If the applicant is a body corporate, it must provide a copy of the committee or general meeting resolution authorising the application.
8. A body corporate application to change its financial year requires a general meeting resolution to apply for the order.
9. If the applicant is otherwise not a natural person, it must provide evidence that the person lodging the application is authorised to act for it (e.g. evidence that the person is a director of the company).
10. If the applicant is a person represented by another person, the applicant must provide evidence that the other person is authorised to act for them (e.g. a power of attorney).

Internal dispute resolution

11. The applicant must describe and provide evidence of their attempts to resolve the dispute prior to lodging the application, both directly with the respondent (internal dispute resolution or 'self-resolution') and through department conciliation.
12. Otherwise, the applicant must explain why self-resolution and conciliation are not appropriate in the circumstances.
13. For further information, see also [Practice Direction 1 – Internal dispute resolution](#).
14. An exception applies where the applicant seeks a declaratory order about the operation of the Act which does not involve a dispute with another party.

Outcomes sought

15. The applicant must clearly and briefly state their requested outcomes.
16. The applicant must identify, for each requested outcome, an appropriate respondent and any person who would be directly and materially affected by the outcome (an 'affected person'), unless the exception in paragraph 14 above applies.

Grounds for outcomes

17. The applicant must make their initial submission in support of their requested outcomes in the 'Grounds' part of their application.
18. The submission must be clear and detailed, including:
 - the nature, circumstances and history of the dispute
 - why they are entitled to each outcome, and
 - where known, any legislation, by-law, legal principle, or other decision, which may be relevant to their application.
19. Refer further to *Submissions and documents*, below.

Submissions and documents

20. The Commissioner will, where required or appropriate, invite other parties to make a submission in response to the application.

21. The Commissioner will invite the applicant to inspect or get copies of any other party's submission and to make a submission in reply (except on an interim order application).
22. A submission must:
 - be relevant to the application, clear and detailed, and as brief as is reasonable
 - refer to, and explain the relevance of, any included document, and the relevant parts of any large document must be identified
 - not be provided merely to inflame a dispute or disparage a person
 - not be false or misleading, including by omission, and
 - if the submission is made by a person in their capacity as a committee member, indicate whether the submission is agreed to by all of the committee.
23. Further, the applicant's reply submission must be limited to matters raised by others in their submissions.
24. A document provided with the application or a submission must:
 - be relevant to the application or submission
 - be clear, legible and clearly labelled or identifiable, and
 - not be false or misleading, including by omission.
25. An email must not exceed 15MB including attachments, and emails and their attachments must be clearly named. See further [Practice Direction 11 – Communication and correspondence](#).
26. A submission or reply submission must be received by 5pm on the specified date. A person who requires additional time must give written reasons for the request before the due date. The Commissioner may approve or deny the request for an extension of time to make a submission.
27. Information and documents provided for a conciliation application for the same dispute, or for any other conciliation or adjudication application, will not be transferred to the new adjudication application by the Commissioner's Office.
28. If relevant information or documents are to be relied upon but are not within the person's knowledge, possession or control, the person must identify who has such information and/or where it is likely to be held.

Amending an application

29. After submissions have been invited from other parties, the applicant may not amend an application or submit additional information or documents, except with permission.
30. The Commissioner may deny an applicant permission to amend their application or may give permission in part or on condition (e.g. the Commissioner may give permission on the condition that the applicant distribute the amendment or addition to other parties at the applicant's own expense).

Privacy and confidentiality

31. Information and documents submitted in a dispute resolution application will be available or provided to other parties.
32. The Commissioner must keep, and is not authorised to delete or return, information and documents provided to this Office.

33. The adjudicator must give detailed reasons for their decision, including information about the parties and their circumstances. The Commissioner publishes adjudication orders and reasons online (www.austlii.edu.au) and also must make them available to interested parties.
34. A person who wishes to keep their identity or information private or confidential is encouraged to raise that concern before providing such material.
35. The Commissioner may decline to accept an application, information or documents if terms of their distribution and use cannot be agreed.

COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

Version 1
Effective 1 July 2025

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