

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 21

Adjudicator's 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.

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.

COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

Version 2
Effective 1 June 2016

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