

# Dispute Resolution Applications

Office of the Commissioner for  
Body Corporate and Community Management



# Topics

- Considerations before lodging
- Completing the forms
- Online forms
- Supporting documentation
- General reminders
- Q&A

# Conciliation or adjudication?

- Department conciliation is used to resolve disputes as quickly and with as little formality and technicality as possible.
- Generally, all applicants must attempt conciliation prior to seeking adjudication.
- Practice Direction 9 outlines some of the factors the Commissioner may consider when deciding whether or not a dispute is appropriate for conciliation.
- General guideline: Could the committee make a decision that would resolve the issue?
  - Yes – Conciliation
  - No – Adjudication

# Have you been authorised to lodge the application?

- For bodies corporate: do you have minutes of a meeting specifically authorising this application to be lodged?
- For owners:
  - Are you applying under the same name as is on title?
  - If a company owns the lot, have you provided evidence of your authority to act for the company?
  - If you are acting on behalf of an owner, have you included a signed authority to act?
- Exception: we take solicitor representation at face value.

# Is your dispute eligible?

- There are many different parties which can have a dispute in a body corporate, but only certain combinations can bring a dispute to us for resolution under the Act.
- **Section 227** of the Act sets out the possible combinations...

# Section 227 party combinations

| Party A              |   | Party B   |
|----------------------|---|---|
| An owner or occupier | ↔ | Another owner or occupier   |
| The committee        | ↔ | A committee member  |
| The body corporate   | ↔ | An owner or occupier<br>A body corporate manager<br>A committee member<br>A caretaking service contractor<br>A letting agent*<br>A service contractor**<br>A former body corporate manager*** |

\* the authorised letting agent for the scheme

\*\* if the dispute arises out of a review under chapter 3, part 2, division 7

\*\*\* for return of records

# Declaratory Orders

- **Section 227(2)** also provides for *declaratory orders* in certain circumstances.
- Declaratory orders may be appropriate where there is **no respondent** and **no legal issue in dispute**. Examples include:
  - approval to change the financial year end date, or
  - declaring that an AGM is not invalid simply because it was held out of time.

In this instance **only**:

| Applicant          | Respondent |
|--------------------|------------|
| The body corporate | → N/A      |

# Can we consider your matter?

- Is the dispute about an issue under the Act or Regulation Module, such as an alleged breach of a legislative obligation?
- Is the respondent obligated under legislation to do what you are asking?
- Is it a complex dispute?
- Adjudicators cannot determine debt disputes, although they may be able to be conciliated.
- Our office cannot determine questions of title to land or lot entitlements.
- Where an order has already been made by an adjudicator on **exactly the same matter** an adjudicator will not be able to rehear the matter.



# Have you attempted to resolve your matter first?

- The Act requires prospective applicants to have taken reasonable steps to resolve their dispute before they apply to our office. This is referred to as ‘internal dispute resolution’ or ‘**self-resolution**’.
- Some disputes require very specific steps to be taken prior to lodging.
- Others require self-resolution in a more general sense.

# Have you attempted to resolve your matter first?

- Important checks:
  - Have you attempted to resolve the dispute with the respondent, preferably evidenced in writing?
  - Have you specifically asked for what you want?
  - If a request has been rejected, have you asked why?
  - If the legislation requires a particular process for the outcome you seek, have you attempted that?
  - Examples:
    - Contravention notices; or
    - General meeting resolutions

# Have you read the practice directions?

- Practice directions are short guides written by the Commissioner to help explain the rules for body corporate disputes, outline steps you must follow, and outline other points you may wish to consider.
- They will not all be relevant to every dispute, but those that are relevant are extremely useful and helpful.
- There are 36 practice directions split into 4 categories:
  - General
  - Disputes
  - Conciliation
  - Adjudication

# Completing the forms

| Conciliation           | Adjudication                |
|------------------------|-----------------------------|
| Section 1              |                             |
| Section 2              |                             |
| Section 3              |                             |
| Section 4a and 4b      |                             |
| Section 5a, 5b, and 5c |                             |
| Section 6              | Section 6a and 6b           |
| Section 7              |                             |
| Section 8 – Background | Section 8 – Interim Order/s |
|                        | Section 9                   |



# Section 1

## Section 1

### Body Corporate / Scheme information

Refer to guide

Name of Scheme.....

CTS / CMS Number..... Number of lots.....

Physical address of scheme.....

Locality / Suburb..... State..... Postcode.....

Regulation Module (*Standard, Accommodation, Commercial, Small Schemes, Two-Lot Schemes*)

.....

- Check the community management statement (CMS) for all of these details except the physical address.
- Name of scheme is not the name of the body corporate management company.

# Section 2

## Section 2

### Secretary's information

Refer to guide

Name .....

Address.....

Locality / Suburb..... State..... Postcode.....

Daytime phone..... Home phone.....

Mobile..... Fax.....

Email.....

- Who is the elected secretary for your body corporate?
- Include any details that you know. These details can also be the name of the secretary 'c/-' the body corporate manager if need be.

# Section 3

## Section 3

### Body corporate manager's information

Refer to guide

Name.....  
Company name.....  
Address.....  
Locality / Suburb..... State..... Postcode.....  
Daytime phone..... Mobile.....  
Email.....

- Does your scheme have a body corporate manager?
- If yes – include any details you know here.
- If not – simply put N/A.

# Section 4a

## Section 4(a)

### Applicant's information

Complete the applicant's details as registered (for e.g. the name of the owner as it appears on the title search).

If corporation provide authority for individual to act.

Name .....

Address.....

Locality / Suburb..... State..... Postcode.....

Daytime phone..... Home phone.....

Mobile..... Fax.....

Email.....

Lot number/s..... on Plan type and number.....

- Put all of your details here – remember to include your name as it appears **on title** if you applying as an owner.



# Section 4b

## Section 4(b)

### Are you applying as?

Refer to guide and *section 227* of the Act

- an owner
- an occupier
- the body corporate
- the body corporate manager
- the committee
- a committee member
- letting agent
- caretaking service contractor
- service contractor

- In what capacity are you making this application?
- Refer back to the table from the earlier slide to make sure you choose an option that is within jurisdiction.

# Section 5a

Section 5(a)

Respondent's information

Refer to guide

Name.....  
Address.....  
Locality / Suburb..... State..... Postcode.....  
Daytime phone..... Home phone.....  
Mobile..... Fax.....  
Email.....

- Put all the details of the respondent here.
- Do not name the body corporate manager if you are lodging against the body corporate. You can, however, put the contact details 'c/-' of the management company.

# Section 5b

## Section 5(b)

### Is the respondent?

Refer to guide and *section 227* of the Act

- an owner
- the body corporate
- the committee
- letting agent
- service contractor
- an occupier
- the body corporate manager
- a committee member
- caretaking service contractor

- Who is the respondent?
- Refer back to the table from the earlier slide to make sure you choose an option that is within jurisdiction.

# Section 5c

## Section 5(c)

Are other persons affected by the outcome sought by you?

Refer to guide

Yes (provide details below or attached)

No

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- Are other people affected by the outcome sought by you?
- If all owners will be affected, you can simply write ‘all owners’. If only some people will be affected – name them and provide any contact details you can.
- If no-one will be affected – tick no.

# Section 6 – Conciliation form

## Section 6

**What attempts have you made to resolve your dispute by internal dispute resolution with the other parties?**

Your application may be rejected if you have not attempted internal dispute resolution

Please attach supporting documentation

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- Refer back to the ‘self-resolution’ slides to make sure you include any relevant information.
- A list or summary of attachments is okay to put here as long as you include them all.

# Section 6 – Adjudication form

## Section 6(a)

What attempts have you made to resolve your dispute by internal dispute resolution and/or department conciliation

Your application may be rejected if you have not attempted internal dispute resolution and department conciliation.

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Same as conciliation form (see previous slide)  
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## Section 6(b)

Do you have a conciliation certificate?

- Yes (*you must attach a copy of the Conciliation Certificate*)  
 No (*you must attach grounds to be excused from conciliation*)  
.....  
.....

- Do you have a conciliation certificate? If yes – attach it. If not – why should you be excused from conciliation? (keeping in mind that conciliation is mandatory for most disputes).

# Section 7

## Section 7

What outcome are you seeking?

If insufficient space on this page attach detailed outcomes sought on an A4 page under the heading -

7. Outcome sought

• I / we want... (conciliation)

• An order that... (adjudication)

- The outcome(s) sought should be a clear, succinct statement of what the applicant wants the respondent to do or stop doing to resolve the dispute.
- Don't explain the reasons for the outcome sought in this statement – there is a different section for that.

# Outcome sought examples

- X I want the body corporate to comply with BCCMA.
- X The owner of lot 7 built a pergola without using a licensed tradesperson and they built the pergola on common property but the pergola actually crosses over into my property and they didn't ask my permission to install it.
- X An order that the body corporate is not allowed to approve any pets at the scheme.



# Outcome sought examples

- ✓ I/we want the owner of lot 2 to remove the deck installed on common property.
- ✓ An order that motions 3, 7, and 9 from the annual general meeting held on 21 September 2019 be overturned.
- ✓ An order that the body corporate reimburse me \$218.90 for repairs undertaken due to the roof not being maintained.

# Section 8 – Adjudication form

## Section 8

### Interim Order Request (if applicable)

Refer to guide & Practice  
Direction 16

If insufficient space on this  
page attach detailed  
outcomes sought on an A4  
page under the heading -

8. Interim order

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- Are you seeking an interim order? If yes, fill out this section. If not, you can leave this section blank.

# Interim orders – what they are, and are not

- Interim orders are similar to an injunction - they are temporary, until the substantive issue raised in the final orders can be determined.
- An applicant must demonstrate that the **nature** or **urgency** of the circumstances necessitate the interim order.
- There must be evidence of irreversible detriment if an interim order is not granted.

# Interim orders – what they are, and are not

- Interim orders **must not be final in nature** and **must relate to the final order sought**.
- To avoid being “final”, it must not resolve the dispute (and render a final order moot).
- There must be a palpable link between the interim order, and the final outcome sought (the final order must resolve the interim issue).
- Have you read Practice Direction 16?

# Interim order examples

- Lot owner disputing validity of decision made to remove a tree.
- Interim order sought to prevent tree being removed **until** final order is made.
- Final order sought to determine whether or not decision was valid.



# Interim order examples

- An application seeking an interim order that a tree be cut down because it poses a safety risk.
  - X Final in nature – there is nothing temporary about this outcome.
- An interim order for permission to install a temporary ramp for a mobility scooter, and a final order that an administrator be appointed to the body corporate.
  - X Final order would not resolve the matter which is the subject of the interim.

# Section 8 – Conciliation form

## Section 8

### Background to your dispute

What are your reasons for making your application? Provide full details here

If insufficient space on this page attach concise and relevant details of the background to the dispute on an A4 page under the heading –

8. Grounds

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- A brief summary about exactly what has occurred, and why, under the legislation, the applicant feels entitled to the outcome sought.

# Section 8 – Conciliation form

## Section 8

### Background to your dispute

What are your reasons for making your application? Provide full details here

If insufficient space on this page attach concise and relevant details of the background to the dispute on an A4 page under the heading –

8. Grounds

X The deck is ugly.

X Nobody else has a deck so they shouldn't be allowed one.

✓ The owner of lot 2 installed a deck on common property, which is  
• in breach of by-law 11.

• We wrote to the owner on 12 August 2019 (attachment a) requesting  
• that they remove the deck. They did not respond.

• On 31 August 2019 we issued a form 10 (attachment b) to the  
• owner who responded that they will not remove it (attachment c)  
• so we are now lodging an application for conciliation.

Example outcome: I/we want the owner of lot 2 to remove the deck installed on common property.



Queensland  
Government



# Section 9 – Adjudication form

- Grounds are the **reason** you are seeking an order, and the **evidence** to support the granting of that order.
- Grounds should only contain **relevant information** and should be only as detailed as is necessary to demonstrate the matter(s) in dispute.
- Ambiguous grievances or personal arguments are usually not grounds, as grounds have to be directly relevant to an outcome sought (which must itself be permitted under the Act).
- Be sure to include (and refer to) relevant documentation (emails, letters, minutes of meetings etc.).

# Section 9 – Adjudication form

## Section 9

### Grounds

A statement of grounds should clearly outline the history and nature of the issue, what action has been taken and when, and why you consider each of the outcomes sought should be made.

Refer to guide

If insufficient space on this page attach concise and relevant details of the background to the dispute on an A4 page under the heading -

9. Grounds

They didn't count my vote.

They didn't let my proxy vote on my behalf.

I sent my proxy to the AGM held on 21 September 2019 (minutes attached) with a completed BCCM Form 6 (attached), in line with section 107(5) of the Standard Module.

- Before the meeting commenced, my proxy holder handed the form
- to the secretary who refused to accept it, saying I had to personally
- hand it in. This is contrary to section 107(5) of the Standard Module.
- No vote was recorded for my lot for any of the motions, however only
- motions 3, 7, and 9 would have a different outcome had my vote
- been counted.
- Therefore, I request that those motions be overturned.

Example outcome: An order that motions 3, 7, and 9 from the annual general meeting held on 21 September 2019 be overturned.

# Section 9 – Adjudication form

## Section 9

### Grounds

A statement of grounds should clearly outline the history and nature of the issue, what action has been taken and when, and why you consider each of the outcomes sought should be made.

Refer to guide

If insufficient space on this page attach concise and relevant details of the background to the dispute on an A4 page under the heading -

9. Grounds

I paid it and they should have.

They caused damage and they should pay for it.

The body corporate failed to maintain the roof as per section 159 of the Standard Module. A hole in the roof caused water damage to my ceiling and internal property during a storm. I repaired the property as soon as possible to prevent further damage however when I presented the receipts (attached) to the committee for reimbursement, they did not agree that the damage to my lot was caused by the hole in the roof (emails attached). Department conciliation was also unsuccessful. In line with section 281 of BCCMA, I would like the body corporate to reimburse me for the repairs I paid for due to damage caused by their contravention of section 159 of the Standard Module (lack of roof maintenance).

Example outcome: An order that the body corporate reimburse me \$218.90 for repairs undertaken due to the roof not being maintained.

# Online forms

- All the same information required as the PDF forms, just not in the same order.
- A few extra tips as you are filling out the application, such as “please provide a copy of conciliation certificate with your application” when you tick ‘yes’ to having already attempted conciliation.
- Can’t lodge form online – must still print and sign the application.

# Supporting documentation

- Attach only the most recent and relevant information.
- Has the issue been addressed at a meeting? Attach the minutes.
- Are you disputing an invoice? Attach the invoice.
- Emails about the dispute?
- Referencing and indexing attachments is super helpful!

# General reminders

- Have you **paid** your application fee or completed a fee waiver application?
- Have you **signed** and **dated** your application?
- Is your application typed, or, if hand-written, is it **clear** and **legible**?
- Have you provided **all relevant contact details** for all parties?
- Have you filled in all relevant items?
- Have you read any relevant **practice directions**?

# Contact us & Questions?

- Phone: 1800 060 119 (free call back service)
- Online enquiry: [www.qld.gov.au/bodycorporatequestion](http://www.qld.gov.au/bodycorporatequestion)
- Website: [www.qld.gov.au/bodycorporate](http://www.qld.gov.au/bodycorporate)
- Practice Directions and Forms:  
<https://www.qld.gov.au/law/housing-and-neighbours/body-corporate/disputes>
- Search Adjudicators' Orders: <http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/qld/QBCCMCmr/>