

Office of the Commissioner for Body Corporate and
Community Management

SCA (Qld) Webinar Series October 2016

*Dispute resolution in the Commissioner's
Office*

Chris Irons, Commissioner for Body Corporate and Community
Management

Christine Partridge, Principal Information Officer



Topics

- Preliminary dispute resolution steps
- Conciliation
- Adjudication
- Particular types of adjudication applications
- Traps for the unwary...

Dispute resolution snapshot

- What is 'different' about body corporate disputes?
- Obligation to try to resolve
- Exclusive jurisdiction
- Legal representation and advice

Preliminary steps

- COMMUNICATION
- Separating the 'dispute' from the 'personal'
- What constitutes a 'dispute'?
- Obligation for self-resolution
- The role of the BCM

Conciliation

- What is it?
- How does it differ from mediation?
- When can we avoid it?
- *“I can’t talk to the other party. They’re impossible! Conciliation will get us nowhere!”*

Conciliation – a few facts

- Over 70% success rate
- Favourable response from parties who have been through it
- Particularly relevant for by-law disputes
- Can conciliate a 'debt dispute' in limited circumstances
- Adjudicator can recommend conciliation
- Non-admissibility

Conciliation – what's involved?

- Application for conciliation (form 22)
- Case management
- Intake
- Representatives
- The session
- The role of the BCM

Post-conciliation

- Agreement reached?
 - Goodwill (not enforceable) agreement
 - Who gets a copy?
- Agreement not reached?
 - Adjudication
- Conciliation certificate:
 - Seeking costs

Adjudication

- Key concepts:
 - On the papers
 - Principles of natural justice
 - Impartiality: no review role for Commissioner or Minister; adjudicator is independent decision-maker
 - Results in a legally-enforceable and appealable order

Adjudication – a brief overview of terms

What or who	Explanation
Applicant	They initiate the application and are at all times responsible for its progress
Respondent	The party the applicant is in dispute with
Affected party	Others who might be affected by the outcome sought
Outcome	What the applicant wants to occur – within the terms of the Act – as the outcome to their application
Application	Consists of the form plus supporting material
Submissions	Written submission received from other lot owners and other parties
Replies	Applicant's response to submissions
Orders	The adjudicator's final order and statement of reasons

Key issues upon lodgement

- Jurisdiction
 - Section 227 of the Act
 - Section 238 of the Act
- Committee or general meeting resolution
 - Must be attached to the application at all times when the applicant is the committee or body corporate
- Self resolution
 - **Must** have attempted self resolution before application is lodged. Contravention notices first!
- Full completion of the form – read the guide!

Sections 1, 2 and 3

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 (<i>Standard, Accommodation, Commercial, Small Schemes, Two-Lot Schemes</i>)
Section 2 Secretary's information Refer to guide	Name Address..... Locality / Suburb..... State..... Postcode..... Daytime phone..... Home phone..... Mobile..... Fax..... Email.....
Section 3 Body corporate manager's information Refer to guide	Name..... Company name..... Address..... Locality / Suburb..... State..... Postcode..... Daytime phone..... Mobile..... Email.....

Registered name of the scheme and its physical address, etc.

Name of the elected secretary – this is not the body corporate manager.

These are your details here.

Sections 4a) and 4b)

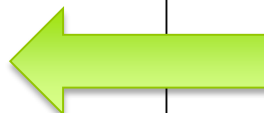
Section 4(a) Applicant's information Complete the applicant's details as registered (for e.g. the name of the owner as it appears on the title search). If corporation provide authority for individual to act.	Name
	Address.....
	Locality / Suburb..... State..... Postcode.....
	Daytime phone..... Home phone.....
	Mobile..... Fax.....
	Email.....
	Lot number/s..... on Plan type and number.....

This is the 'Body Corporate for Test CTS 1234' or the 'Body corporate committee for Test CTS 1234' – it can be care of your company.



Section 4(b) Are you applying as? Refer to guide and section 227 of the Act	<input type="checkbox"/> an owner	<input type="checkbox"/> an occupier
	<input type="checkbox"/> the body corporate	<input type="checkbox"/> the body corporate manager
	<input type="checkbox"/> the committee	<input type="checkbox"/> a committee member
	<input type="checkbox"/> letting agent	<input type="checkbox"/> caretaking service contractor
	<input type="checkbox"/> service contractor	

4b must match 4a!
If lodged by the 'Body Corporate' tick 'Body Corporate'.
If lodged by the committee tick the 'committee'.



Sections 5a), 5b) and 5c)

Section 5(a) Respondent's information Refer to guide	Name..... Address..... Locality / Suburb..... State..... Postcode..... Daytime phone..... Home phone..... Mobile..... Fax..... Email.....
Section 5(b) Is the respondent? Refer to guide and <i>section 227</i> of the Act	<input type="checkbox"/> an owner <input type="checkbox"/> an occupier <input type="checkbox"/> the body corporate <input type="checkbox"/> the body corporate manager <input type="checkbox"/> the committee <input type="checkbox"/> a committee member <input type="checkbox"/> letting agent <input type="checkbox"/> caretaking service contractor <input type="checkbox"/> service contractor
Section 5(c) Are other persons affected by the outcome sought by you? Refer to guide	<input type="checkbox"/> Yes (<i>provide details below or attached</i>) <input type="checkbox"/> No

The full name, address and contact details of the respondent
Note: s.227

The capacity of the respondent – owner, occupier, etc.

Affected persons e.g. “all owners”.

Sections 6a) and 6b)

<p>Section 6(a)</p> <p>What attempts have you made to resolve your dispute by internal dispute resolution and/or department conciliation</p> <p>Your application may be rejected if you have not attempted internal dispute resolution <u>and</u> department conciliation.</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
---	---

Outline all of the attempts at self resolution directly with the named respondent



<p>Section 6(b)</p> <p>Do you have a conciliation certificate?</p>	<p><input type="checkbox"/> Yes (<i>you must attach a copy of the Conciliation Certificate</i>)</p> <p><input type="checkbox"/> No (<i>you must attach grounds to be excused from conciliation</i>)</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
---	--

You must have attempted department conciliation – Tick ‘Yes’ and give a copy of the certificate.



Before saying ‘No’ - Read Practice Direction 9 – Matters not appropriate for conciliation. In most cases conciliation is mandatory first step so lodge form 22 instead.

Sections 7 & 8

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

Form area for Section 7 with 10 horizontal dotted lines for writing.



Clearly and succinctly state what order you want the adjudicator to make that will finally resolve the dispute (read schedule 5 of the Act)

Section 8

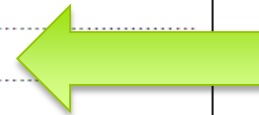
Interim Order Request (if applicable)

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

Form area for Section 8 with 10 horizontal dotted lines for writing.



Clearly and succinctly state what interim order is sought to maintain the status quo

Section 9

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



Give a detailed history of the dispute – refer to all attachments stating their relevance to the application.

Applicant must give grounds as to why they are entitled to the outcome/s sought

Number each attachment so you can easily refer to them in your grounds and the adjudicator knows which document you are referring to.

Outline how the respondent has contravened the legislation or the community management statement. If they haven't – where is the dispute??

Differences with Form 22

- Conciliation form varies slightly from section 6 onwards
- There is no 6b asking for conciliation certificate
- You must show self resolution in section 6 as required in section 6a) of form 15
- No interim order –section 8 is the background which is the same as section 9 ‘Grounds’ on the adjudication form

Particular adjudication types

- Change financial year/hold AGM out of time
- 'Expeditable'
- Emergency
- Interim

Particular adjudication types

Change financial year/Hold AGM out of time

DO	DON'T
Provide full copy of the minutes of the general meeting which approved it	Give an extract of the minutes
Applicant is the 'Body Corporate for XYZ'	Name the body corporate manager as the applicant
Identify in the outcome sought what the new financial year will be	Just ask for a "change of financial year"
Include the current financial year for the scheme in the grounds	Leave the grounds blank

PRACTICE DIRECTION 19

Particular adjudication types

Expeditable

DO	DON'T
Use for return of body corporate property from former BCM, committee member or service contractor	Apply until the 14 days in the prescribed notice given to the person by the committee has expired
Use to hold AGM more than 3 months after the scheme's EOFY	Ask for permission to hold AGM late without saying when you want to hold it
Use for change of financial year	Forget the Do's and Don'ts on previous slide!
For any other application, provide reasons for expediting the application	Ask to expedite unless genuine aspect of urgency, not just convenience

PRACTICE DIRECTION 19

Particular adjudication types

Emergency

DO	DON'T
Provide grounds and evidence to show there is a genuine emergency	Say it is an emergency but not demonstrate how
Provide at least one quote	Give an approximate cost only
For emergency expenditure, identify if adequate funds on hand	Seek approval for spending without identifying how it will be funded
For calling EGM on reduced notice, include copy of proposed agenda	Include motions on the EGM agenda other than the emergency matter/s
Provide information requested by our Office as soon as practicable	Claim it is an emergency but then delay providing requested information

PRACTICE DIRECTION 18

Particular adjudication types

Interim

DO	DON'T
Use for <i>temporary</i> orders seeking injunctive relief (e.g. put action on hold)	Use simply to 'hurry up' a final order – not what they are for
Provide evidence of self resolution for interim orders sought	Lodge interim without respondent knowing you have a dispute
Include grounds demonstrating the potential detriment if order is not made	Ask for an interim order without explaining why it should be made
Apply for an interim order as soon as there is a dispute you can't resolve	Wait until the last minute to try to resolve or lodge an application
Provide information requested by our Office as soon as practicable	Claim the matter is urgent but then delay providing requested information

PRACTICE DIRECTION 16

Adjudication – role of BCM

- As a party
- As an affected party
- Responding to requests for information
- Distribution of application

After adjudication...

- Notification of order
- Acting upon the terms of the order
- Appeal rights
- Enforcement – copy of the order certified by the Commissioner

Traps for the unwary...

- Getting too deeply involved in the dispute
- Taking sides
- Commenting on an application
- Acting beyond instruction
- Not following through on outcomes

In conclusion

- Commissioner's Office:
 - 1800 060 119 (Freecall)
 - www.qld.gov.au/bodycorporatequestion
 - www.qld.gov.au/bodycorporate