

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. As soon as 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 will act as a delegate of the Commissioner in determining whether the application complies with the legislative requirements and practice directions. In particular, the case manager will assess whether the dispute falls within the jurisdiction of the Commissioner's Office.
6. Where necessary, the case manager will contact the applicant to request clarification of the application or additional information or documentation to satisfy the requirements of the legislation and Practice Directions.

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 that the person 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'. In some cases the adjudicator may determine that it is appropriate to conduct a teleconference or face-to-face meeting with the parties.
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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COMMISSIONER

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