



FACT SHEET

Dispute Resolution Process



This document provides an overview of the dispute resolution process under chapter 6 of the *Body Corporate and Community Management Act 1997* (Qld) (BCCMA).

1. The chapter 6 process

1.1 Chapter 6 of the BCCMA establishes a process to resolve specific types of disputes, including:

- (a) contraventions of the BCCMA or community management statements (ie by-laws);
- (b) the exercise of rights or powers, or the performance of duties, under the BCCMA or community management statements (ie by-laws); and
- (c) matters arising under the engagement/ authorisation of persons as body corporate managers, service contractors or letting agents.

1.2 Jurisdiction to resolve disputes is vested in:

- (a) adjudicators through the Office of the Commissioner for Body Corporate and Community Management (the Commissioner's Office); and
- (b) the Queensland Civil and Administrative Tribunal (QCAT).

1.3 Disputes about contractual matters concerning the engagement of body corporate managers, service contractors or letting agents (ie building managers) are resolved through QCAT. This guide does not consider those types of disputes, or debt disputes. This guide will only consider disputes that may be resolved through conciliation or adjudication in the Commissioner's Office.

1.4 The Commissioner's Office facilitates what is generally a quick, cost-effective and informal dispute resolution process. It is different to the normal litigation process through courts and tribunals. In particular:

- (a) there is no presumption that a successful party will recover their legal costs;
- (b) the rules of evidence do not have to be followed;
- (c) there is no hearing in person;
- (d) all decisions are made 'on the papers'; and
- (e) the adjudicator has inquisitorial powers to investigate the application and require parties to give them information.

1.5 The Commissioner is similar to a Court Registrar. The Commissioner is responsible for providing the dispute resolution service and also an education and information service. All dispute resolution applications are scrutinised by the Commissioner before they are passed on to a conciliator or an adjudicator. The Commissioner may reject an application in certain circumstances.

1.6 There are two types of dispute resolution applications:

- (a) conciliation applications; and
- (b) adjudication applications.

2. Self-resolution

- 2.1 Before a dispute resolution application can be made, parties to a dispute must make reasonable attempts to resolve the dispute internally and provide evidence of those attempts in the application.
- 2.2 The Commissioner may reject an application if they believe that an applicant has not made reasonable attempts at self-resolution.

3. Conciliation

- 3.1 The general rule is that parties must attempt conciliation before an application progresses to adjudication.
- 3.2 The Commissioner may reject an application if they believe that:
 - (a) an applicant has not made reasonable attempts to resolve the dispute by conciliation; or
 - (b) the matter is not appropriate for conciliation.
- 3.3 There is no right to legal representation in conciliation. The conciliator has to give permission for any legal representative to attend the conciliation, which in our experience is very rare.
- 3.4 The conciliation can be conducted in person or by teleconference.
- 3.5 The conciliator is usually legally-qualified and experienced in body corporate law. They may contact you prior to a conciliation to assist in their preparation or discuss the matter privately.
- 3.6 A body corporate must be represented at conciliation by no more than two persons, who can either be lot owners or two voting committee members. A committee resolution should be passed authorising those persons to represent the body corporate during the conciliation and placing any conditions on their appointment.
- 3.7 A committee representative at conciliation may do anything the committee may do under the regulation module unless it has been limited or prohibited by the committee's authorising resolution.
- 3.8 While conciliation is generally an informal process, you should carefully prepare for it to make the most of the opportunity. We can assist in preparing the conciliation application, submissions or a position paper to guide you through the conciliation.
- 3.9 An agreement reached at conciliation must be written and signed by each party and the conciliator.
- 3.10 If each party consents, the conciliator must refer the agreement to an adjudicator for a consent order. This is important, particularly if an agreement you negotiate during the conciliation requires the other party to do, or refrain from doing, something. Referring that agreement to an adjudicator for a consent order can make the outcome you negotiated enforceable.

- 3.11 You should contact us before you sign any conciliation agreement for advice.

4. Adjudication

- 4.1 If a dispute cannot be resolved internally or by conciliation, an adjudicator can make an order that is just and equitable in the circumstances to resolve a dispute within their jurisdiction.
- 4.2 The power to make an order that is 'just and equitable' does not necessarily mean that the adjudicator will make an order that they think is 'fair'. 'Just' means in accordance with the law and 'equitable' means having regard to any equitable principles of the law. So, although it is an informal process, the dispute will still be resolved by legal argument.
- 4.3 The adjudication will usually follow this process:
 - (a) If it is accepted by the Commissioner, copies of the adjudication application will be sent to the respondent and to the body corporate manager.
 - (b) The body corporate (usually through its body corporate manager) will usually be required to distribute a copy of the adjudication application and the submissions in support to all lot owners within two business days, notifying the owners that they can:
 - (i) request a complete copy of the application (including all attachments/ exhibits) from the secretary; and
 - (ii) make a submission on the application by the nominated deadline.
 - (c) About two – four weeks will be given for any affected persons to make a submission on the application.¹
 - (d) The Commissioner can extend the submission-making period at the request of a respondent, committee or lot owner.
 - (e) Once the submission-making period ends, the applicant will be given an opportunity to obtain copies of any submissions made for a fee and then about two – three weeks to reply to those submissions. The reply may only relate to issues raised by the submissions.
 - (f) The Commissioner can extend the period for making a reply.
 - (g) Once the period for making a reply ends, the Commissioner will refer the application, any submissions and any reply to an adjudicator² for investigation and a final decision.

- (h) Once the adjudicator makes a final decision on the application, a copy of the orders made and reasons for decision will be sent to the parties. There is then a six week period for an appeal to be made to QCAT by the applicant, respondent or an interested person that made a submission.
- 4.4 From the time an application is made, it can take anywhere between two weeks and one year for an adjudicator to make a final decision.³

5. Interim orders

- 5.1 An adjudicator can make an interim order if satisfied, on reasonable grounds, that an interim order is necessary because of the nature or urgency of the circumstances.
- 5.2 The onus is on the applicant to demonstrate that an interim order is necessary. The usual requirements are that:
- (a) the application must raise a serious legal question; and
 - (b) the balance of convenience must favour the interim order being made.
- 1 Submissions may be given in support of, or against, an application. It can help if you lobby owners to make a submission that aligns if your position.
- 2 An adjudicator is usually a legally-qualified person with experience in body corporate law.
- 3 The timeframe is generally outside the control of the parties and will depend on the complexity and urgency of the dispute, the depth of any investigations, the

workload of the Commissioner's Office and the responsiveness of the parties to any information requests, and any extension requests.

- 5.3 The purpose of an interim order is to maintain the status quo until the adjudicator has the opportunity to carefully consider and investigate the substance of the application. It is not to quickly make a final decision.
- 5.4 An example of an interim order is that an adjudicator may restrain a body corporate from implementing a motion if it passes at a general meeting until a final decision is made on the application. An example of a final order is that an adjudicator may order that a motion passed at a general meeting is invalid, void or of no effect.

6. Appeal

- 6.1 Any appeal against the adjudicator's order/s must be started within six weeks after the aggrieved person receives a copy of the order.
- 6.2 The appeal can only be made a question of law, and not on a question of fact.
- 6.3 The general rule is that each party will be bound by the case they make during the adjudication. This means that you will not be able to lead new evidence or arguments not raised in the adjudication during any appeal. Accordingly, you should present your best and complete case during the adjudication.
- 6.4 The commencement of any appeal by a body corporate must be approved in general meeting.

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Strata Community Australia (Qld) Limited (SCA Qld) is the peak industry body for Body Corporate and Community Title Management in Queensland. Membership includes body corporate managers, support staff, committee members and products and services providers to the sector.

Grace Lawyers is the leading full service legal provider to the strata, community, stratum and company title industry, specialising in debt collection, insurance, strata and community law, construction defects, management rights and planning law.

SCA (Qld) thank Grace Lawyers for providing the information in this fact sheet, noting it provides general information only and does not substitute legal advice.