



Enforcement of adjudicators' orders and penalties

The following provides information on the enforcement of adjudicators' orders and other penalties. Readers should be aware of the dispute resolution provisions of Chapter 6 of the *Body Corporate and Community Management Act 1997* (the BCCM Act) and the orders adjudicators may make under those provisions. The legislation should be consulted as the primary reference.

What is the role of an adjudicator?

An adjudicator has wide powers under the BCCM Act and may make an order that is just and equitable to resolve a dispute involving a claimed contravention of the BCCM Act or the community management statement for a community titles scheme. Schedule 5 of the BCCM Act gives examples of the orders which an adjudicator may make and includes an order:

- requiring the body corporate to record a new community management statement
- to call a general meeting to deal with stated business
- to increase or reduce contributions
- to declare motions or meetings void.

More information on adjudication can be obtained from the *Adjudication* factsheet.

How is an order enforced?

An adjudicator's order can be enforced in the Magistrates Court as if it were a judgment handed down by a court.

If the order requires the payment of a sum of money or that other specific actions are undertaken, the person in whose favour the order is made can seek enforcement so that the required action is taken.

It is an offence under the BCCM Act for a person to fail to comply with an order that does not involve the payment of money and the offender may be fined. A wider group of people can start this proceeding. These people could be the applicant for the original order, a person in whose favour the order was made, the body corporate, or an administrator appointed by the adjudicator or the Magistrates Court.

An application for enforcement by the Magistrates Court is not an appeal or a re-hearing of the merits of the original application.

Preliminary steps for enforcement

To enforce an order, the person in whose favour the order is made must file with the registrar of the Magistrates Court:

- a copy of the adjudicator's order certified by the Commissioner
- a sworn statement stating the amount outstanding under the order, or
- a sworn statement stating that the specific action imposed in the order has not been undertaken.

The sworn statement is made on Form 46 of the Uniform Civil Procedure Rules (UCPR). Forms are available at the Magistrates Court.

Enforcement of orders for payments of money

The registrar of the Magistrates Court must register the order in the court and the order may then be enforced as if it was a judgement of the Magistrates Court (UCPR Form 58).

Once the judgment is obtained, the enforcement creditor (the person in whose favour the order was made) may start enforcement proceedings at any time within six years after the date of the judgment. This may include:

- holding an enforcement hearing to find out the financial situation of the debtor
- seeking an enforcement warrant for seizure and sale of property, redirection of debt, redirection of earnings, and/or
- payment by instalments.

The enforcement creditor can obtain more information on this process from the civil registry of the Magistrates Court.

Where the enforcement debtor is a body corporate, section 300 of the BCCM Act allows an administrator to be appointed by the court on application by the enforcement creditor. The enforcement creditor would have to supply the magistrate with information on a suitable and willing administrator.

Enforcement of other orders

The court registrar may, if he or she considers it appropriate, register the order in the court. The Magistrates Court may, by order, appoint an administrator authorised to perform the obligations, under the order, of the body corporate, the committee for the body corporate, a member of the committee or the owner or occupier of a lot.

If the applicant wants the magistrate to appoint an administrator to carry out the adjudicator's order, the applicant will need to complete an application (Form 9) and a supporting affidavit (Form 46) supplying information on the order sought and contact details of a suitable administrator willing to perform that function if appointed.

Fees

Application fees may apply for registering an order of an adjudicator in the Magistrates Court via application Form 9. The civil registry of the Magistrates Court can provide information about current fees.

What happens if an adjudicator's order is ignored?

A person who fails to comply with an adjudicator's order (other than an order for the payment of money) commits an offence. The offence can be punishable by a maximum penalty of 400 penalty units¹ and reasonable costs may be recoverable against a defendant. The criminal standard of proof is required in the Magistrates Court which means that the applicant must prove 'beyond all reasonable doubt' that the order has not been complied with.

The proceeding is commenced by a sworn Complaint and Summons (Form 3 under the *Justices Act 1886*).

It is advisable to obtain independent legal advice before commencing such proceedings as an applicant could become liable for costs and/or witness expenses in certain circumstances.

Fees

Application fees may apply for commencing proceedings for compliance by way of complaint and summons to the Magistrates Court via application Form 3. The civil registry of the Magistrates Court can provide information about current fees.

¹

Penalty units are set by section 5(1) *Penalties and Sentences Act 1992* and as at January 1 2009 are \$100 per unit.

Other penalties under the BCCM Act and regulation modules

Both the BCCM Act and the regulation modules prescribe penalties for failure or breach of certain parts of the legislation. Where a penalty provision is made, such penalties may be imposed by a Magistrates Court, acting under powers given by section 19 of the *Justices Act 1886*.

The process for taking a proceeding is the same as that described above where an adjudicator's order is ignored.

Further information

For more information on commencing a proceeding, please contact the Brisbane Magistrates Court on 07 3247 5778, or your nearest Magistrates Court. Additionally, the Department of Justice and Attorney-General has a website at www.justice.qld.gov.au which provides factsheets on Magistrates Court procedures.

The Office of the Commissioner for Body Corporate and Community Management (BCCM Office)

Information Service telephone (freecall): 1800 060 119

Email: bccm@justice.qld.gov.au

Website: www.justice.qld.gov.au/bccm

Street address: Level 17, 288 Edward Street, Brisbane

Postal address: GPO Box 1049, Brisbane Qld 4001

Copies of the *Body Corporate and Community Management Act 1997*, the regulation modules, and any amendments can be accessed for free via the Office of the Parliamentary Council at: www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm or purchased from SDS, Ground Floor, Mineral House, 41 George Street, Brisbane. SDS Customer Service can be contacted on: 07 3118 6900 or 1800 679 778 or at: www.publications.qld.gov.au.

Disclaimer

The laws referred to in this guide are complex and various qualifications may apply in different circumstances. The information in this factsheet does not constitute legal advice. You are encouraged to obtain independent legal or financial advice if you are unsure of how these laws apply to your situation.

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