

Office of the Commissioner for Body Corporate and Community Management

# Practice Directions

## Conciliation

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## Conciliation

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 7

## Conciliation process

This practice direction is issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). 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 conciliation 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 dispute resolution coordinator will act as a delegate of the Commissioner in determining whether the application complies with the legislative requirements and practice directions. In particular, the dispute resolution coordinator will assess whether the dispute falls within the jurisdiction of the Commissioner's Office.
6. Where necessary, the dispute resolution coordinator 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.
7. The Commissioner may reject an application that fails to comply with the requirements of the legislation or a practice direction about internal dispute resolution (refer to [Practice Direction 23: Internal dispute resolution](#)).

### Referral to conciliation

8. Once the Commissioner has decided that the matter should be referred to conciliation, the application is referred to a conciliator.
9. In certain circumstances the Commissioner or a delegate may determine that a dispute is not appropriate for conciliation. This issue is further explained in [Practice Direction 9: Matters not appropriate for conciliation](#) and further information is provided in [Practice Direction 10: Preparing for conciliation](#).
10. If the parties reach agreement at conciliation on any of the issues in dispute, the parties can choose to sign a written agreement documenting the terms of their agreement. It should also be noted that parties can also negotiate a settlement leading up to a scheduled conciliation session.

### Ending conciliation

11. At the end of the conciliation process the parties will be issued with a conciliation certificate to inform

them that the conciliation process has concluded. A copy of this certificate should be retained as it must be lodged with any future adjudication application about the same dispute.

12. Once the conciliation process has concluded, the conciliator has no further involvement in the dispute or any subsequent adjudication application about the dispute.

### **After conciliation**

13. An applicant may lodge an adjudication application on the same dispute if conciliation was not able to resolve the dispute, providing the applicant has made a reasonable attempt to conciliate.
14. If a respondent does not make a reasonable attempt to conciliate the dispute, an applicant may request that an adjudicator order the respondent to reimburse the applicant for the conciliation and adjudication application fees.

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 8

## Conciliation applications

This practice direction is issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). 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. Applicants must complete the [conciliation application form \[BCCM form 22\]](#).
2. Applicants are encouraged to complete the application form online at [www.qld.gov.au/bodycorporatedisputes](http://www.qld.gov.au/bodycorporatedisputes) and then post or email the completed form to the Commissioner's Office.
3. Alternatively, a hardcopy of the application form, to be completed manually, can be downloaded from the above website or obtained from the Commissioner's Office. The hardcopy includes a guide to completing the application form.

### Case management

4. When an application is received by the Commissioner's Office, a new file is opened and allocated a unique file reference number.
5. 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.
6. The application is then assessed by the Commissioner or a delegate, generally a dispute resolution coordinator. The assessment will determine whether the application complies with the legislative requirements and practice directions, including whether the dispute falls within the jurisdiction of the Commissioner's Office.
7. At all times the onus is on the applicant to 'make their case', in other words, to ensure their application form is correctly completed and meets legislative requirements. The Commissioner's Office cannot complete application forms for applicants and nor can the Commissioner's Office instruct applicants on how to complete their application form.
8. Applications must be lodged with the prescribed fee.
9. In addition to the information in the online form and guide, applicants should note the following:

### Applications must be clear and legible

10. The application form and any attachments should preferably be typed, in a clear font. Handwritten applications must be clear and legible.
11. If an application is not clear and legible, whether typed or handwritten, the applicant will be requested to submit a revised application that is clear and legible.

### **Applicant and respondent**

12. The applicant is the person who is making the application. The respondent is the other person or party with whom the applicant has a dispute.
13. If the applicant has disputes against separate respondents, generally separate applications will be required (each accompanied by the prescribed fee).
14. Where the applicant is a body corporate, a copy of a committee or general meeting resolution authorising lodgment of the application must be supplied.
15. A dispute can only be between certain combinations of parties [Act, [section 227](#)]. For example, an owner or occupier can only bring an application naming the body corporate or another owner or occupier as a respondent. An owner or occupier cannot lodge an application against the body corporate manager, the committee or a caretaker (refer to the online form or guide for full details).
16. If an owner has a dispute about a decision made, or the failure to make a decision at a general meeting or committee meeting, the respondent to the dispute would normally be the body corporate.

### **Outcome sought**

17. The applicant must provide a short statement of what outcome they believe would resolve the matter. Generally, the outcome should clearly identify the action that the applicant wants the respondent to take, or to cease, in order to resolve the dispute.

### **Background**

18. This must summarise the dispute including what has occurred, and what rights, powers and responsibilities exist under the Act that have not been complied with or that entitle the applicant to the outcome sought.
19. If the applicant is relying on supporting documentation, these should be clearly identified and referenced in the summary.
20. Information included in the application assists the conciliator, the respondent and any affected party to understand what the applicant wants and the reasons why the application has been made.

### **Internal dispute resolution**

21. Refer to [Practice Direction 23: Internal dispute resolution](#) for further details.

### **Amendment or withdrawal of application**

22. An applicant can request to amend their application or provide additional information prior to the referral to conciliation.
23. If necessary, the dispute resolution coordinator will contact the applicant and request them to:
  - a) clarify information or documents related to their application, or provide additional information or documents to satisfy the requirements of the legislation and practice directions;
  - b) if amendments are substantial, the dispute resolution coordinator may request that replacement pages are provided.

24. An applicant may withdraw an application in writing at any time before the conciliation application is finalised. Once an application is withdrawn, the Commissioner's Office will take no further action in relation to the application.

### **Privacy and confidentiality**

25. Certain provisions of the body corporate legislation authorise a department conciliator to disclose the contents of a conciliation application to the respondent, the body corporate and other interested persons for the application.
26. It is the responsibility of an applicant to ensure the application and any supporting material contains only information that the applicant is prepared to have made available to all other parties to the dispute.

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 9

## Matters not appropriate for conciliation

This practice direction is issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). 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. Generally, all applicants must attempt to resolve the dispute through conciliation with the Commissioner's Office before seeking adjudication. A conciliation application is a [BCCM form 22](#).
2. The Commissioner may reject an application for conciliation if the Commissioner considers the dispute is not appropriate for conciliation. This practice direction describes some of the factors which the Commissioner may take into account in deciding whether a dispute is not appropriate for conciliation. It is not an exhaustive list.
3. The Commissioner will consider the particular facts and circumstances of each dispute before deciding whether conciliation is appropriate.
4. The Commissioner may request the applicant or another person to provide information about the dispute, to assist in deciding whether to refer the application to conciliation or to reject the application [[sections 240](#) or [251](#) of the Act].
5. Factors the Commissioner may take into account include:
  - a) any circumstance or aspect of urgency associated with the issues in dispute, including whether an interim or emergency order is being sought;
  - b) whether the application seeks an adjudicator's order and where there is no respondent and no dispute, such as a request for a change of financial year;
  - c) whether the application is seeking the return of body corporate property, such as records, necessary for the operation of the body corporate;
  - d) whether the respondent to the application cannot be otherwise determined. For example: where a body corporate has no functioning committee and is not able to appoint representatives to act on its behalf at conciliation;
  - e) whether the application involves numerous applicants and respondents, making conciliation impractical;
  - f) where there are related legal proceedings arising from the same set of facts in dispute;
  - g) where the particular history and nature of the dispute cannot be accommodated by the conciliation process. For example, where a party alleges that threats of violence have been made by another party to the dispute; or
  - h) where there has been a past unsuccessful attempt at conciliating another dispute involving either the applicant and/or the respondent, the circumstances of which indicate that conciliation of the new dispute is not likely to result in a quick and efficient resolution.
6. A previous failure by the parties to resolve the dispute through internal dispute resolution does not, of itself, make a matter inappropriate for conciliation.
7. If the Commissioner decides to reject an application, the Commissioner will inform the applicant in writing of the reasons for the decision and the applicant's right to seek a review of the decision by the Queensland Civil and Administrative Tribunal.



8. Where an application for conciliation is rejected on the basis that the dispute is not appropriate for conciliation, the applicant may lodge an application for adjudication providing the dispute is within the jurisdiction of a dispute resolution officer. Generally, the Commissioner will waive the prescribed fee for an adjudication application lodged in these circumstances.

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 10

## Preparing for conciliation

This practice direction is issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). 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 Commissioner's Office provides a conciliation service through the use of trained conciliators to assist parties to resolve a wide range of issues in a constructive and non-confrontational manner. The following information provides a guide to assist parties in preparing for conciliation.

### The role of the conciliator

2. The role of the conciliator is to facilitate discussions and assist parties to resolve issues that they are unable to resolve themselves. Conciliators may also assist parties in discussing how to resolve any future disputes which may arise between them.
3. Conciliators are trained to provide general information on the legislation relevant to the issues in dispute and to discuss possible resolution with the parties. Conciliators may also refer parties to previous decisions of adjudicators, tribunals and courts which have interpreted and applied provisions of the body corporate legislation relevant to the current issues in dispute.
4. Conciliators do not provide legal advice or make a decision about who is right, who is wrong or what the outcome of the dispute should be.
5. Conciliation in the Commissioner's Office is not the same as mediation which is commonly used in commercial arbitration or some other dispute resolution forums (for example, in the Courts).

### Preparing for the conciliation session

6. The conciliator will contact each of the parties prior to the conciliation session. The conciliator may seek further information from the parties to assist the conciliator's understanding of the dispute and how each of the parties would like the dispute to be resolved.
7. Parties should advise the conciliator of any special needs prior to the session. This may include interpreting services and physical access requirements to attend the session.
8. Parties can prepare for conciliation by:
  - a) identifying the issues of concern to them that relate to the dispute and being prepared to give a brief description of the situation;
  - b) considering what the issues may be for the other parties to the dispute and how these issues may affect them;
  - c) bringing or making available any relevant documents, plans or photographs that might assist the other party to better understand the opposing point of view;
  - d) contacting the Information Service of the Commissioner's Office (1800 060 119; or [www.qld.gov.au/bodycorporatequestion](http://www.qld.gov.au/bodycorporatequestion)) to get general information on the legislation that may help them understand rights and responsibilities;
  - e) considering what might be their acceptable outcomes to the dispute; and
  - f) being prepared to listen to other points of view.

9. If parties have additional information to add to the dispute, the conciliator will allow this material only if the conciliator believes it is relevant and will assist in resolving the dispute.

### **The conciliation session**

10. The conciliator will decide on the type of conciliation session to be held. Generally, conciliation is jointly conducted with all parties and the conciliator via either a face-to-face or telephone conference. However, in some circumstances, the conciliator may conduct a shuttle conference consisting of a series of one-on-one telephone conversations with each party to the dispute.
11. Conciliation may take up to 3 hours and parties are requested to set aside this time for a possible resolution.
12. Parties are encouraged to represent themselves in the conciliation session and actively contribute towards discussions to resolve the dispute. Parties seeking to be represented at conciliation should read [Practice Direction 11: Representation at conciliation](#).
13. The Commissioner's Office notifies parties in writing of the time of a conciliation session. Parties may request a more suitable time but should be aware that a re-scheduled session will depend on the availability of the conciliator and the other parties to the dispute. The legislation requires conciliation to be conducted as quickly as possible.

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 11

## Representation at conciliation

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1. This practice direction sets out requirements for representation and attendance at conciliation sessions.

### Attendance

2. The conciliator makes the final decision as to who is permitted to attend the conciliation session.
3. In most cases, only the parties directly involved in the dispute are permitted to attend and take part in the conciliation session. The parties who attend the session are expected to have the authority to negotiate and enter into an agreement to resolve the dispute.
4. The conciliator may allow a person who is not a party to attend the conciliation session if the conciliator believes it may help resolve the dispute. If the conciliator allows a person who is not a party to the dispute to attend, the conciliator may impose conditions or limitations on the person's attendance and involvement in the conciliation session.
5. If a party requires an interpreter in the conciliation session the Commissioner's Office will arrange an interpreter. A party requiring an interpreter is requested to advise the Commissioner's Office as soon as possible on receipt of the invitation to attend conciliation, to ensure the availability of an interpreter at the session.

### Representation by an agent

6. An agent may represent a party to an application at the conciliation session with the permission of the conciliator. The conciliator may impose conditions on the agent's attendance at the session. A party's entitlement to be represented by an agent is subject to the agent complying with any conditions imposed by the conciliator.
7. If the party is a corporation under the *Corporations Act*, an authorised officer of the corporation may represent the party. Refer to [Practice Direction 2: Representation](#).
8. If the party is the body corporate for the community titles scheme, not more than 2 individual lot owners or committee voting members can represent the body corporate.

### Representation by committee voting members as an agent of a body corporate

9. It can be useful for the body corporate to be represented by voting committee members if the resolution sought by the conciliation application is not a restricted issue. That is, where the committee has the power under the legislation to make a decision about the issue.
10. The legislation provides that a committee voting member may be appointed as an agent for the body corporate if authorised in writing by a majority of the committee voting members. The authorisation can limit the representative from making certain decisions.
11. In acting as agent for the body corporate, the committee voting member may do anything the committee may do according to the authorisation provided for under the regulation module applying to the community titles scheme.

12. The committee voting member is not able to make a decision on a restricted issue under the regulation module applying to the scheme. These issues must be decided by the body corporate at general meeting.

### **Legal representation**

13. The nature of conciliation is non-adversarial and provides an environment which encourages parties to openly talk to one another and work together to resolve their dispute. As such, legal representation is generally not permitted in conciliation. However, a conciliator may, for exceptional reasons, allow a legal representative to attend conciliation. The attendance of a legal representative at the session is subject to any conditions imposed by the conciliator.

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 12

## Admissibility of information from conciliation

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1. The following is a guide to the confidentiality and admissibility of information arising out of department conciliation.

### Conciliators and confidentiality

2. A conciliator must not disclose any information about a person that the conciliator acquired in conciliation to anyone else, unless one or more of the following circumstances apply [Act, [section 252L](#)]:
  - a) with the person's consent;
  - b) for statistical purposes such as departmental reporting, which does not disclose the identity of a party;
  - c) for the purpose of conducting the conciliation session during which the information was provided;
  - d) where the disclosure is reasonably necessary because there is a serious threat to personal property or safety;
  - e) for a proceeding for an offence under the Act; or
  - f) if the disclosure is required under law.
3. Information about a person includes any opinion, admission or offer made by the person in a conciliation session, or the personal circumstances of a person involved in the dispute.
4. Once the conciliator has ended the conciliation process, the conciliator has no further legislative role in relation to the dispute. Unless one of the above conditions applies, the conciliator is unable to enter into any discussion about what was said or done in conciliation with any person – even with a named party or another person who took part in the conciliation – once the certificate has issued.

### Admissibility

5. Evidence of anything said or done about a dispute in conciliation is inadmissible in an adjudication process or another legal proceeding outside of the Commissioner's Office [Act, [section 252E\(5\)](#)].
6. This requirement exists to encourage an open flow of information between the parties and assist resolving the dispute in a way that satisfies the parties.

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## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 36

## Rescheduling a conciliation session

This practice direction is issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). 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 sets out considerations for when one or more of the parties to a conciliation application requests the date for a conciliation session be rescheduled.
2. The Act requires that a conciliation session must be conducted as quickly as possible (Act, [section 252E](#)). Given that a request to reschedule has the effect of delaying a session, there should be no presumption a request to reschedule will be granted and the Conciliator must be satisfied it is fair and reasonable to do so, taking all relevant circumstances into account.
3. Any request for a reschedule must be made prior to the date for confirmation of participation, as advised in the notice. The request must:
  - a) be in writing;
  - b) include the reasons why the party cannot participate on the scheduled day; and
  - c) provide two alternative dates no more than three weeks from the original scheduled date.

### Relevant circumstances to be considered

4. While not an exhaustive list, the Conciliator may take the following circumstances into account when deciding whether or not to reschedule a session:
  - a) serious illness or injury (supporting documentation may be required);
  - b) death or serious illness or injury to a family member (supporting documentation may be required);
  - c) specialist medical appointment (supporting documentation may be required);
  - d) nature and urgency of the dispute;
  - e) availability of the other parties;
  - f) availability of the Conciliator and meeting rooms; and
  - g) other extraordinary circumstances.
5. The following are generally not sufficient reasons for a reschedule:
  - a) non-availability of a 'preferred' committee member;
  - b) normal work commitments; and
  - c) overseas or interstate travel (also refer to [Practice Direction 35: Parties residing or travelling overseas](#)).

### Other relevant matters

6. If the Conciliator refuses the rescheduling request, the Conciliator may then close the conciliation session and issue a “No Reasonable Attempt” certificate. A “No Reasonable Attempt” certificate may be grounds for an applicant to seek reimbursement of both conciliation and adjudication application fees, if the applicant then lodges an adjudication application.
7. There is no right of review of the Conciliator’s decision to refuse a rescheduling request.

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