



## PRACTICE DIRECTION 2

### Conciliation applications

Practice directions are issued pursuant to [section 233](#) of the *Body Corporate and Community Management Act 1997* (the Act). They provide directions and information about internal dispute resolution processes and the Commissioner's dispute resolution service. Practice directions must be interpreted and applied consistently with the Act. They do not limit the discretion of the Commissioner or dispute resolution coordinators when assessing individual applications. Anything done by a person for internal dispute resolution or the dispute resolution service is subject to any relevant practice direction.

#### What is department conciliation?

1. Where parties to a dispute about rights or obligations under the Act cannot resolve the dispute privately between themselves, they may apply for department conciliation to help guide them towards an agreed non-binding resolution.
2. A conciliator is an independent person with knowledge of the legislation and experience in dispute resolution.
3. Parties who wish to arrive at a *legally binding* agreed resolution through the conciliation process should also see [Practice Direction 7 – Consent orders](#).
4. If the Commissioner considers that the dispute is not suitable for conciliation, the applicant may instead be invited to apply for department adjudication to resolve the dispute through an adjudicator's binding order.

**Example:** *The dispute cannot be resolved through conciliation because it requires a decision which can only be made by owners at a general meeting.*

**Example:** *The applicant cannot reasonably be required to conciliate with the other party because there is a genuine fear of violence.*

#### Application

5. An application for department conciliation must be made on [BCCM form 22](#), with reference to the [Guide to completing the conciliation form](#).
6. The applicant must also immediately pay the prescribed conciliation application fee or apply for a fee waiver. For further information, see [Practice Direction 10 – Application fees and costs orders](#).
7. An application must be:
  - typed or clearly handwritten on the prescribed form
  - complete and compliant with the legislation and relevant practice directions
  - compliant with a Commissioner's request to give further information or documents
  - not false or misleading, including by omission.

8. Where the applicant is:

- a body corporate, it must provide a copy of the committee or general meeting resolution authorising the application, or
- otherwise not a natural person (e.g. a company or body corporate), or is a natural person represented by another person, the applicant must provide evidence that the application is authorised by it or them.

### Internal dispute resolution

9. The applicant must explain what steps they took to resolve the dispute directly with the other party before making the conciliation application and provide supporting information and evidence.
10. Otherwise, the applicant must explain why self-resolution is not appropriate in the circumstances. For further information, see [Practice Direction 1 – Internal dispute resolution](#).

### Outcomes sought

11. The applicant must clearly and briefly state their desired outcomes from the process.
12. The applicant must identify, for each desired outcome, an appropriate respondent and any person who would be directly and materially affected by the outcome.

### Background to the dispute

13. The applicant must clearly and briefly describe the background to the dispute, including:
- the nature, circumstances and history of the dispute, and
  - why they are entitled to each outcome.
14. The background statement must:
- be relevant to the dispute, clear and as brief as is reasonable in the circumstances
  - not be provided merely to inflame a dispute or disparage a person
  - not be false or misleading, including by omission, and
  - refer to and explain the relevance of any included document, and the relevant parts of any large document must be identified.
15. Applicants are encouraged to state, where known, the legislation, by-laws, legal principles, and adjudication decisions relevant to their desired outcomes.
16. A document provided with the application must:
- be relevant to the dispute
  - be clear, legible and clearly labelled or identifiable, and
  - not be false or misleading, including by omission.
17. An email must not exceed 15MB including attachments, and emails and their attachments must be clearly named. See further [Practice Direction 11 – Communication and correspondence](#).

## Amending an application

An applicant may request that their application be amended, and they may provide additional information at any time *before* the Commissioner has referred their application to conciliation.

## Conciliation session

18. During the conciliation session, a participant must make reasonable efforts to resolve the dispute and must not act in a way intended or likely to unreasonably harass, annoy, intimidate, or cause detriment to a person, or otherwise abuse the conciliation process.
19. A party must make reasonable efforts to be available for a proposed conciliation session time, personally or by an authorised representative.
20. A request to reschedule a conciliation session must be made in writing prior to the scheduled date, explaining the need to reschedule and proposing at least two alternative dates which are no more than three weeks from the original scheduled date.
21. A party authorising a person to represent them must inform the conciliator as soon as possible of any limits on the representative's authority to make decisions for the party. For further information, see also [Practice Direction 9 – Representation](#).
22. A participant who requires assistance or special arrangements for the conciliation session (e.g. a language interpreting service or assistance with meeting technology) must inform the conciliator as soon as possible.

## Privacy and confidentiality

23. Information and documents submitted in a dispute resolution application will be available or provided to other parties.
24. The Commissioner must keep, and is not authorised to delete or return, information and documents provided to this Office.
25. A person who wishes to keep their identity or information private or confidential is encouraged to raise that concern before providing such material.
26. The Commissioner may decline to accept an application, information or documents if terms of their distribution and use cannot be agreed.

## COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

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Version 1  
Effective 1 July 2025

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