

## 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*(Act). Its purpose is to provide further information on the procedures and content requirements for a dispute resolution application 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 an individual dispute resolution application 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 (*section 252E*, Act). 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 Commissioner's Practice Direction 35).



## 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.

## COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

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