

Office of the Commissioner for Body Corporate and Community Management

Practice Direction 11

Representation at conciliation

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. 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. 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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COMMISSIONER

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