



Conciliation

This information sheet introduces parties to the conciliation service provided by the Office of the Commissioner for Body Corporate and Community Management (the BCCM Office) under the *Body Corporate and Community Management Act 1997* (the BCCM Act). It is not intended to be an exhaustive guide to the conciliation process. The legislation should be used as the primary reference.

Self resolution

Before making an application for conciliation, an applicant must have attempted to resolve their dispute by internal dispute resolution (self resolution). Self resolution may comprise any endeavour by the parties, or one of them, to resolve the dispute themselves and might include:

- simply talking to the other party about the issue in dispute or
- submitting a motion to a meeting where a vote by owners can determine the issue.

Please refer to the 'Self resolution' factsheet for further information.

What is conciliation?

The BCCM Office provides a dispute resolution service (including conciliation and adjudication) when a dispute covered by the BCCM Act and regulation modules (the BCCM legislation) cannot be resolved by the parties themselves.

Conciliation involves an unbiased, impartial person with knowledge of the BCCM legislation assisting parties involved in a dispute to achieve their own resolution through negotiation.

Conciliation normally involves the parties participating in either a face-to-face meeting or a teleconference. The conciliation session is facilitated by a conciliator.

Is conciliation compulsory?

The Commissioner may reject an adjudication application if the Commissioner reasonably believes the applicant has not made a reasonable attempt to resolve the dispute by either self resolution or department conciliation. Only in

limited circumstances will the Commissioner waive the requirement for conciliation prior to an adjudication application being made.

What are the consequences if a party does not attend a conciliation session without a reasonable excuse?

An applicant who fails to make a reasonable attempt to conciliate may have a subsequent adjudication application concerning that dispute rejected by the Commissioner.

A respondent who fails to make a reasonable attempt to conciliate may be required to reimburse the applicant the prescribed fee for the conciliation and subsequent adjudication application, should one be made.

In exceptional circumstances the conciliator can reschedule a conciliation session. If a party is unable to attend the conciliation session, they must inform the conciliator as soon as possible.

What are the benefits of conciliation?

Most of the disputes under the BCCM Act are between parties who have an ongoing relationship. Conciliation has particular benefits for these types of disputes including:

- usually disputes can be resolved more quickly by conciliation than by adjudication, which requires formal written submissions
- all parties have input into the resolution of the dispute, including putting forward their points of view, listening to the other parties' points of view, and proposing solutions
- parties can find their own solutions without the need to go to adjudication. If an agreement is reached which satisfies the interest of all parties a decision will not be imposed on them by an adjudicator
- parties can develop or maintain good relations through improved communications
- useful information can be provided to all parties
- information shared at a conciliation session can often prevent future disputes.



What is the role of the conciliator?

The conciliator will:

- facilitate discussions between the parties to a dispute, but will not reach conclusions or impose a determination on the parties
- encourage open and honest discussions between the participants, but remain unbiased and impartial
- help identify the issues in dispute, but will not determine those issues
- provide information on the provisions of the BCCM legislation, but will not give legal advice to the parties
- facilitate the generation of options which may resolve the issues of concern and
- assist the parties to design strategies which may prevent the occurrence of similar disputes in the future.

Who attends conciliation?

Only the people involved in the dispute are entitled to attend the conciliation session. However, with the consent of the conciliator, an agent, legal advocate or support person may attend the conciliation session. The role of each person attending the conciliation will be outlined by the conciliator.

Preparing for conciliation

In order to maximise the benefits of conciliation, the parties should be properly prepared and each party should:

- make a list of the issues of concern and make a concise summary of these
- consider obtaining any legal, financial, technical or specialist advice to understand the issues in dispute, their rights and responsibilities
- make available any relevant documents, plans or photographs which may assist the other party to better understand their point of view
- discuss any special needs or requirements they have with the conciliator (for example an interpreter can be arranged).

When will conciliation happen?

Once a conciliation application has been made with the BCCM Office, and has been checked for compliance with legislative requirements (including jurisdiction), conciliation staff will contact parties to begin the conciliation process.

What can happen at conciliation?

- Everyone involved in the dispute will be encouraged to participate.
- Each party will be invited to briefly explain the issues from their point of view.
- The conciliator will then:

- assist each party to try to understand the views of the other party
 - clarify the issues in dispute using joint and separate sessions
 - examine the BCCM legislation relating to the dispute and relevant adjudicator's orders
 - assist the parties to explore options and consider solutions
 - assist the parties to reach a mutually acceptable agreement.
- Agreements can be written and signed by all the parties. The agreement reached can address all or only some of the issues discussed.
 - Conciliation agreements are not enforceable under the BCCM Act – however, by mutual agreement the parties can request that an adjudicator provide a consent order, which if made, will bind the parties to the terms agreed to in the conciliation agreement.
 - If parties fail to reach a conciliation agreement, having made reasonable endeavours to do so, the applicant may make an adjudication application.

What is the fee?

The current fee for making a conciliation application is included in the applicants' fee schedule which is detailed in the 'Guide to completing the Conciliation Application Form' available from the BCCM Office.

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

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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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