

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

# Practice Direction 2

## Representation

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. The following sets out the requirements for a person, including a body corporate, to authorise a representative or agent to act on their behalf in a dispute resolution application.
2. A separate approval is required from a department conciliator in order for a party's representative or agent to participate in a conciliation session. This is explained further in *Practice Direction 11: Representation at conciliation*.

### Authorisation of a representative

3. Where an applicant is represented by a third party, the applicant should clearly identify this in their application form. The representative cannot be named in place of the applicant.
4. The application form must be signed by each applicant. The only exception is where the application form is signed by an applicant's authorised representative.
5. Where the applicant is a body corporate, a copy of a committee or general meeting resolution authorising lodgment of the application must be supplied.
6. Where the applicant is a company who is represented by an officer or nominee of that company, the application must be accompanied by a statement or appropriate documentation identifying the representative and confirming their authority to act on behalf of the company. For example, a general manager of the company may be authorised to act by a letter, on company letterhead, signed by a company director. Alternatively, a director seeking to act on behalf of the company may provide an ASIC search showing their full name and position in respect of the company.
7. Where an applicant is represented by a power of attorney, the application must be accompanied by a copy of the power of attorney. The power of attorney instrument should be clear about the representative's ability to commence a proceeding on behalf of the other person.
8. Where an applicant is represented by a person other than a solicitor or a power of attorney, the application must be accompanied by a statement signed by the applicant and which specifically authorises the representative to act on their behalf in respect of the application.



9. Where appropriate, the Commissioner's Office may request evidence of the authority of a person to make a submission or otherwise act on behalf of a respondent or other affected person. An example of the evidence might be a certified copy of the instrument appointing the power of attorney.
10. At all times, it is the responsibility of the applicant to keep the Commissioner's Office advised of any change in circumstances related to their representative. For example, where an applicant changes legal representation.

### **Communication with applicants**

11. The Commissioner's Office will communicate directly with an applicant unless that applicant has authorised a representative.
12. The Commissioner's Office will use the contact details supplied on the application form unless an applicant advises otherwise.
13. Where there are multiple applicants for an application, the applicants must nominate one person to act as the applicants' point of contact with the Commissioner's Office. The nominated contact will be responsible for relaying any relevant notice, information or request from the Commissioner's Office to each of the named applicants.
14. The Commissioner's Office retains discretion to contact a party directly regarding an application, or to decline to communicate to a representative, where, in the Commissioner's view:
  - a. the urgency of the circumstances requires the party to be contacted directly in order to either be notified of, or requested to provide, information relevant to the dispute;
  - b. the representative has failed to provide information about an application in response to a request by the Commissioner or an adjudicator; or
  - c. for another reason, it would be inappropriate to communicate via the nominated representative.



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**COMMISSIONER**

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Version 2  
Effective 1 June 2016

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