

## PRACTICE DIRECTION NUMBER 8 OF 2021

### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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#### TAKING EVIDENCE BY TELEPHONE OR VIDEO LINK

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This Practice Direction operates subject to the unfettered and overriding discretion of the Member of the Queensland Industrial Relations Commission (Commission) who has been allocated the matter for hearing.

The purpose of this Practice Direction is:

- to ensure that all parties are aware of the approach to the taking of evidence by telephone and/or video link in the ordinary case;
- to streamline the taking of evidence by these means;
- to avoid delay and disruption; and
- to maintain the decorum of the proceeding.

The Practice Direction has no application to conferences, including and not limited to dismissal and dispute conferences as well as conferences conducted pursuant to s 552A of the *Workers' Compensation and Rehabilitation Act 2003*.

The Practice Direction is applicable where submissions are to be made in a hearing.

#### **General**

1. Evidence by telephone will only be taken from expert witnesses and on formal and uncontroversial matters. Telephone evidence will not be taken where credibility is in issue.
2. Evidence by telephone or video link may be given only at the discretion of the Member.
3. The Commission will bear the costs of taking evidence by telephone and video link from witnesses located within Queensland. The party calling a witness may be required to bear the cost of taking evidence by telephone or video link (if applicable) from a witness who is not located within Queensland. In such cases, the Industrial Registry may forward the cost to the party who called the witness for payment.

4. Should the taking of evidence by telephone from a witness located overseas be required, the witness will be expected to call in to the courtroom at a prior arranged time. The party calling that witness is expected to arrange, and bear the cost of, taking the evidence by telephone. The courtroom telephone number will be provided to the party calling that witness prior to the commencement of the proceeding.

**Proposal for a witness to give evidence by telephone or video link**

5. The party wishing to have evidence taken by telephone or video link should notify the other party and/or those given the right to be heard at the earliest opportunity, no less than seven (7) days prior to a hearing, to determine whether there is any objection. In the notification, the party seeking the taking of evidence by telephone or video link must state why the proposal is necessary or convenient, including the reasons as to why it is not possible or practical for the witness to give evidence in person. The Industrial Registry is to be notified immediately where there is an objection so that the appropriate Member may be informed, and the objection can be dealt with and considered in a timely manner.
6. Where the parties consent to the taking of evidence by telephone or video link, the Industrial Registry is to be notified of that consent as soon as practicable, but no less than 72 hours prior to a hearing to be held in Brisbane and no less than seven (7) days where the hearing is to be held outside of Brisbane.
7. It is consistent with this Practice Direction that a directions hearing may be held to determine the question of whether evidence should be taken by telephone or video link.

**What a party must do where the taking of evidence by telephone or video link is allowed**

8. In the case of video link, once the Member approves the taking of evidence in this manner, the party calling the witness is to complete the form 'Application for Video Link', available on the Commission's website and return it to the Industrial Registry.
9. The Commission conducts video links through two main platforms, "Zoom" and "Pexip" (video conferencing downloadable application/web-based applications). These platforms facilitate video links and are available to the witness via a device connected to the internet (smartphone, tablet, laptop, personal computer).
10. In anticipation of the taking of evidence by telephone or video link, the party calling the witness **must**:
  - (a) arrange for the witness to have immediate access to a telephone (preferably a landline) and, in the case of video link, a device with uninterrupted access to the internet;

- (b) ascertain from the witness the form of oath to be taken and ensure that the witness is equipped to comply with the formalities of the oath, or confirm that it is appropriate to affirm;
- (c) explain to the witness that:
  - the evidence is being given in formal and recorded court proceedings;
  - the witness may be cross-examined by the representative of the other party/parties and questioned by the Member;
  - they must be careful to respond to questions put and answer only the questions which are put; and
  - until directed by the Member, to not respond to a question while an objection is being taken;
- (d) arrange for the witness to give evidence from a place where the witness is alone in a quiet room and will not be interrupted by work or other requirements/commitments; and
- (e) ensure that the witness has with them a copy of their affidavit/statement (if relevant) and any other relevant documents which may be referred to during the course of their examination.

#### **What a witness must do if giving evidence by telephone or video link**

11. A witness giving evidence by video link must be prepared to participate at least 15 minutes prior to the commencement of the video link, so that the link may be set up.
12. The witness giving evidence by telephone or video link must have the appropriate materials to comply with the formalities of any oath to be taken.
13. The witness must also have with them a copy of their affidavit/statement (if relevant) and any other relevant documents.

#### **Procedure in a hearing**

14. This paragraph applies where witnesses are located either within or outside Queensland:
  - (a) Where the evidence is to be given by telephone:
    - prior to the time the evidence is to be given, the party calling the witness to give evidence by telephone is to inform the Associate to the Member hearing the matter of the telephone number of the witness, if they have not done so already. Except in the case of international calls, the Associate will telephone the witness a couple of minutes prior to the pre-arranged time in order to have them give evidence. The Associate will announce to the Commission that the person is available via telephone.

(b) Where the evidence is to be given or submissions made by video link:

- a couple of minutes prior to the pre-arranged time the Associate will contact the witness/party via the approved process through video link. When the video link is established, and it is clear the witness or party is waiting, the Associate will announce to the Commission that the person is available via video link.

**D.L. O'Connor, OAM**

Vice President

24 March 2021