

Payment instead of taking long service leave application guide

Queensland Industrial Relations Commission



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The Registry of the Queensland Industrial Relations Commission is the custodian of this document. All enquiries regarding this document should be directed in the first instance to:

Industrial Registry qirc.registry@qirc.qld.gov.au Tel: 1300 592 987

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Part 1: Purpose

This document is for guidance only. Individual applications may be managed differently if circumstances require.

This guide sets out an overview of the procedures that the Queensland Industrial Relations Commission (Commission) will usually adopt in deciding Payment Instead of Taking Long Service Leave Applications (LSL applications) made pursuant to section 110 of the *Industrial Relations Act 2016* (Qld).

These black boxes indicate items of particular importance. Pay attention to them.

This guide is written for self-represented parties.

Legally represented parties, or parties represented by an agent, should note that the procedures outlined in this guide are centred on the directions orders issued in instances where the Applicant is self-represented.

Part 2: Introduction and overview

This section is intended to introduce you to the Commission, its related jurisdictions, and its general structure.

2.1 What is the Queensland Industrial Relations Commission?

The Commission has jurisdiction over the following areas:

- Industrial disputes involving state and local government employees
- Unfair dismissals and reinstatement applications for state and local government employees
- Workers' compensation appeals
- Work-related anti-discrimination complaints
- Public service appeals
- Wage recovery
- Trading Hours
- Work, health and safety reviews
- Long service leave payment applications
- Other matters prescribed under various Acts

In dealing with most of those jurisdictions, the Commission holds conferences to try and assist the parties to understand their respective positions. Conferences are generally more informal. Matters that do not settle as the result of conference usually go to a 'hearing'. A hearing is a formal process presided over by a Member of the Commission. For LSL applications there is usually no conference or hearing and the applications are decided by the Members on the papers.

There are four types of Members at the Commission:

- The President, who is also a judge of the Supreme Court of Queensland
- The Vice President
- Deputy President
- Industrial Commissioners.

How to address a Member of the Commission at a hearing or in a conference is simple:

- The President, Vice President, and the Deputy President are all referred to as 'Your Honour'
- Industrial Commissioners are referred to as 'Commissioner'

If you are writing to a Member or the Registrar, you should use their title as the salutation i.e. 'Dear Deputy President', 'Dear Commissioner', or 'Dear Registrar'.

Each of the Members has an Associate. The Associate's role is to assist the Member with their duties. Associates are unable to provide you, or any other party, with legal advice. Associates are the contact point between parties to a matter and the Member, and between the Industrial Registry (**Registry**) and the Member's chambers.

Associates should only be directly contacted if the matter is urgent or if the Commission directs you to contact the Associate instead of the Registry.

2.2 What is the Industrial Registry?

The Registry is the support body for the Commission and the Industrial Court of Queensland (**Court**). It is where forms and materials are filed for appeals, applications, and notifications. The Registry is headed by the Industrial Registrar and is supported by the Deputy Registrar and staff of the Registry. The Registry is located at:

Industrial Registry
Level 21, Central Plaza Two
66 Eagle St
Brisbane Qld 4000

The staff of the Registry cannot provide parties with legal advice, but they can assist you with identifying which form to use in certain situations and other procedural matters.

If you ever need to write to the Registry, or send an email (qirc.registry@qirc.qld.gov.au), then you can address your message to the Industrial Registrar (i.e. 'Dear Registrar').

Part 3: Applications

This part of the guide covers applications to the Commission and how to make them.

3.1 What is an application?

Applications to the Commission for payments instead of taking long service leave (LSL Payment Application) are governed by section 110 of the *Industrial Relations Act 2016*.

You may apply if you have an entitlement to Long Service Leave.

3.2 Basis of an application

There are two grounds on which you can make an Application:

1. Financial Hardship; or
2. Compassionate.

If you make an application you should make sure that you provide enough explanation to support one, or both, of those grounds.

If you are filing by email, and what you are filing is quite large, the Industrial Registry may require you to provide a hard copy also.

See: **APPENDIX A** to this guide on page 17 Practice Direction - ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

3.3 Who are the parties to an application?

The person who files the application is called the Applicant. This means that you will be described as the Applicant in documents which are issued by the Commission/Registry relating to your application.

Your employer will be described as the Employer/Interested Party. Your employer is involved in the application as it may be required to pay money to you, but they are not a party to the application.

3.4 How to apply – [Form 13](#)- Application for payment instead of taking long service leave

Applications are made by filing a **Form 13 – Application for payment instead of taking long service leave**. You can access Form 13 from www.qirc.qld.gov.au under the Forms Tab on the Commission's website.

Form 13, and all other forms, can be filed at the Registry via the following methods:

- **By e-mail:** qirc.registry@qirc.qld.gov.au
- **In person over the counter:** Industrial Registry
Level 21, Central Plaza Two
66 Eagle St
Brisbane Qld 4000
- **By post:** Industrial Registry
GPO Box 373
Brisbane Qld 4001
- **By fax:** (07) 3221 6074

In most instances the Registry will communicate with you by email. If you have not provided an email address on your Form 13 then the Registry will be in contact with you requesting that you provide an email address. If you do not have an email address, then the Registry will communicate with you by post.

The reception of the Registry is open from 8.30 am to 4.45 pm, Monday to Friday (excluding public holidays and the compulsory Christmas to New Year closure). Documents can be filed electronically at any time, however if sent after hours (after 5.00 pm) they will be accepted as being filed the next business day. You will be unable to file documents on public holidays, or closures, or outside of office hours.

3.5 How to complete the [Form 13](#)

[Form 13](#) requires that you fill out your name, address, and contact details. If you have a representative you must also provide that information.

You must also complete the sections with your Employer's details; the date that your employment commenced; the ground/s on which you are applying; the amount of long service leave that you are applying for; and you must sign the application and have your signature witnessed by a Justice of the Peace, a Commissioner for Declarations, or a Lawyer.

For more detailed information on what to include in your Form 13, please see part 5 of this guide.

3.6 What happens once your application is filed in the Registry?

Once your properly completed [Form 13](#) has been filed with the Registry, it will be processed. A new file will be created with your details and a matter number will be given to the file. The matter number will look like this: **EC/2021/712**

When contacting the Registry, be sure to use your matter number as a reference so your matter can be located easily. The Registry will also date stamp your Form 13. This means that it will be stamped and dated as in Figure 1.

The Industrial Registrar's date stamp represents the date of filing of the form in the Registry. If your form, or any other filed document, is received by the Registry after office hours (see above) then it will not be stamped until the next business day.



Figure 1 – Date Stamp

After your file is created the Registry will send you and your employer a stamped copy of the Form 13 (pages 1 to 3 only) and a directions order. This is the only instance where the Registry will send documents to other parties for you. The directions order is discussed below in 'Part 4: Directions order'.

You and your employer **must** comply with the directions order. The Commission will contact your employer or you if your employer or you fail to comply with a direction on time.

Unless there is great urgency, communication with the Commission via the Registry must be in written form (e.g. email) and copied to the other party/parties at the same time.

Part 4: Directions order

This part of the guide covers what a directions order is, explains the way in which they are issued, and provides further detail on particular terms and concepts within the directions order.

4.1 What is a directions order?

The Commission will organise your application around a directions order. A directions order is the roadmap for the conduct of your matter, it governs when documents are due to be filed, and which documents should be filed and served on other parties.

A directions order itself is a **formal document** which directs the conduct of a matter, it will set out in numbered steps what must be done, by when, and by which party.

You **must** comply with a directions order.

Failure to comply with a directions order can have negative consequences for your application.

4.2 The directions order

On the following page, inside the black box, is an example of a directions order which is issued by the Commission via the Registry after your Form 13 has been stamped and processed by the Registry.

The content of the directions order will depend on how much material you filed in support of your application.

The directions order can look intimidating at first, but once you read through it you may notice that it is broken down into clear steps for each of the parties to complete. The text following the directions order directs you to other parts of this guide for further detail.

4.3 What if you need more time to comply with the directions order?

If you are unable to comply with the timeframes of a directions order, then you must seek an extension from the Commission. An extension can be sought by putting the request in writing to qirc.registry@qirc.qld.gov.au and explaining why the extension is sought.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016

John Citizen
Applicant

Matter No. EC/2021/712

APPLICATION FOR PAYMENT OF LONG SERVICE LEAVE

DIRECTIONS ORDER

AFTER READING the application in the above matter filed on 24 February 2021, IT IS ORDERED:

1. That the **Employer** provide to the Industrial Registry AND to the Applicant, by **12 noon on [approx. 3 days after filing date] 2021** the completed statement [attached] containing the following information:
 - (a) the Employer's full business name, entity/group name, ABN and/or ACN (if applicable), responsible for the employment of the Applicant;
 - (b) the date the Applicant's continuous service with the Employer commenced;
 - (c) the present nature of the Applicant's employment e.g. part-time, full-time;
 - (d) the Applicant's present entitlement to long service leave (e.g. the full entitlement accrued to-date);
 - (e) the **Gross** and **Net** monetary value of the amount of long service leave applied for by the Applicant; and
 - (f) the title of the Industrial Instruments which apply to the Applicant (i.e. Award, Certified Agreement).
2. The **Applicant** is to advise the Industrial Registry AND the Employer by **12 noon on [approx. 1 day after order 2] 2021**, should they disagree with the information provided by the Employer.
3. Upon receipt of all information, the matter will be considered by a Member of the Queensland Industrial Relations Commission and determined on the papers, unless otherwise directed.

Dated 24 February 2021

Registry Officer
For the Industrial Registrar

Part 5: Form 13 explained

5.1 Details of your employment

At part 4 of Form 13, you will need to provide details in relation to your employment, such as:

- What date did you commence employment with your employer?
- What date did you become entitled to take long service leave?
- What are the grounds on which you are applying?
- What is the amount of Long Service Leave you are applying for?

This information is important in determining your eligibility or entitlement to receive a payment in lieu of taking your long service leave.

Long service leave can only be paid out if:

- the industrial instrument (e.g. Award/Agreement) allows for it; or
- by making an application to the Commission (Form 13) for compassionate reasons or on the grounds of financial hardship and can only be made once the employee has qualified for a leave entitlement (for example, has completed 10 years continuous service with the employer).

To check if you have an entitlement to have your long service leave paid out, contact the Industrial Relations Infoline on 07 3406 9999

5.2 Why do I need to have my signature witnessed?

In order to attest to the contents of your application being true and correct, it is important to make sure that you sign your application and have your signature witnessed by either a Justice of the Peace, Commissioner for Declarations or a Lawyer.

You will most likely find a Justice of the Peace or a Commissioner for Declarations at a bank, or a post office. Should you wish to file your application in person at the Industrial Registry, there may be a Justice of the Peace or Commissioner for Declarations who will be able to witness your signature also. Alternatively, you can search for a Justice of the Peace or a Commissioner for Declarations who is nearest to you at: [Queensland Government - Find a Justice of the Peace](#)

5.3 The grounds on which the application is made

In your application, at Schedule 1, you must identify the reasons/ground on which you are applying for the long service leave payment. You must also provide detail on **why** you are applying, expanding on the previously indicated financial hardship and/or compassionate reasons.

Please note that this information will not be provided to your employer, however this information is important for the Commission to consider in the determination of your application.

5.4 List of assets and liabilities & List of income and expenditure

In order to approve your application, the Commission needs to be satisfied that you are in financial hardship and/or need to access a payout of your long service leave on compassionate grounds. The provision of a 'snapshot' of your current financial position will assist the Commission. Part 2 of Schedule 1 of Form 13 lays this out for you in table form.

Please note that this information will not be provided to your employer, however this information is important for the Commission to consider in the determination of your application.

Assets are things that you own. An asset can be any of the following:

- House
- Car
- Caravan
- Furniture and contents
- Shares
- Money in the bank
- Investment property etc.

There are many types of assets. Anything that could generate money if sold could be an asset. The list above is only an example.

Liabilities are debts or monies that you owe. The following non-exhaustive list is of things which are liabilities:

- Amount left to pay on mortgage
- Personal Loan
- Credit Card Debt
- Car Loan

Income is anything which creates money for you on a regular basis. The following non-exhaustive list is of things which could be considered income:

- Salary/wages from employment
- Dividends paid by shares
- Interest generated from money in accounts
- rental property income etc.

Make sure to attach copies of two recent payslips as proof of your current income

Expenditure is anything that causes you to spend money. These things might be, but are not limited to:

- Mortgage repayments
- Rent
- Bills
- Groceries
- Living expenses
- Car Maintenance
- Council Rates or Body Corporate Fees
- School Fees
- Entertainment/Dining Out
- Professional Memberships
- Clothing
- Insurance
- Medical Costs, etc.

5.5 What if my portable long service leave is kept with QLeave?

Portable long service leave is available to employees in the building and construction, contract cleaning, and community services industries. The nature of these industries may mean that employees could work for multiple employers over a period of time. The portable long service leave scheme allows employees working in those industries to accrue a long service leave entitlement.

If you are employed in any of those industries, and your long service leave is held by QLeave, please check with QLeave as to whether you are eligible to apply for a payout of your long service leave.

QLeave	
Website: www.qleave.qld.gov.au	Phone: 1300 753 283

5.6 What information will my employer be required to supply?

Upon receipt of your application, your employer will be requested to provide the following information to confirm the information contained within your application:

- the employer's full business name and ABN/ACN (if applicable);
- confirm the date the applicant's continuous service with the employer commenced;
- confirm the present nature of the applicant's employment (part-time/full-time);
- the applicant's present entitlement to long service leave (e.g. the full entitlement accrued to date, represented in hours, days, weeks);
- confirm the gross and net monetary value of the amount of long service leave applied for by the applicant;
- the title of the industrial instrument applying to the applicant's employment (e.g. Award/Agreement).

5.7 Filing and serving documents

It is important to understand what 'file' and 'serve' mean as they are sometimes used by the Registry and people who work at the Commission.

File—means that you must provide the document stated in the directions order to the Registry. You must do this in the way that the Registry or Member (via directions order) requires.

Serve—means that you must effectively provide a document stated in the directions order to the other party or parties in the matter. You must make sure that the other party or parties have a copy of the document. Effective service is your responsibility.

(For further details regarding service, please refer to the *Industrial Relations (Tribunals) Rules 2011*, Part 2, Division 2, Subdivision 3).

Checklist:

- Sign pages 1, 2 and 3 and have your signature witnessed by a Justice of the Peace (JP), a Commissioner for Declarations or a Lawyer on each of pages 1, 2 and 3.
- Provide your reasons/grounds for making the application by completing page 4.
- Provide an outline of my current financial situation by completing page 5.
- Attach copies (originals not required) of two recent pay slips as proof of my current income.
- Attach copies (originals not required) of documents in support of my application (e.g. bank/credit card statements, letters of demand, current bills).
- Check that you have entitlement to payment instead of taking long service leave (e.g. have completed at least 10 years of continuous service).

To check your long service leave entitlements, speak with your employer, or contact the **Industrial Relations Infoline on 07 3406 9999**.

If your portable long service leave is held by **QLeave**, please contact them on **1300 753 283**.

Please remember:

Should your application be approved:

- Your long service leave entitlement balance will be reduced by the amount of days/weeks you have requested to have paid out and you will have no further claim to that entitlement.
- Your payment instead of taking long service leave is calculated at the ordinary rate of pay and will be subject to appropriate taxation provisions.

Part 6: Order for payment

If a Member of the Commission agrees that you are suffering from financial hardship or that you have established compassionate grounds for the making of an order, then an order will be made and sent to both yourself and your employer.

Your employer must comply with the order. If your employer does not comply with the order, then you should inform the Commission. The Commission will then review the situation and act accordingly. The Commission has power to enforce the order.

Frequently Asked Questions

Does it cost anything to make an application?

It costs nothing to make an application for a payout of long service leave.

Am I eligible to apply?

The Industrial Registry are not able to provide advice with regards to eligibility. For information regarding your long service leave entitlements, you may wish to contact the ***Industrial Relations Infoline*** on 07 3406 9999.

If you have your long service leave through ***QLeave***, you may wish to contact them regarding your eligibility - 1300 753 283.

What is financial hardship or compassionate grounds?

There is no set definition for 'financial hardship' or 'compassionate' grounds. Generally, Applicants who are entitled to access their Long Service Leave in this way, and who are experiencing difficult times, or financial hardship, can apply to the Commission.

Applications are granted for various reasons, and some of the more common reasons can include:

- overdue bills
- credit card debts
- outstanding mortgage or loan repayments
- rent in arrears, or pending eviction
- funeral costs
- medical or surgical costs
- separation or divorce
- other unexpected family or life events
- other unforeseen circumstances.

If your reason for applying is because of financial hardship then you must attach evidence to your affidavit that demonstrates your financial position – the list of income, expenditure, assets, is an effective way of quickly summing up your finances.

How long does my application take to process?

This depends on many factors including whether you have a valid application, the time it takes for both yourself and your employer to respond to the Directions Orders, and other unforeseeable delays. Generally, a valid application made without any delays can take up to four weeks until funds become available to you. These types of applications are treated as a matter of priority.

Do I have to come to the Commission?

Most applications are decided on the material that has been filed. However, in a few instances the Commission may wish to speak with you about your application to clarify some points or request further information. The conferences are usually informal and conducted over the phone.

If you have any further enquiries, please contact the Industrial Registry

Website: qirc.registry@qirc.qld.gov.au

Phone: 1300 592 987

Appendix A – Practice Direction - Electronic filing and hard copies of documents

PRACTICE DIRECTION NUMBER 3 OF 2021

INDUSTRIAL REGISTRAR

ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

This Practice Direction applies to all documents sought to be filed with the Industrial Registry.

This Practice Direction must be complied with. However, the Industrial Registrar may, in appropriate circumstances, waive compliance with this Practice Direction. The Industrial Registrar may also stipulate other requirements for the filing of documents in addition to those contained in the *Industrial Relations (Tribunals) Rules 2011* (Qld).

In this Practice Direction:

electronically file—means to file by electronic or computer-based means.

soft copy—means a document in a non-printed, electronic or computer-based format.

hard copy—means the original or printed version of a document.


page—means a page conforming to rule 13 of the *Industrial Relations (Tribunal) Rules 2011* (Qld).

1. A person may only electronically file a soft copy of a document with the Industrial Registry that is 30 pages or fewer in length.
2. If a soft copy of the document which a person seeks to electronically file is more than 30 pages, then the document will not be accepted for filing until a hard copy of the document is supplied to the Industrial Registry.
3. If a person seeks to electronically file more than one document at a time, or within a short period of time, and the combined length of the documents is more than 30 pages, then the documents will not be accepted for filing until a hard copy of each document is supplied to the Industrial Registry.
4. If a person is required to file a hard copy of a document as a consequence of 2 or 3 above, then the document will only be filed upon receipt of the hard copy by the Industrial Registry.
5. A document will only form part of the file once it is accepted for filing.
6. This Practice Direction will commence operation immediately.


M.P. Shelley
Industrial Registrar
24 March 2021

Contacts:

 www.qirc.qld.gov.au

 1300 592 987

 qirc.registry@qirc.qld.gov.au

 Level 21, Central Plaza 2, 66 Eagle Street, Brisbane