

# Workers' compensation appeal guide

Queensland Industrial Relations Commission



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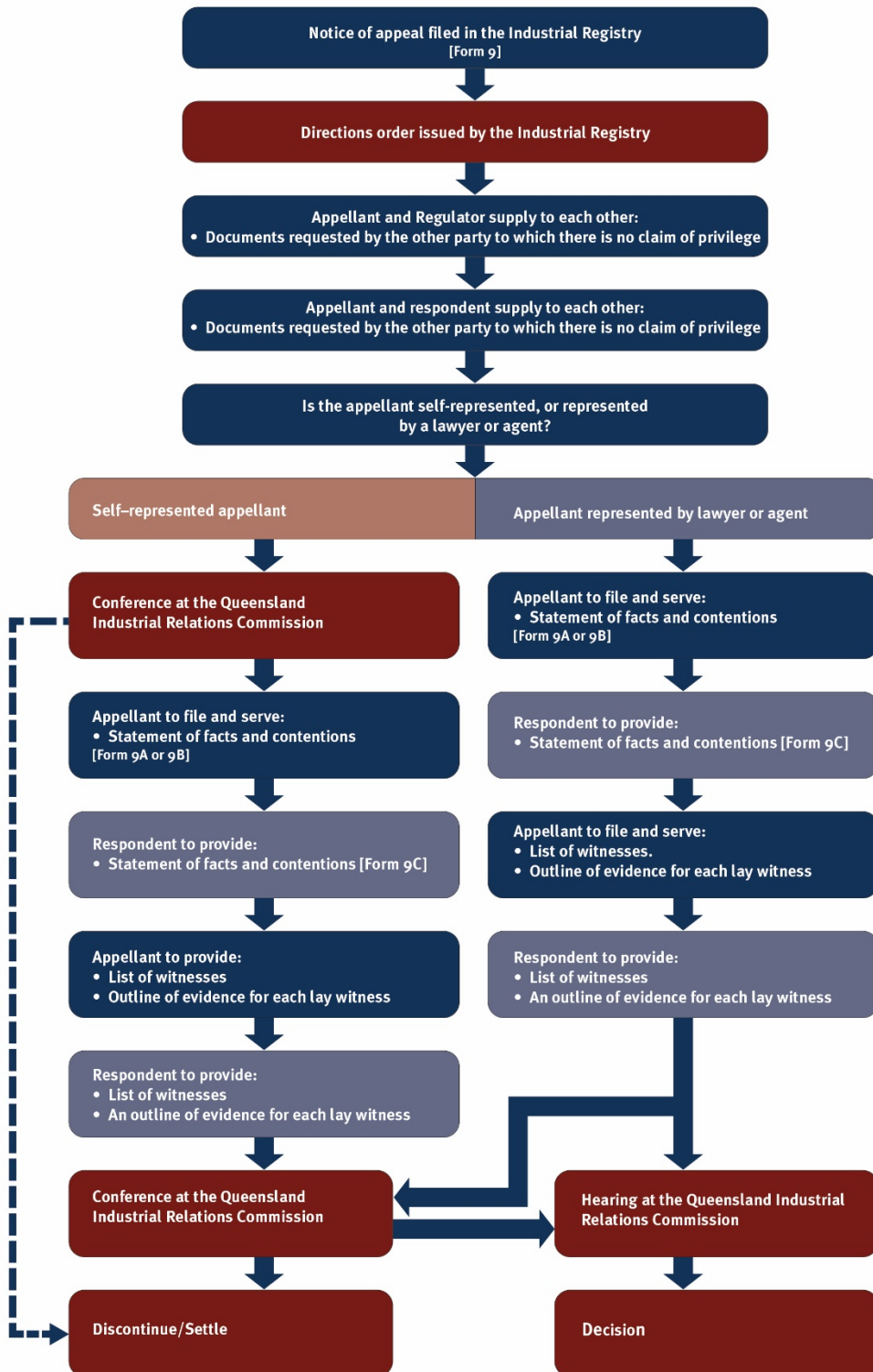
## Table of contents

Overview .....	6
Part 1: Purpose.....	7
Part 2: Introduction and overview .....	8
2.1 What is the Queensland Industrial Relations Commission? .....	8
2.2 What is the Industrial Registry? .....	9
Part 3: Appeals to the Commission .....	10
3.1 What is an appeal?.....	10
3.2 Basis of an appeal .....	10
3.3 Who are the parties to an appeal? .....	10
3.4 Are there any time limits?.....	11
3.5 How to Appeal – Form 9 Notice of Appeal .....	11
3.5.1 Completing the Notice of Appeal [Form 9].....	12
3.6 What happens once the notice of appeal is filed in the Registry? .....	13
3.7 Filing and serving documents .....	13
Part 4: Directions order.....	14
4.1 What is a Directions Order?.....	14
4.1.1 Types of Directions Order .....	14
4.2 Example of first Directions Order .....	15
4.3 Example of Further Directions Order.....	16
4.4 What if you need more time to comply with the Directions Order?.....	17
4.5 Disclosure - List of documents and copies of documents.....	18
4.5.1 List of documents.....	18
4.5.2 Copies of documents .....	18
4.5.3 Non-party documents .....	19
4.5.4 Disclosure (document lists and copies) - Example.....	19
4.6 What is a Statement of Facts and Contentions?.....	20
4.7 What kind of facts and contentions should I include?.....	21
4.7.1 Physical injury and/or secondary psychiatric/psychological injury to a physical injury .....	21
4.7.2 Psychiatric and/or psychological injury which can be excluded if it arose out of, or in the course of, reasonable management action taken in a reasonable way .....	21
4.8 List of stressors – for psychological or psychiatric injuries .....	22
4.9 List of names of all witnesses.....	23
4.10 An outline of the evidence.....	23
4.11 Expert Reports .....	24

4.12 What is a trial plan? .....	24
Part 5: Conferences.....	25
5.1 What is a section 552A conference?.....	25
5.2 What can I expect at a conference? .....	26
Part 6: Notices.....	27
6.1 The notices.....	27
6.2 What are the different notices for? .....	27
6.2.1 Obtaining documents.....	27
6.2.2 Attendance at the Commission.....	28
6.2.3 Forms .....	28
Part 7: Hearings.....	29
7.1 How do I get to a hearing?.....	29
7.2 What is a mention? .....	29
7.3 What do I need to prove? .....	30
7.3.1 Physical injuries.....	30
7.3.2 Psychiatric and/or psychological disorders.....	30
7.4 The hearing .....	31
7.5 Preparing for a hearing .....	32
7.6 How does oral evidence work?.....	32
7.6.1 Evidence-in-chief.....	33
7.6.2 Cross-examination .....	33
7.6.3 Re-examination .....	33
7.6.4 Remainder of the witnesses for the Appellant .....	33
7.6.5 Expert evidence.....	34
7.6.6 Respondent's case.....	34
7.7 Submissions.....	34
Part 8: Decisions.....	35
8.1 Publication of decisions .....	35
Part 9: Appealing a decision of the Commission.....	36
9.1 How do you appeal to the Industrial Court of Queensland? .....	36
Part 10: Costs .....	37
10.1 Witness attendance, allowances, expenses, and conduct money .....	37
Part 11: The model litigant principles .....	38

Part 12: Etiquette and communications .....	39
12.1 General points.....	39
12.2 Communicating with the Registry or the Commission .....	40
Part 13: Finding legislation, cases, advice, and resources .....	41
13.1 Legislation .....	41
13.2 Cases .....	41
13.3 Advice and Resources .....	41
13.4 Interpreters .....	42
Part 14: Glossary .....	43
14.1 Frequently used terms .....	43
Appendix A – Practice Direction 3 of 2021 - Electronic Filing and Hard Copies of Documents.....	45
Appendix B – Codes of conduct .....	46

# Overview: Workers' Compensation Appeal



## Part 1: Purpose

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

This guide sets out an overview of the procedures that the Queensland Industrial Relations Commission (Commission) usually adopts when managing workers' compensation appeals under s 549 of the [Workers' Compensation and Rehabilitation Act 2003](#) (Qld).

At the back of this guide there is a glossary of terms which are commonly used throughout the guide and at the Commission.

**These black boxes indicate items of importance.**

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 Appellant 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
- Trading hours
- Work, health and safety reviews
- Wage recovery
- Long service leave payment applications
- Other matters prescribed under various acts.

In dealing with most of those jurisdictions the Commission holds conferences to assist parties to understand each other. Conferences are generally more informal. Matters that do not settle at conference usually go to a hearing. A hearing is a formal process presided over by a Member of the Commission.

There are four types of Members at the Commission:

- The President (who is also a judge of the Supreme Court of Queensland);
- Vice President;
- Deputy President; and
- Industrial Commissioners.

When addressing a Member of the Commission at a hearing or in a conference:

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

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

Each Member has an Associate. The Associate's role is to assist the Member in their duties. Associates are unable to provide legal advice. Associates are responsible for the administration of a Member's Chambers.

Associates should only be directly contacted if the matter is urgent or if directed by a Member.

All communication should be made through the Industrial 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 documents are filed for a matter. The Registry is headed by the Industrial Registrar and is supported by the Deputy Registrar and staff of the Registry (Registry Officers). The Commission and Registry are located at:

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

The staff of the Registry cannot provide parties with legal advice, but they can assist you with information concerning procedures of the Court and Commission.

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

**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 3: Appeals to the Commission

This part of the guide covers appeals to the Commission. How to appeal, time limits for appealing and other topics related to commencing an appeal. Generally, it is important to consider your conduct during your appeal. See Appendix B for more detail about the Codes of Conduct.

### 3.1 What is an appeal?

Appeals to the Commission are appeals against decisions made by the Workers' Compensation Regulator (Regulator). Appeals are governed by Part 3 of Chapter 13 of the *Workers' Compensation and Rehabilitation Act 2003 (Qld)*.

### 3.2 Basis of an appeal

Workers' compensation appeals are conducted on a *de novo* basis. This means that the matter is heard from the beginning and that the Commission can consider new or fresh evidence obtained during the appeal process and is not limited to the information that was before the previous decision maker (e.g. WorkCover Queensland). It is important to remember that the Commission will make its decision based on all of the evidence presented during the hearing.

The Commission does not revisit the decisions of WorkCover Queensland/self-insurer and/or the Regulator, or review the correctness of those decisions.

If you are unhappy with a review decision made by the Regulator, then you may appeal the decision to the Commission.

### 3.3 Who are the parties to an appeal?

A claimant, worker or employer may appeal the decision of the Regulator.

The person who files the appeal is called the Appellant. In most cases the Appellant will be the claimant or worker who is the subject of the appeal. This means that you, as the worker who is appealing, will be called the Appellant.

The party who is resisting the appeal is called the Respondent. The Regulator is a Respondent in all workers' compensation appeals as all of the appeals arise from decisions made by the Regulator.

There can be more than one Respondent. For example, if the employer is the Appellant and the claimant or worker wishes to be a party to the appeal there will be two respondents. The Regulator will be the First Respondent and the claimant or worker will be the Second Respondent.

Employers are not permitted to be the respondents in an appeal made by a claimant or worker.

### 3.4 Are there any time limits?

There are time limits on appealing decisions of the Regulator or an insurer.

**Within 20 business days** of the day that you receive notice of the Review Decision, you must file a notice of appeal with the Registry.

See s 550 of the *Workers' Compensation and Rehabilitation Act 2003*.

If you are unable to file your notice of appeal within the appropriate time frame, you may ask the Respondent to allow you further time to appeal. To do this, you will need to contact the Regulator and ask them whether they will allow you further time to file. The Regulator will inform you of the information you need to provide them when requesting an extension to file a notice of appeal.

Should you need to contact the Regulator regarding an extension of time request, you can email them at [appeals@oir.qld.gov.au](mailto:appeals@oir.qld.gov.au).

### 3.5 How to Appeal – Form 9 Notice of Appeal

Appeals commence at the Commission by filing a [Form 9](#) - Notice of Appeal. You can access Form 9 from [qirc.qld.gov.au](http://qirc.qld.gov.au) under the 'Forms' tab, or from the Workers' Compensation Appeals page.

Form 9 and all other forms can be filed at the Registry via the following methods:

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

The general requirements with regards to documents for filing can be found at [rule 13 - Industrial Relations \(Tribunals\) Rules 2011](#).

If you are filing a document by email and what you are filing is quite large (over 30 pages), the Registry may require you to also provide hard copies.

See: **APPENDIX A** to this guide, **Practice Direction 3 of 2021 - Electronic Filing and Hard Copies of Documents**.

In most instances, the Registry will communicate with you by email. If you have not provided an email address, the Registry will be in contact with you requesting that you provide an appropriate email address. If you do not have an email address, 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.

### 3.5.1 Completing the Notice of Appeal [Form 9]

Providing the appropriate amount of information in the Form 9 is important. Too much information may make it difficult for the Respondent and the Commission to understand your appeal. The efficient use of information is important in understanding why you have appealed the Regulator's decision and why your appeal should be allowed.

Form 9 requires that you state the decision being sought, clearly and concisely.

The Form also requires that you complete a number of sections.

Section 5 'Grounds of the appeal' asks you to state the grounds on which you are appealing. This means that you should set out why you think the Regulator's decision is incorrect. A ground of appeal is where you outline what the error is and how it is wrong.

For example, did the Review Officer rely on incorrect information, known as a factual error; or, did the Review Officer rely on the wrong section of the legislation or the wrong legal decision, which is known as a legal error.

In section 6 'Facts relied on' you should state, as simply as possible, the facts which are relevant to your matter. Relevance is the key thing you need to consider as not all facts are relevant. For example, you may think that the Commission needs to know your entire employment history, but this may not be relevant to your appeal.

**Do not attach supporting documents to Form 9, other than the Regulator's decision.**  
Your supporting documents will not be accepted for filing at this time.

You will have an opportunity to provide relevant documents to support your matter throughout the process.

### 3.6 What happens once the notice of appeal is filed in the Registry?

Once your completed Form 9 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: WC/2021/800.

When contacting the Registry use your matter number so your file can be located easily. The Registry will also date stamp the Form 9. 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 is received by the Registry after office hours (see Part 3.5) 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 the Respondent a stamped copy of the Form 9 and a Directions Order. This is the only instance where the Registry will send documents to other party or parties for you. For more information about the Directions Order see Part 4 of this guide.

### 3.7 Filing and serving documents

There are a number of references in the Directions Orders below to 'file' and 'serve'. It is important to understand what these terms mean.

**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).

## 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 Orders that are issued in workers' compensation appeals.

### 4.1 What is a Directions Order?

The Commission administers its matters via Directions Orders. Directions Orders are the 'road-map' for how your appeal will be conducted; when documents are due to be filed; which documents should be filed and provided to other parties; and, when you will need to come to the Commission for a conference or hearing.

A Directions Order is a formal document which directs the conduct of a matter. It is signed and sealed by either a Registry Officer, the Industrial Registrar, or a Member of the QIRC and sets 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 appeal.

#### 4.1.1 Types of Directions Order

There are several types of directions orders, all of which need to be complied with, the main being the standard directions order and a further directions order.

'Further' means another directions order.

Additional further directions orders will be numbered. Do not be alarmed if you see Further Directions Order No. 2, this is only done so parties can keep track of the most recently issued directions.

## 4.2 Example of first Directions Order

On the following page inside the black box, is a copy of the Directions Order which is issued by the Registry after your Form 9 has been stamped and processed by the Registry. That Directions Order is

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

*Workers' Compensation and Rehabilitation Act 2003*

John Citizen  
*Appellant*

v

Workers' Compensation Regulator  
*Respondent*

*Matter No. WC/2021/800*

**APPEAL AGAINST DECISION OF RESPONDENT PURSUANT TO SECTION 549**

**DIRECTIONS ORDER**

AFTER reading the Appeal in the above matter filed on 6 March 2021, IT IS ORDERED:

1. That the Appellant supply to the Respondent **by 4.00 pm on 3 April 2021**, a **list of documents** in their possession or under their control directly relevant to a matter in issue in the proceeding.
2. That the Respondent supply to the Appellant **by 4.00 pm on 3 April 2021**, a **list of documents** in their possession or under their control directly relevant to a matter in issue in the proceeding.
3. That the Appellant supply to the Respondent, **by 4.00 pm on 9 April 2021**, **copies of those documents** contained in the list disclosed which the Respondent requests for which the Appellant has no legal claim to privilege. Copies of documents already provided to the Respondent in the Review or Appeal process need not be further copied and provided.
4. That the Respondent supply to the Appellant, **by 4.00 pm on 9 April 2021**, **copies of those documents** contained in the list disclosed which the Appellant requests for which the Respondent has no legal claim to privilege. Copies of documents already provided to the Appellant in the Review or Appeal process need not be further copied and provided.
5. That there be a section 552A conference before Deputy President Smith at the Queensland Industrial Relations Commission, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane **on 19 April 2021 at 11:00 am**. The Industrial Registry is located on Level 21, 66 Eagle Street, (Cnr Elizabeth and Creek Streets) Brisbane.

Dated 9 March 2021

Delegated Officer  
for the Industrial Registrar

an example of the first Directions Order issued in a workers' compensation appeal. 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.

For more information: 'List of documents' see Part 4.5.1.

'Copies of those documents' see Part 4.5.2.

### 4.3 Example of Further Directions Order

The layout and requirements contained within a Further Directions Order will be dependent upon whether or not parties are legally represented.

Please note, further directions orders may 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.

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

*Workers' Compensation and Rehabilitation Act 2003*

John Citizen  
*Appellant*

v

Workers' Compensation Regulator  
*Respondent*

*Matter No. WC/2021/800*

**APPEAL AGAINST DECISION OF RESPONDENT PURSUANT TO SECTION 549**

**FURTHER DIRECTIONS ORDER**

AFTER the conference held on **19 April 2021**, IT IS ORDERED:

1. That the Appellant is to file in the Industrial Registry and serve on the Respondent a **Statement of Facts and Contentions** detailing clearly and concisely the key facts upon which the Appellant relies and the contentions that the Appellant believes should be drawn from those facts **by 4.00 pm on 17 May 2021.**

**NOTE:**

- a. For psychiatric/psychological injuries, facts must include a concise **List of Stressors** the Appellant asserts led to the sustaining of the psychiatric/psychological injury.
  - b. Other than a **List of Stressors**, there should be no supporting or additional documents attached to the **Statement of Facts and Contentions**. Supporting or additional documents attached to the form will not be accepted for filing in the Industrial Registry.
2. That the Respondent is to file in the Industrial Registry and serve on the Appellant a **Statement of Facts and Contentions** detailing clearly and concisely the key facts upon which the Respondent relies and the contentions that the Respondent believes should be drawn from those facts **by 4.00 pm on 14 June 2021.**

**NOTE:**

There should be no supporting or additional documents attached to the **Statement of Facts and Contentions**. Supporting or additional documents attached to the form will not be accepted for filing in the Industrial Registry.

3. That the Appellant file in the Industrial Registry and serve on the Respondent a **list of names of all witnesses** to be called by the Appellant in the hearing, **by 4.00 pm on 5 July 2021.**
4. That the Appellant serve on the Respondent, but not file in the Industrial Registry, an **outline of the evidence** to be given by each lay witness at the hearing (one A4 page per witness), as well as any **expert reports** that will be relied upon **by 4.00 pm on 5 July 2021.**
5. That the Respondent file in the Industrial Registry and serve on the Appellant a **list of the names of all witnesses** to be called by the Respondent in the hearing, **by 4.00 pm on 26 July 2021.**



6. That the Respondent serve on the Appellant, but not file in the Industrial Registry, an **outline of the evidence** to be given by each lay witness at the hearing (one A4 page per witness), as well as any **expert reports** that will be relied upon **by 4.00 pm on 26 July 2021**.
7. Once all directions have been finalised, the Appellant is to contact the Industrial Registry in order to proceed to a second s 552A conference, or to hearing.

Dated 20 April 2021

Delegated Officer  
for the Industrial Registrar

Please note that should your representation status change at any time throughout the process, your Further Directions order may be amended by the Member who has carriage of the matter, to better suit the circumstances.

For more information about: 'Statement of Facts and Contentions' see Part 4.6.  
'List of stressors' see Part 4.8.  
'List of names of all witnesses' see Part 4.9.  
'An outline of evidence' see Part 4.10.  
'Expert reports' see Part 4.11.

#### 4.4 What if you need more time to comply with the Directions Order?

If you are unable to comply with the Directions Order in the time specified, you must seek an extension from the Commission. An extension can be sought by submitting the request in writing to [girc.registry@girc.qld.gov.au](mailto:girc.registry@girc.qld.gov.au) and explaining why the extension is sought. A brief email will be sufficient.

You should also ask the other party, or parties, whether they consent to the extension of time. Within your request for extension you must inform the Registry or the Commission of the other party or parties' attitude to the extension, if known.

If they consent to the extension, depending on the circumstances, then the extension will most likely be allowed. If the extension is not consented to, the Commission will determine whether or not the extension should be allowed. The Commission may request that the parties provide further information.

## 4.5 Disclosure - List of documents and copies of documents

'**Disclosure**' refers to the process of providing relevant documents to other parties. This may include the list of documents and copies of those documents.

Disclosure is carried out by the provision of a **list of documents**.

A **document** is not just a paper document it can also mean:  
tape recordings, videos, CCTV footage, e-mails etc.

### 4.5.1 List of documents

Parties in a matter must advise each other of all the documents in their possession, or have under their control, and which are relevant to the matter. This may be done using a [Form 23 - List of Documents](#). Unless otherwise directed, this form should only be exchanged between the parties and not filed in the Registry. If you do not have a copy of a particular document, then you should not tell the other parties that you have it.

'**In their possession**' refers to ownership of the document. A document that a party possesses is one that they own.

'**Under their control**' of the person includes documents that the party has the power or authority to retrieve. Thus, relevant documents held at the office of a party's accountant or solicitor, or relevant documents held by the Respondent would have to be listed.

A document is directly relevant if it relates to an issue which is in dispute between the parties and which has the potential to advance one party's case or damage the other party's case.

The list should allow the other parties to identify the documents specifically but not necessarily to know its content. It does not need to be in a great level of detail.

Consider how you would like the list of documents that you will receive from the other parties to look and how much information you would need in order to tell whether you would need a copy of the document. You should put a similar amount of detail into the list that you prepare.

### 4.5.2 Copies of documents

Once the parties have exchanged their respective list of documents, they will have an opportunity to consider whether they would like copies of any of the documents in the list provided.

If you would like a copy of a document, or documents, then you must write to the relevant party and ask them for the document. A copy of the document must be provided unless the party who listed it claims that it is subject to privilege. You will be unable to obtain a document if it is subject to privilege.

'**Privilege**' is often a term used to describe whether a party has a right to resist providing the other party with material. It is often referred to as legal professional privilege or client legal privilege and is a mechanism designed to protect certain communications and advice from disclosure, thereby encouraging a free exchange of communication between a client and the lawyer acting for a client.

The parties **must** provide copies of the documents by the time and date specified in the directions order.

#### 4.5.3 Non-party documents

During the process you may need to request documents from individuals or organisations (apart from the Respondent), which may assist in the preparation of your matter proceeding to hearing. As they are not a party to your matter, they are collectively known as '**non-parties**'. In order to obtain this information, you need to file in the Registry, for approval, a [Form 29](#) - Notice of Non-Party Disclosure.

Any **Non-Party Disclosure** should be sought as soon as possible. Any delay in obtaining or receiving directly relevant documentation will mean this material will may not be available to a party when drafting their list of documents or their statement of facts and contentions.

Once the Form 29 has been approved by the Commission or the Registrar, the notifying party (i.e. the party who filed the Form 29) must then serve the Notice of Non-party Disclosure on the party requested to provide the documents ('**requested party**') and also on any person who may have an interest in the requested documents and/or who may be affected if the requested documents are provided ('**affected party**'). See Part 7.6 of this guide for more information about the Notice of Non-Party Disclosure and other notices.

#### 4.5.4 Disclosure (document lists and copies) - Example

For example, an injured worker may say that their injury arose from their employment because of the way they were treated when being disciplined by their managers, but the employer may say that the treatment was reasonable and that, therefore, the injury is not capable of being compensated. As the issue in dispute is whether the injured worker has been treated reasonably while being disciplined, documents that may be relevant will be those such as show cause notices, letters relating to the disciplinary process, meeting agendas and notes, emails about the discipline, and documents relating to events that led up to the worker being disciplined.

Similarly, the Workers' Compensation Regulator will list all of the documents they consider are relevant in the appeal. These documents usually come from the workers' compensation claim file (the WorkCover Queensland claim file), documents that were submitted to the Review Unit of the Regulator and sometimes documents that the Regulator has requested after the appeal is filed.

The injured worker may review the Respondent's list of documents and notice that they do not have copies of some of the documents or may not have seen some of the documents before. The injured worker should then request copies of those documents that they wish to be provided with. The Respondent will do the same thing. The parties must then provide each other with the respective documents requested by the deadline set out in the Directions Order. Remember, you will not be able to obtain documents if they are covered by a type of privilege (see Part 4.5.2).

#### 4.6 What is a Statement of Facts and Contentions?

A 'Statement of Facts and Contentions' allows the Commission to quickly understand the key facts and arguments which are relevant to the matter. It helps to narrow the issues and expedite the conduct of matters. In some instances, the parties may even agree on the facts after having both provided their respective statements of facts and contentions.

The issues that must be clearly set out in a Statement of Facts and Contentions are:

- the key facts upon which the party relies;
- the contentions that the party believes should be drawn from those facts.

When drafting a Statement of Facts and Contentions, you must summarise the contentious issues between the parties in a clear and concise manner.

A Statement of Facts and Contentions should not include lengthy extracts and summaries from medical reports and/or other evidence that the party wishes to rely upon. However, it may be useful to make general reference to reports or evidence (if available) to support an asserted fact.

You will be bound by the content of your Statements of Facts and Contentions. As will the other party or parties. You will not be allowed to depart from the statement filed. You will not be able to amend the statement without the approval of the Commission.

Any application to amend a Statement of Facts and Contentions must be made at least seven days prior to the commencement of the hearing. If the amendments are significant then you may encounter some opposition. The Commission may allow or disallow a proposed amendment.

There are two different forms used in the Commission by the Appellant in relation to Statements of Facts and Contentions, depending upon the injury:

- **Form 9A - Appellant's statement of facts and contentions psychiatric and/or psychological injuries** - if your appeal relates to a psychiatric or psychological injury; and
- **Form 9B - Appellant's statement of facts and contentions physical and/or psychiatric/psychological secondary injuries** - if your appeal relates to a physical injury or a

psychiatric or psychological injury which arose from a physical injury you sustained during the course of your employment.

**Do not attach supporting documents to your Statement of Facts and Contentions.**

Your supporting documents will not be accepted for filing at this stage.  
The only thing which you may attach to your form is your **list of stressors**.

#### 4.7 What kind of facts and contentions should I include?

The following lists are examples of the most common issues in dispute between parties in appeals. The lists are not exhaustive, and your matter may concern different, or extra, topics than those outlined below.

##### 4.7.1 Physical injury and/or secondary psychiatric/psychological injury to a physical injury

- whether the Appellant was a worker within the meaning of [s 11](#) of the Act;
- whether the Appellant sustained an injury within the meaning of [s 32](#) of the Act;
- whether any physical injury was an aggravation of a pre-existing injury;
- whether any physical injury (or aggravation) arose out of, or in the course of, employment;
- whether employment is a significant contributing factor to any physical injury (or aggravation);
- whether the psychiatric injury is a secondary injury to any physical injury or whether it is a stand-alone injury;
- whether the psychiatric injury arose out of, or in the course of, employment; and/or
- whether employment was a significant contributing factor to the psychiatric injury.

##### 4.7.2 Psychiatric and/or psychological injury which can be excluded if it arose out of, or in the course of, reasonable management action taken in a reasonable way

- whether the Appellant was a 'worker' within the meaning of [s 11](#) of the Act;
- whether the Appellant sustained an injury within the meaning of [s 32](#) of the Act;

- whether the psychiatric injury arose out of or in the course of employment;
- whether employment was a significant contributing factor to the psychiatric injury;
- whether the psychiatric injury is excluded because it arose out of/or in the course of reasonable management action taken in a reasonable way; and/or
- whether the psychiatric injury is excluded because of the perception of the worker's expectation or perception of reasonable management action being taken against the worker.

If you are a 'worker' as defined in [s 11](#) of the *Workers' Compensation and Rehabilitation Act 2003*, then you will need to identify each and every work event that you assert led to the sustaining of the psychiatric/psychological injury for which you claim workers' compensation in your Statement of Facts and Contentions.

#### 4.8 List of stressors – for psychological or psychiatric injuries

Unlike physical injuries, where it can be relatively easy to pinpoint the cause or particular activity which led to the injury, psychological and psychiatric injuries can occur over a lengthy period of time and may involve many different factors. Because of this, the Commission requires that you identify the factors, known as **stressors**, which caused your psychological or psychiatric injury. You must include a **list of stressors** in your facts. If your list of stressors is too long for the facts section of the form, then you will be allowed to attach the list to your form – this is the only thing which you may attach to your form.

Your list of stressors must state the individual events and issues which caused your injury. The stressors must be numbered, and must identify the matter number, and the parties in the matter. It is not an opportunity for you to give a lengthy outline about why your appeal should succeed.

The Member who hears your matter will use the list to guide proceedings. The list also acts as a useful guide for the Member to understand which issues may have contributed to your injury.

Your list should set out the stressors, which you say led to your injury, into easy to read and understandable pieces. The list must also:

- identify the stressors numerically;
- provide a date, or date range, for each stressor;
- provide a short title for each stressor; and
- briefly describe each stressor.

Here is an example of how you can set out your list of stressors:

Matter No. WC/2021/800 Citizen v Workers' Compensation Regulator			
No.	Date	Title	Description
1	28.02.17	February assault	Mr. Bloggs, my direct supervisor, assaulted me at a workplace function. The function was to celebrate meeting targets. The function started at 6pm. Ms. Jones, Ms. Smith, and Mr. Green, all saw the assault. The assault occurred at 10pm in the office kitchen.
2	3.03.17	March confrontation	Mr Bloggs came to my desk at 10:30am and yelled at me for not having finished the February report by the deadline. Other people witnessed this event. I felt terrible after he yelled at me and went home sick immediately after he left my desk.
3	Etc.	Etc.	Etc.

#### 4.9 List of names of all witnesses

The **list of names of all witnesses** should state the full names of all persons you will be calling to provide evidence in support of your case at the hearing (there is no set form for this). The people who will be on your list of witnesses should be reflected in the facts set out in your Statement of Facts and Contentions.

If you fail to call someone who could provide relevant evidence to your matter it may count against your case.

How you extract evidence from witnesses, and evidence generally, is covered at Part 7.6 of this guide.

#### 4.10 An outline of the evidence

The Further Directions Order requires that you serve on the Respondent an '**outline of evidence**' to be given by each lay witness at the hearing (one A4 page per witness). This means that for each witness you call, who is not an 'expert' (doctors, psychologists, psychiatrists, etc.), you will need to provide a single A4 page summary of the evidence that they will provide to the Commission. You do not need to fill the entire A4 page, it is just a brief overview of the material they will cover.

The Commission requires this so that the parties to your matter know, roughly, what evidence your witnesses will be presenting to the Commission and, likewise, so that you know, roughly, what evidence the witnesses called by the Respondent/s will be providing. This avoids a 'hearing by ambush' and ensures that the parties are better prepared to advance their cases.

## 4.11 Expert Reports

If applicable, each of the experts that you will be calling in a matter (doctors, psychologists, psychiatrists, etc.) should have prepared and supplied to you a report about your injury. You must supply those reports to the other parties in the matter. Likewise, the Respondent/s in the matter must supply you with the reports of the experts that they will be calling. This ensures that all parties are able to fully understand the case. Unless otherwise directed, expert reports are only to be exchanged between the parties and **not** filed in the Registry. In some instances, parties settle after they have had an opportunity to view the expert reports obtained by the other parties. See also 'Expert evidence' in Part 7 of this guide for further information.

## 4.12 What is a trial plan?

In some cases, usually where a hearing is listed for four days or more, or where the parties seek to call an extensive number of witnesses, the Commission will generally require the parties to submit an agreed trial plan. If the Commission requires a trial plan, you will be advised of that requirement.

A trial plan requires the parties to indicate the time expected for an opening statement (if required, an opening statement generally sets out a 'road-map' about what how a party expects the evidence to unfold), for evidence-in-chief, cross-examination and re-examination, for each of the witnesses to be called and closing submissions for each party. Both parties are then committed to the agreed trial plan and must seek the agreement of the Commission if they wish to depart from it.

Where the parties fail to produce an agreed trial plan within the timeframe specified, each party will be required to provide their draft trial plan and the Commission will devise a trial plan for the hearing and the parties will be bound by that trial plan.



## Part 5: Conferences

This part of the guide covers conferences. For workers' compensation appeals, a conference is an informal meeting between the parties, and a Member of the Commission, with an aim of helping all parties to understand their respective positions in the matter and may also be beneficial in providing information, and explaining the steps and procedures, with regards to the process of these matters in the Commission.

### 5.1 What is a section 552A conference?

The first set of Directions Orders contains listing for a conference. That first conference is held so that a Member of the Commission can explain the steps that will be required for the upcoming processes.

Usually the same Member of the Commission will also chair the second conference (which is listed via the Further Directions Order) to explore and refine any issues in dispute between the parties. At that conference, the parties have the opportunity to address the Member of the Commission on the issues they feel should be clarified. The Member of the Commission will also explain the hearing process. Although general guidance may be given, it is not the Commission's role to provide advice about how a party may conduct their case. The Member of the Commission who chairs such a conference will not be the Member who hears the appeal.

Generally, by the second conference (which is listed at the end of the Further Directions Order), all parties have provided relevant information to each other and the Member of the Commission will then help the parties to review, refine or narrow down the issues.

**No commercial settlement is possible at the conference.** Conferences for workers' compensation matters are not intended to facilitate conciliations. Following the conference, the Respondent *may* decide to review its position or consider conceding the appeal where new information is presented that they may not have yet considered. Alternatively, you may wish to discontinue your appeal. The more likely outcome of a conference is that parties will have a better understanding of the issues to be addressed at a hearing and the processes involved in a hearing.

Specifically, the conference can assist in understanding whether any elements of s 32 of the Act can be agreed. The particular elements of s 32 of the Act are set out in Part 7 of this guide. It is important to remember that workers' compensation appeals before the Commission are heard over again from the beginning. This is sometimes referred to as an appeal *de novo*. This means that, even though the Regulator may have previously accepted an element of s 32 of the Act, it does not mean that this element will be accepted by the Respondent at the appeal stage.

## 5.2 What can I expect at a conference?

As conferences are informal, they will usually not be held in a court room. Instead, you will be seated in a conference room around a large table with the other parties, a Member of the Commission, and the Member's Associate. The conferences will usually be recorded and transcribed (by a Transcription Providing Service) and only the parties involved are able to request a copy of the transcript of the proceeding (by placing an order on the QIRC website - [Transcript Request Form](#)). The Member may also decide to 'go off the record' and go into 'private conference' if the Member believes that it may assist the parties. This means that the Member may speak to the parties separately in private and this is not recorded or transcribed.

Unlike hearings, conferences are not adversarial - this means that it is not about 'winning' the conference or stating a case at the conference so that you convince the Member that your side of the matter is correct.

In some conferences it may become apparent that the further directions order may need to be amended/extended to allow further time for the filing of additional, or new, material or for parties to amend their statement of facts and contentions.

The conference can also assist the parties in reaching an agreement about these issues and to discuss the nature of the evidence that will be led during the hearing. Other matters which may be discussed at the conference include the number of days that a hearing might take and the number of witnesses to be called to give evidence.

What will happen at a conference is entirely dependent on how complicated the matter is, how prepared the parties are, and the best way the particular Member decides to approach it. The above information contains general points about what you can expect and may guide your preparation for the conference.

## Part 6: Notices

There are four kinds of notices which you can use to compel people who are not parties to the proceedings to do something (e.g. appear to give witness evidence or provide documents) for the purposes of providing information to the Commission.

### 6.1 The notices

There are five forms relevant to the issue of notices in workers' compensation appeals:

- [Form 29](#) – Notice of non-party disclosure
- [Form 32](#) – Request for attendance notice
  - [Form 32A](#) – Attendance notice to give evidence
  - [Form 32B](#) – Attendance notice to produce
  - [Form 32C](#) – Attendance notice for production and to give evidence

Part 2, Subdivisions 7 and 7A, of the [Industrial Relations \(Tribunals\) Rules 2011](#) governs the use of the these notices.

### 6.2 What are the different notices for?

The notices generally require people to perform certain tasks for the hearing, including to attend the Commission to give evidence orally, to attend the Commission to provide a document to the Commission, or both, or to provide a document to a party. If a non-party can produce the document without having to attend the Commission, that option should be utilised first.

#### 6.2.1 Obtaining documents

Notices can be used to obtain documents that you do not have and have not been given to you by the Respondent during disclosure (see Part 4.5.4) but are directly relevant to the matter. You should start by filing a [Form 29](#) – Notice of non-party disclosure if you wish to obtain documents from people other than the Respondent/s. Once you have filed your forms correctly, a Member of the Commission or the Registrar will approve them, and the forms will be returned to you to serve on the relevant parties.

In your Form 29, you should provide specific details about the documents you are seeking. If you are seeking email correspondence, for example, covering a period of time – ensure that the date range of the emails is directly relevant to the matter. If the date range is excessive and beyond the relevant period, you risk your notice being rejected. The non-party also has an option to object pursuant to [rule 64E](#) of the [Industrial Relations \(Tribunals\) Rules 2011](#).

If you are seeking a document from a large organisation, then you must appropriately identify the person you will be serving the document upon. This person is known as the '**Proper Officer**'. To work

out how to name/identify the Proper Officer you should enquire with the person or organisation you are wanting documents from about who the Proper Officer is.

When a Notice is served on a Queensland Government department or agency, it should not say the Proper Officer; rather, it should say '**Director-General**' as this is the person with delegation to receive the document (even though it may be sent to the legal services section of that department or agency).

You must appropriately identify other people who are affected by the Notice – there is space for this on the form. An '**affected party/person**' is someone who might also be the subject of the material (meaning that they are mentioned in the material sought) or information that you are seeking, or the owner of a document other than the non-party. Affected parties may also **object** to the production of a document sought.

### 6.2.2 Attendance at the Commission

You may also want a particular person to attend the Commission, either to provide documents, or to provide oral evidence, or to do both. In workers' compensation appeals, medical witnesses may require a notice which requires that they attend the Commission and produce a copy of their report.

If you wish to issue attendance notices then you must also file a [Form 32](#) – Request for Attendance Notice as well as a completed Form 32A, or 32B, or 32C. Once you have filed your forms correctly, a Member of the Commission or the Registrar will approve them, and the forms will be returned to you to serve on the relevant parties.

### 6.2.3 Forms

You will find the forms mentioned above, and throughout this guide, on the website of the Queensland Industrial Relations Commission – [Forms](#).

## Part 7: Hearings

Hearings are formal and are conducted in a court room. Witnesses are called, documents are tendered as evidence (Exhibits) and parties make submissions. The length of a hearing will be dependent upon the complexity of the issue/s, the number of witnesses etc.

The parties must ensure all oral evidence, documentation and/or other material on which they intend to rely upon at the hearing is ready to be presented at the hearing. Any documentation/material not presented at the hearing will not be in evidence and will not be considered by the presiding Member when deciding your appeal.

### 7.1 How do I get to a hearing?

At a conference the Member may establish whether the parties would like the matter to proceed and be heard and determined. If the Member is satisfied that the matter should go to a hearing the file will be allocated to a different Member for hearing. The Member who was allocated your matter for the conference will not be the Member who hears and determines the matter.

If the Member does not address the issue of whether or not there will be a hearing and you would like to proceed to a hearing, you may request that the matter be heard. This may be done in writing to the Industrial Registry ([qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au)).

Once a hearing date has been set and a Member has been allocated the file, you will receive a Further Directions Order or a Notice of Listing which sets out when the hearing will be, where it will be held and who will be hearing the matter. A Notice of Listing may also contain any other information which might be specific to your matter. Hearings may be held in Brisbane, or in other parts of Queensland, depending on the location of the parties and witnesses.

### 7.2 What is a mention?

Sometimes the Commission will list matters for a mention prior to the set hearing dates. The aim of a mention is to ensure that all directions have been complied with and that the parties are ready to proceed to hearing without delay.

Mentions are also used to resolve small procedural or preliminary issues that might arise during the course of a matter. That might involve a party flagging a particular issue and wanting this addressed by the Commission.

## 7.3 What do I need to prove?

It is important to note that the **onus of proof** is on the Appellant. That means that if you are appealing a decision, then you bear the responsibility of proving certain things. When proving something you must meet the standard of proof. In workers' compensation appeals, the standard of proof is the **balance of probabilities**. The balance of probabilities means that it is more likely than not to have occurred. In short, this is often referred to as the 'Briginshaw principle', meaning that the Commission must be satisfied of the relevant matters on the balance of probabilities, to a comfortable degree, based on clear and cogent evidence.<sup>1</sup>

### 7.3.1 Physical injuries

Generally speaking, you must prove the following elements of s 32(1) of the *Workers' Compensation and Rehabilitation Act 2003*:

- (a) that you were a worker within the meaning of s 11 of the Act;
- (b) that you sustained a personal injury;
- (c) that your injury arose out of, or in the course of, the employment; and
- (d) that your employment was a significant contributing factor to the injury.

If the Appellant is the employer, it must then prove that the injury does not meet the elements specified in s 32(1) of the Act.

### 7.3.2 Psychiatric and/or psychological disorders

If your injury is a psychiatric or psychological disorder, then you must prove the following elements of s 32(1) of the *Workers' Compensation and Rehabilitation Act 2003*:

- (a) that you were, or are, a worker within the meaning of s 11 of the Act;
- (b) that you sustained a personal injury;
- (c) that your injury arose out of, or in the course of, the employment; and
- (d) that your employment was a significant contributing factor to the injury.

In addition to being able to prove the elements under s 32(1) of the Act, you must also show that any psychological or psychiatric injury was not connected to management action that was reasonable in the circumstances and/or conducted in a reasonable way.

Psychological/psychiatric injuries that are connected to the worker's expectation or perception of reasonable management action being taken against them are also not able to be accepted.

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<sup>1</sup> *Briginshaw v Briginshaw* [1938] 60 CLR 336

## 7.4 The hearing

A hearing in the Commission is a formal process where parties put forward arguments and other information (known as submissions) that are based on the evidence before the Commission. The evidence before the Commission will be the oral evidence of witnesses and the documents provided by the parties during the hearing (tendered as Exhibits).

As with conferences, a typed record of what was said in the hearing is produced for later reference, and this is known as the transcript. Parties to matters before the Commission may obtain copies of the transcript free of charge. If you wish to receive a copy of the transcript you must complete the transcript order form available on the Commission's website ([Transcript Request Form](#)).

If you are representing yourself, you will sit at a table (known as the bar table) facing a Member of the Commission who will sit at a raised platform (known as the bench). The Member's Associate sits at the table immediately in front of the bench and faces the parties. For more information on courtroom etiquette, please see Part 11.



If you have any questions about procedures, please ask the Associate before the proceeding commences. Like the Registry, Associates do not give legal advice. If you do not understand something during the proceeding, be sure to ask the presiding Member.

Prior to witnesses giving evidence, they will be asked by the Associate to take an 'oath' or 'affirmation' promising to tell the truth.

**Example: Oath** (swearing on a bible)

The evidence which I shall give to the Commission touching the matters in question between the parties shall be the truth, the whole truth, and nothing but the truth.  
So help me God

**Example: Affirmation** (non-religious)

I solemnly affirm and declare that the evidence given by me to the Commission, touching the matters in question between the parties, shall be the truth, the whole truth, and nothing but the truth.

You can settle and discontinue your matter at any time by agreement with the other party/parties involved. Should you wish to discontinue your matter, please complete a [Form 27](#) - Request to discontinue proceeding.

## 7.5 Preparing for a hearing

Once it has been decided that the matter will be dealt with by way of a hearing you will need to ensure that any witnesses you intend to call are present at the hearing. You will also need to bring any documents which you intend to present to support your case and to make sure you have sufficient copies of those documents to provide the Member and other party or parties and the witness (if applicable).

You are responsible for any allowance for attendance and expenses for the witnesses you intend to call (pursuant to rule 62 of the [Industrial Relations \(Tribunals\) Rules 2011](#)). These expenses are to be paid to the witness a reasonable period before the day the person is required to attend. The Commission may treat the failure to pay expenses or allowances as a lawful excuse for the witness to not appear to give evidence (for more information, see Part 10.1).

You should arrive at the location of the hearing with plenty of time to spare before the commencement time for the matter. The Associate can show you where to sit if you ask and will answer any procedural questions that they can.

Usually the Appellant will open its case first. This means that you will have an opportunity to provide to the Commission your evidence so long as it is directly relevant to the matter and not excluded for any particular reason. Documents which you wish to provide to the Commission in support of your case must be tendered 'through a witness'. This means that you ask a particular witness questions about a document that they have knowledge of, and then you have the document tendered and it will become an exhibit. Specific information regarding evidence can be found at Part 7.6.

The Respondent/s will open their case when you have closed yours.

## 7.6 How does oral evidence work?

In workers' compensation matters, all witness evidence is provided orally. There are generally no affidavits or witness statements. Therefore, the Directions Order only requires that you provide a one-page **outline of evidence** for each of the witnesses to each of the parties.

There is an established process for the presentation of oral evidence before the Court and Commission. It has three phases:

- Examination-in-chief (this phase is done by the party who called the witness);
- Cross-examination (this phase is done by the other party or parties); and
- Re-examination (this phase is done by the party who called the witness).



Each of these three phases is repeated for each witness. The three phases are explained in greater detail below.

#### 7.6.1 Evidence-in-chief

All witnesses must give evidence under oath or an affirmation to the Commission (see Part 7.4). You, as the Appellant, will give your evidence first. The evidence is to consist of events that led to the Appellant sustaining the injury. Those events should be organised in chronological order and with enough detail to prove each of the elements of [s 32](#) of the Act that are in issue.

The evidence-in-chief is your opportunity to obtain from your witness all of the facts and statements that the witness can provide in support of, and directly relevant to, your appeal.

As part of the evidence-in-chief, you should tender to the Commission (meaning to make an Exhibit) any documents relevant to the claim. As stated above, documents not tendered at the hearing will not be considered as evidence and the Member of the Commission hearing the appeal will not take them into consideration when making the decision.

If the Respondent, or any other party to the proceeding, is calling a witness it will do the evidence-in-chief for that witness.

#### 7.6.2 Cross-examination

After the examination-in-chief has finished, the party who did not call the witness will conduct the cross-examination. Cross-examination is an opportunity to test the evidence of the witness provided in the examination-in-chief.

#### 7.6.3 Re-examination

Upon conclusion of the cross-examination, the party who did the examination-in-chief will then re-examine. Re-examination is used to clarify any issues that arose from cross-examination. Only questions arising out of the things said in cross-examination may be asked in re-examination.

#### 7.6.4 Remainder of the witnesses for the Appellant

After you have concluded giving your evidence, you will then have the opportunity to call any other witnesses in support of your case. If witnesses do not freely agree to become witnesses, then the Appellant must request that an attendance notice to give evidence be issued by the Commission to compel that person to attend the hearing and give evidence. This is done once the hearing dates are advised in the Further Directions Order and prior to the hearing of the matter. In circumstances where an attendance notice to give evidence is issued, you will be required to pay witness expenses for that person.

For more information about an attendance notice to give evidence see Part 6 of this guide.

### 7.6.5 Expert evidence

In some instances, depending on the content of the matter, both parties may consider presenting medical or expert evidence to support their case. This will be done by calling expert witnesses such as general practitioners or specialist practitioners (i.e. psychiatrists, orthopaedic surgeons, engineers, accountants etc.). Whilst lay witnesses must give evidence in person, generally, expert witnesses may give evidence over the phone or by video, if the Commission allows.

Where expert witnesses are called, the party calling the witness will need to pay the expenses of the expert witness and arrange, well in advance of the date of hearing, for the expert witness to give evidence at a pre-determined time during the hearing.

It is important to note that presenting a medical report on its own cannot be considered without having the expert witness give evidence **orally** to support that document and being available for cross-examination by the other party.

To ensure an expert witness attends the hearing (either in person or via telephone/video) as required, the party calling the expert witness should request that an attendance notice to give evidence be issued by the Commission. For more information about an attendance notice to give evidence see Part 6 of this guide. For more information about telephone/video evidence, please see the website.

### 7.6.6 Respondent's case

After the Appellant has called all of their witnesses, the Respondent will then open its case and call its witnesses. For each witness the Respondent calls, the Appellant will have an opportunity to cross-examine them.

## 7.7 Submissions

Generally, after all the evidence has concluded, the parties are required to make written and/or oral submissions (also known as closing argument or summing up of important points in the hearing) addressing the elements of s 32 of the Act and any other relevant sections of the Act in support of their case.

The order in which the parties provide their submission is determined by the Member, however should the Appellant make submissions first, they will be followed by the Respondent, and following that the Appellant may make a submission in reply addressing any legal issues that were raised by the Respondent.

If submissions are to be in writing, the Member of the Commission hearing the appeal may issue directions for the filing of written submissions at the conclusion of the hearing itself. Those directions may be in a formal Directions Order, like those you will have previously received, or they may be made orally at the conclusion of the parties' evidence.

## Part 8: Decisions

In most appeals, the Member who heard the matter will not make a decision immediately, instead the Member will 'reserve' their decision. This means that the decision, and the reasons for that decision, will be provided to the parties at a later date in writing.

### 8.1 Publication of decisions

Once the Member has written a decision, a copy will be emailed to the parties. Unless a suppression order has been issued, **all decisions are published on the Supreme Court Library website** and are **publicly accessible** - [Supreme Court Library Queensland](#) -

Decisions are made available to the public because they can be instructive for future factual scenarios that are similar, act as a precedent and allow for effective public scrutiny of the decision-making processes of the Commission and its Members.

## Part 9: Appealing a decision of the Commission

If you disagree with the decision of the Commission in your matter, you may appeal the decision to the Industrial Court of Queensland.

If you choose to appeal the decision, you must do so within the appeal period, being 21 days from the date that the decision of the Commission was released – this date will be on the front page of the decision.

### 9.1 How do you appeal to the Industrial Court of Queensland?

You must use [Form 5](#) – Application to Appeal if you wish to appeal the Commission's decision to the Industrial Court of Queensland. Form 5 asks you to state the grounds of appeal. Generally, you can only appeal on two grounds:

- An error of law (this means that the Member may have misapplied the law or a legal principle to the facts).
- An excess, or want, of jurisdiction (this means that the Member may have made a decision that is not within their power to make).

If you wish to go beyond those two grounds, then you must seek the leave of the Industrial Court to do so. You can do this within the Form 5 noting that you are seeking leave to appeal on grounds other than those in s 557(1) and pursuant to s 557(2) of the *Industrial Relations Act 2016 (Qld)*.

## Part 10: Costs

Hearings before the Commission or the Industrial Court of Queensland can be expensive. Barristers, solicitors, medical experts, and witnesses are all involved, and can all incur expenses which you may be required to cover if you are unsuccessful.

In workers' compensation appeals 'costs follow the event'. This means that the **unsuccessful party will usually be required to pay the costs of successful party/parties**. Costs include the cost of obtaining legal advice and legal representation, as well as any expenses in calling witnesses (flights etc.).

If the Respondent is successful in defending the appeal, then any costs ordered against you will include the costs of the Respondent's Barrister for the preparation of their defence of the Regulator's decision, conferencing of witnesses and their appearance in the Commission on all days of the hearing. Those **costs can be considerable**.

Any costs order in workers' compensation appeals are based on [regulation 132](#) of the [Workers' Compensation and Rehabilitation Regulation 2014](#) i.e. the costs in relation to Barrister's or solicitor's fees are those found in the [Uniform Civil Procedure Rules 1999, Schedule 2](#). For the costs in relation to witness fees and expenses, the costs are to be under the [Uniform Civil Procedure \(Fees\) Regulation 2019, Part 3](#).

### 10.1 Witness attendance, allowances, expenses, and conduct money

Witnesses who attend the Commission are entitled to have their reasonable expenses of travelling to the Commission paid by the person who calls them to the Commission. Those witnesses are also entitled to an allowance which would be equivalent to those payable to a witness in a civil action in the Supreme Court. This allowance is paid daily and is referred to as 'conduct money' (see Part 3 of the [Uniform Civil Procedure \(Fees\) Regulation 2019](#)). You should research the amount of conduct money which should be paid as it may change over time.

Expert witnesses are entitled to a higher rate of conduct money. The longer the expert is required, the more conduct money they will be entitled to.

These expenses are to be paid to the witness within a reasonable period prior to the day the person is required to attend.

If you do not pay the reasonable expenses of the witness and do not provide them with the required conduct money, the witness will have a lawful reason for not attending the Commission.

## Part 11: The model litigant principles

Queensland Government agencies or departments have a set of guiding principles for the conduct of litigation. Those principles are called the Model Litigant Principles. They are not applied rigidly, and they do not override any legislative requirements or authorities concerning the agency's functions.

For a downloadable copy of the model litigant principles please visit the [Department of Justice and Attorney-General website](#).

## Part 12: Etiquette and communications

This part of the guide covers small points of etiquette for conferences, mentions, directions hearings and hearings.

**The Commission is a formal environment and you are expected to behave respectfully to all, as well as follow rules and procedures.**

There is no need to be nervous when you have to speak. The Member is there to listen to you and will ask you questions if they need further clarification or if they did not understand something that you said.

### 12.1 General points

- Make sure you attend the Commission early to avoid delaying the proceeding.
- If you are delayed for any reason it is important that you contact the Registry as early as possible to ensure a message is sent to the Associate.
- If you have a mobile phone, make sure it is switched off in the conference or hearing room.
- Do not record proceedings (audio or visual). If applicable, a transcript of proceedings will be supplied to the parties.
- When the Commission Member enters the room, those present will be asked to stand. If it is a hearing you should stand when you are addressing the Member. Be sure to address the Member correctly. The President, Vice President and Deputy President should be referred to as 'Your Honour', and Industrial Commissioners should be referred to as 'Commissioner'.
- In a hearing it is customary to bow to the bench by slightly inclining your head and bending slightly at the hips at the beginning of the proceeding. Similarly, if you should need to leave the hearing room while the proceeding is underway, you should bow in the same way when you reach the door of the court room. You are not bowing to the Member, but to the coat of arms behind the Member which is symbolic of the Crown's authority.
- The Member will ask for 'appearances'. Simply state your name slowly and say that you are appearing for yourself. The Member may ask you to spell your name – this will be so that the transcript can accurately reflect the spelling of your name.

- Whether it is a conference or a hearing, the Commission Member may ask each of the parties, in turn, for a brief statement describing what the matter is about. It is a good idea to have this prepared in advance, you can read from it if you wish.
- Make sure you speak loud enough for everyone to hear and so that if the proceeding is being transcribed the transcribers can clearly understand you.
- Do not speak when a witness is taking an oath or an affirmation.
- Do not interrupt the other party or the Commission Member when they are speaking.
- Do not eat or chew while in the hearing. Drinking water (only) is acceptable.
- You should show respect by dressing neatly although you do not have to wear a suit.
- You may notice parties who are familiar with the Commission using phrases such as 'If the Commission pleases', as a newcomer to the Commission you are not expected to necessarily follow such practices.
- Should you wish to observe another trial, you may check the [Hearing Lists](#) on the website. Please be advised however that conferences are not open for public observation, only hearings.

## 12.2 Communicating with the Registry or the Commission

If you communicate with the Registry or the Commission for any reason in connection with your matter, you must also inform the other party/parties of what you are communicating (see the [Code of Conduct](#) for persons appearing before the Commission).

If you are sending an email to the Registry or a Member's Associate (via the Registry) you **must** copy in the other parties to your matter

If you telephone the Registry, you must also relay what you spoke to the Registry about to the other party or parties to your matter. Email is the preferred form of communication.

If you fail to copy in or convey your communication to the other party/parties in your matter, then the Registry or the Member's Associate may inform the other parties of what you have sent or told the Registry or the Commission.

**Constant failures to copy in or convey to other parties will not be viewed favourably by the Registry or the Commission.**



## Part 13: Finding legislation, cases, advice, and resources

This part of the guide contains a brief overview of where you can locate some resources which may be of assistance to your matter.

### 13.1 Legislation

If you are looking for the authoritative Government issued copies of the relevant legislation ([Workers' Compensation and Rehabilitation Act 2003](#) and [Industrial Relations Act 2016](#)) then you can find a free version online at the Queensland Legislation Website: [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au). All current and previous state legislation can be found here.

The Australian Legal Information Institute ('AustLII') also provides a free resource for locating legislation. It will allow you to search Acts by each section. You can locate AustLII at: [www.austlii.edu.au](http://www.austlii.edu.au).

You can also contact the Supreme Court Library Queensland for assistance with locating legislative materials if you have difficulty. The contact details for the Library can be found on its website: [www.sclqld.org.au](http://www.sclqld.org.au).

### 13.2 Cases

If you are looking for relevant cases of the Commission or the Industrial Court, the Supreme Court Library Queensland has published all decisions made by the Commission since 2014. The Commission's decisions can be found here: [Supreme Court Library - Commission decisions](#).

The Industrial Court's decisions can be found here: [Supreme Court Library - Industrial Court decisions/judgements](#).

The Australian Legal Information Institute ('AustLII') also publishes the Commission and the court's decisions: [www.austlii.edu.au](http://www.austlii.edu.au).

### 13.3 Advice and Resources

As mentioned throughout this guide, the Registry and Associates are unable to provide you with legal advice with regards to your matter. You may be able to obtain information or advice through the following services:

**Workers' Compensation Regulator ([www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au))**

For information concerning the review process - [Worksafe Queensland - Workers' Compensation Regulator - Review of a claim decision](#)

**WorkCover Queensland ([www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au))**

For information regarding making a Workers' Compensation claim - [Worksafe Queensland - WorkCover](#)

**Workers' Compensation Advisory Service ([www.queenslandunions.org](http://www.queenslandunions.org))**

[Queensland Council of Unions - Workers' Compensation Advisory Service](#)

The Workers' Compensation Information Service provide information to injured workers regarding the workers' compensation system in Queensland

**Legal Aid Queensland (LAQ) ([legalaid.qld.gov.au](http://legalaid.qld.gov.au))**

LAQ provide legal advice over the phone and via their website to financially disadvantaged people. Contact LAQ to see if you are eligible.

**Community Legal Centres ([clcs.org.au](http://clcs.org.au))**

Your local community legal centre may provide legal advice and assistance. For a list of local community legal centres in Queensland, follow this link [communitylegalqld.org.au](http://communitylegalqld.org.au).

**Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) ([atsils.org.au](http://atsils.org.au))**

ATSILS are a community-based organisation providing professional and culturally proficient legal services for Aboriginal and Torres Strait Islander people across Queensland.

**Queensland Law Society (QLS) ([qls.com.au](http://qls.com.au))**

QLS may assist you in finding a solicitor or law firm. They have a 'Find a Solicitor' tool on their website.

## 13.4 Interpreters

The Commission recognises that some participants in proceedings before the Commission may require the services of an interpreter. For further information, please refer to the [Practice Direction](#) on the website, or email the Registry at [qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au).

## Part 14: Glossary

This part of the guide contains words that you will frequently come across in your appeal.

### 14.1 Frequently used terms

**Adjourn/Adjournment:** When a conference, mention, or hearing is adjourned it is ended either definitely or until a later time when it will be resumed. In many conferences and hearings, the Member will 'adjourn the Commission' either so that the Member can leave the room so that parties can have a discussion or because that particular part of the proceedings is over.

**Affected Person:** An affected person may be a person about whom information is sought or may be the owner of a document sought through, for example, a notice of non-party disclosure.

**Affidavit:** An Affidavit is a sworn written statement of fact. Affidavits provide a factual account of an event, or a thing, and are written from the witnesses' perspective about things that the witness saw or heard.

**Affirmation:** An affirmation is made in lieu of an oath in certain circumstances, confirming something to be true/promise of truthfulness (see Part 7.4).

**Agreed Trial Plan:** See Part 4.12.

**Appellant:** A person or an employer who filed an appeal in the Registry under s 549 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

**Balance of probabilities:** The standard to which you must prove your case – i.e. you must present evidence which allows the Commission to find that it was more probable than not that something happened or that something caused your injury.

**Cross-examination:** See Part 7.6.2.

**Directions order:** See Part 4.1.

**Disclosure:** See Part 4.5.

**Evidence-in-chief:** See Part 7.6.1.

**File and Serve:** See Part 3.8.

**Further Directions Order:** See Part 4.1.1.

**List of documents:** See Part 4.5.1.

**Oath:** For example, swearing an oath - making a promise to a deity (e.g. God) of truthfulness (see Part 7.4).

**Onus of proof:** See Part 7.3.

**Parties:** See Part 3.3.

**Privilege:** Legal professional privilege or client legal privilege is a mechanism designed to protect certain communications from disclosure and thereby encourages a free exchange of communication between a client and the lawyer acting for a client.

**Proper Officer:** A Proper Officer is someone who is authorised to act on behalf of, or has responsibility for specific functions of, a Company.

**Re-examination:** See Part 7.6.3.

**Seek leave:** Means to ask the Commission whether you may do something – for example, this may be seeking leave to be legally represented, or seeking leave to amend a filed document.

**Self-Represented Litigant:** A person, not a company or organisation, who is not represented by a lawyer, agent or industrial organisation.

**Submissions:** See Part 7.7.

## Appendix A – Practice Direction 3 of 2021 - 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

## Appendix B – Codes of conduct



# **INDUSTRIAL COURT OF QUEENSLAND**

## **QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

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### ***CODES OF CONDUCT***

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Section 436 of the *Industrial Relations Act 2016* provides that the President is, among other things, to develop a code of conduct for—

- (i) Members of the Queensland Industrial Relations Commission; and
- (ii) persons appearing before the QIRC.

Pursuant to s 412 of the Act, these codes also apply, with the necessary changes being made, to Members when sitting in the Industrial Court and to persons appearing before the Court.

The following sets out the codes which apply pursuant to s 436.

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### ***CODE OF CONDUCT FOR MEMBERS OF THE COMMISSION***

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1. Members are responsible for ensuring that proceedings are fair and that parties are treated with courtesy and respect.
2. During proceedings, Members have a responsibility to:
  - listen to evidence
  - ask questions to clarify points that are unclear and to obtain information that is relevant to the considerations which the Member must take into account
  - manage the behaviour of persons appearing before the Commission to ensure that all parties are treated with courtesy and respect
  - exclude irrelevant information
  - discourage repetition, and
  - deal with each matter on its merits, in accordance with the relevant provisions of the applicable legislation.

3. Otherwise, members of the Commission are to observe the guidelines (with such changes as are necessary) contained in the *Guide to Judicial Conduct* (3<sup>rd</sup> Edition) published for the Council of Chief Justices of Australia and New Zealand by the Australasian Institute of Judicial Administration<sup>2</sup>

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*CODE OF CONDUCT FOR PERSONS APPEARING BEFORE THE COMMISSION*

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The *Industrial Relations Act* contemplates that there will be five categories of persons who may appear before the Commission. They are:

- (a) a litigant in person;
- (b) an agent appointed in writing;
- (c) if the party or person is an organisation—an officer or member of the organisation;
- (d) a lawyer; or
- (e) any person (including a Government Legal Officer) appointed to represent the State of Queensland.

A lawyer is bound by the rules of conduct of the relevant professional body – the Bar Association of Queensland or the Queensland Law Society.

All other persons are included in the term 'parties and their representatives'.

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*CODE FOR PARTIES AND THEIR REPRESENTATIVES*

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1. Parties and their representatives have obligations to behave appropriately to both the Commission and each other, and in a way that helps provide a fair hearing for all.
2. Parties and their representatives should:
  - treat the Commission and other parties/representatives with courtesy and respect
  - act honestly, and not knowingly give false or misleading information
  - cooperate with other parties and the Commission to enable the just, efficient, timely and cost effective resolution of the issues in dispute
  - act promptly, comply with Commission directions, and minimise delay
  - take reasonable steps to make sure the costs incurred in connection with proceedings are reasonable and proportionate to the complexity and importance of the issues and amount in dispute, and
  - where appropriate, take reasonable steps to resolve disputes by agreement or to minimise the number of issues in dispute.

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<sup>2</sup> <https://aija.org.au/wp-content/uploads/2017/12/GUIDE-TO-JUDICIAL-CONDUCT-3rd-Edition.pdf>


### 3. Communication with Associates

- A party or any representative may only communicate with the Associate of a member of the Commission or Court where it is appropriate to do so.
- Unless there is great urgency, communication must be in writing (which includes by email). In the case of such urgency, telephone communication is permitted.
- In most cases, a party or any representative may only communicate with an Associate with the consent or prior knowledge of the other parties.
- If the issue in the communication is uncontroversial, or unlikely to result in dispute, then consent is not required but the communication must be copied to the other parties at the same as it is sent to the Associate.




## Contacts:

 [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)

 1300 592 987

 [qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au)

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