



INDUSTRIAL REGISTRY

Industrial Court of Queensland and Queensland Industrial Relations Commission

Representation – Information Sheet

Representation generally

Pursuant to s 529 of the [Industrial Relations Act 2016](#) (IR Act) parties can be generally represented in proceedings by:

- (a) a lawyer (but only in accordance with s 530 of the IR Act – see below section on legal representation);
- (b) an employee or officer of an organisation (a registered industrial organisation) appointed in writing as the agent of the party or person;
- (c) if the party or person is an organisation, an employee or officer or member of the organisation;
- (d) if the party or person is an employer, an employee or officer of the employer; or
- (e) another person appointed in writing as the agent of the party or person only with the leave of the industrial tribunal (Court of Appeal, Court, Full Bench, Commission or Industrial Magistrates Court) conducting the proceedings.

Representation by an Agent

Section 529(1)(e) of the IR Act refers to the ability of an agent to represent a party or person. An agent is *not* a lawyer however can represent a party or person in proceedings only with leave of the Member conducting the proceedings. An agent should be appointed in writing by completing a **Form 33** (Notice of appointment of agent).

The Member may only give leave for an agent to represent a party or person if:

- giving that leave would enable the proceedings to be dealt with more efficiently (taking into consideration the complexity of the matter);
- it would be unfair not to allow the party or person to be represented if they are not able to represent themselves; or
- it would be unfair not to allow the party or person to be represented having regard to fairness between the party or person and the other party/parties to the matter.

However, a party or person **may not** be represented by an 'agent' who:

- directly or indirectly demands or receives a fee for representing the party or person; or
- is an employee or officer of, or acting for, an entity (other than a registered industrial organisation) that purports to represent the industrial interests of employees or employers.

All **registered** industrial organisations are listed on the QIRC website.

Legal Representation

Section 530 of the IR Act outlines the requirements with regard to legal representation.

Pursuant to s 530(4) of the IR Act, the Commission may only give leave for legal representation if:

- (a) it would enable the proceedings to be dealt with more efficiently, having regard to the **complexity** of the matter; or

- (b) it would be **unfair** not to allow the party or person to be represented because the party or person is unable to represent the party's or person's interests in the proceedings; or
- (c) it would be **unfair** not to allow the party or person to be represented having regard to fairness between the party or person, and other parties or persons in the proceedings (e.g. a person is from a non-English speaking background etc).

When is a Form 101 and Form 102 required?

Practice Direction 1 of 2023 (Parties or Persons applying for Leave to be Represented by a Lawyer in Certain Proceedings before the Commission) was issued by the President on 5 April 2023. **Please note, this PD applies only to certain proceedings before the Commission**, those being:

- proceedings before the Full Bench;
- proceedings before the Commission, other than the Full Bench, under the [Anti-Discrimination Act 1991](#);
- proceedings before the Commission, other than the Full Bench, relating to an industrial matter involving allegations of sexual harassment or sex or gender-based harassment;
- proceedings before the Commission, other than the Full Bench, relating to a matter under:
 - Chapter 8 of the IR Act (*General Protections, Unfair Dismissals*)
 - s 471 of the IR Act (*Amending or voiding contracts*);
 - Chapter 12, part 2 or part 16 of the IR Act (*Registered industrial organisations – Registration and de-registration*)

A party or person who seeks **leave** to be represented by a lawyer in certain proceedings before the Commission only must file in the Industrial Registry and serve on all other parties a **Form 101** (Application for leave to be represented by a lawyer). It is ultimately up to the Commission as to whether leave is granted. The form is to be accompanied by an Affidavit (**Form 20**).

A party or person served with a Form 101, must, within seven days of being served, file in the Industrial Registry and serve on all other parties, or persons ordered or permitted to appear in the proceeding, a Response in the prescribed form – **Form 102** (Response to application for leave to be represented by a lawyer). This form must also be accompanied by an Affidavit (**Form 20**).

The table below further outlines those certain proceedings where a Form 101 (and subsequent Form 102) may be required:

Description	Relevant matter types	Relevant Forms
Proceedings before a Full Bench	All	
Proceedings before the Commission (other than a Full Bench) under the <i>Anti-Discrimination Act 1991</i>	Anti-Discrimination matters (AD)	Form 83 – Application for exemption or renewal of exemption Form 84 – Application for order protecting complainant's interest Form 85 – Referral of a matter Form 86 – Application for review of Commissioner's (Human Rights) decision
Proceedings before the Commission (other than a Full Bench) relating to an industrial matter involving allegations of sexual harassment or sex or gender-based harassment	Disputes (D) Unfair Dismissals (TD) General applications (B) General Protections (GP)	This will depend under what section an application is made as there is no specific section that relates to sexual harassment or sex or gender-based harassment, it relates to all matters within the IR Act.

<i>Description</i>	<i>Relevant matter types</i>	<i>Relevant Forms</i>
Proceedings before the Commission (other than a Full Bench) relating to a matter under:		
Chapter 8 (Rights and responsibilities of employees, employers, organisations etc) of the IR Act (includes ss 278 to 335)	GP	Form 2 – General application (section 309(2) – dispute (including s 309 (1)(a) – dismissal)
	TD	Form 12 – Application for Reinstatement (s 317)
	B	Form 2 – Application for severance allowance (s 326)
	B	Form 2 – Application for order for contravention of the Act (s 329)
Section 471 (Power to amend or declare void contracts) of the IR Act	B	Form 2 – General application
Chapter 12, Part 2 (Registration) or Part 16 (De-registration) of the IR Act	Registered Industrial Organisations (RIO)	Form 56 – Application to QIRC – pursuant to Chapter 12

If leave is subsequently granted by the Commission, for completeness the party should file a **Form 34** (Lawyers notice of address for service).

Generally, (unless it falls within the proceedings outlined in the table above) a Form 101 (and subsequently a Form 102) is not required for:

- Fair Work Claims;
- Unpaid Amount Claims;
- Wage Recovery matters (including payout of Long Service Leave, Unpaid wages and unpaid superannuation contributions etc,)(see below for more information where legal representation is not allowed);
- Public Sector Appeals (see below for more information where legal representation is not allowed);
- Workers' Compensation Appeals (see below for more information regarding legal representation ;
- Disputes;
- Certified Agreements (not before a Full Bench);
- Modern Awards (not before a Full Bench);
- Trading Hours (not before a Full Bench);
- Appeals to the Industrial Court;
- Work Health and Safety disputes.

However, parties should file a **Form 4** (Application in Existing Proceedings) and **Form 34** (Lawyers notice of address for service), if applicable (e.g. for proceedings before the Commission, other than the Full Bench, where there is not consent from all parties and therefore leave must be sought).

When a party is the "State of Queensland" and Crown Law are the representative, s 530(5)(a) of the IR Act applies.

Legal Representation in Workers' Compensation Appeals

Pursuant to s 552B of the [Workers' Compensation and Rehabilitation Act 2003](#), a party may be represented by a lawyer at a s 552A conference, or at the hearing of an appeal, but only by agreement of the parties or with leave of the Commission. Please note that [Practice Direction 1 of 2023](#) does not apply to Workers' Compensation appeals.

Further, with regards to Workers' Compensation appeals filed in accordance with s 537E (Compliance Notices) of the [Workers' Compensation and Rehabilitation Act 2003](#), the Regulator and the Appellant may be represented by a lawyer, in proceedings, without the need for there to be mutual agreement or leave of the Commission.

When is legal representation not allowed?

Pursuant to s 530A of the IR Act, a party or person in a **Public Sector Appeal (PSA)**, **may not** be represented by a lawyer, unless the lawyer is an employee or officer of the party or person, or an employee or officer of a registered industrial organisation representing the party or person.

In other matters, a party **must not** be represented by a lawyer:

- if the party is a negotiating party to arbitration proceedings (under Chapter 4, Part 3, Division 2 of the IR Act); or
- if the matter is in relation to a claim made under s 403 of the IR Act (**Form 18** – Application for order for repayment of fee received by a private employment agent) or s 475 of the IR Act (**Form 14** - Application for proportionate payment of long service leave **or Form 15** - Application to recover unpaid wages, superannuation contributions etc).

The information contained in this guide is for information purposes only and is not considered legal advice.
