

# Anti-Discrimination Guide

Queensland Industrial Relations Commission



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### Acknowledgements

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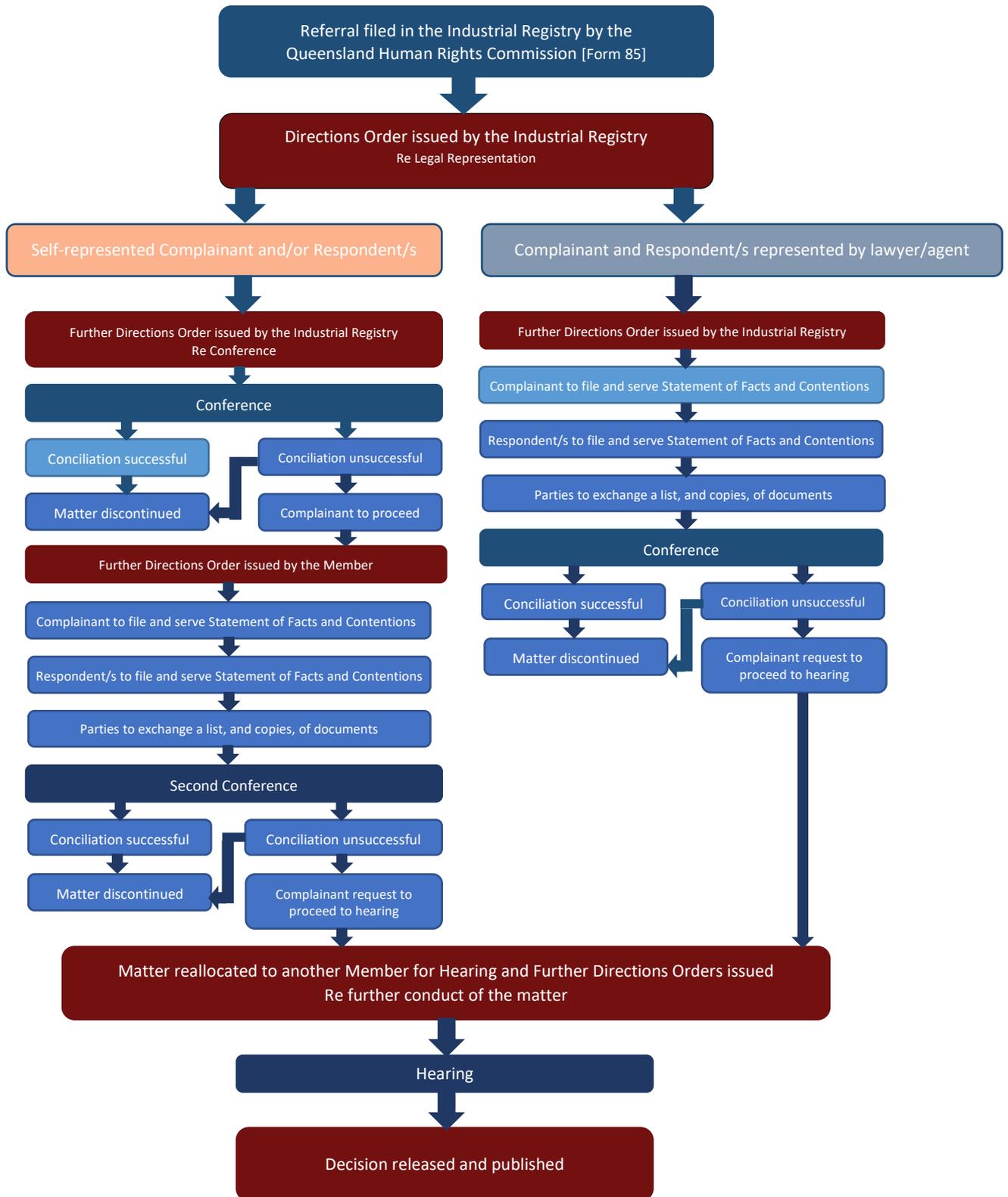
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## Overview: Anti-Discrimination Referral



## Part 1: Purpose

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

This guide sets out an overview of the procedures that the Queensland Industrial Relations Commission (Commission/QIRC) usually adopts when managing complaints lodged with the Queensland Human Rights Commission (QHRC) which have been referred to the Commission under either s 155(4), s 164A(2), s 166(1), s 167(1)(a) or s 169(3) the [Anti-Discrimination Act 1991](#) (the AD Act).

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 Complainant 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
- 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's positions. 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.

The Members of the Commission consist of:

- 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';
- Industrial Commissioners are 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.

In most instances, contact should only be made with Chambers via the Registry.  
(See also Appendix B)

## 2.2 What is the Industrial Registry?

The Registry is the administrative 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 St  
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.**

## 2.3 Filing and serving documents

There are a number of references in directions orders (See Part 5, page 15) to the terms '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).

All forms and documents 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 St  
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 on page 49, **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.

## Part 3: Complaint process

This guide covers the overall process once a work-related complaint has been referred to the QIRC from the QHRC.

Below is some information regarding the meaning of a work-related matter, as well as work-related exemption applications which may be made to the QIRC.

### 3.1 What is a work-related matter

A work-related matter includes complaints that allege discrimination, sexual harassment, or other contraventions of the AD Act that happened at work. This includes:

- discrimination at work;
- discrimination when applying for work;
- victimisation by an employer;
- requesting and encouraging discrimination at work;
- requesting unnecessary information at work or when applying for work;
- sexual harassment at work; and
- vilification that occurred at work or when applying for work.

### 3.2 Exemptions

The QIRC is also responsible for granting an exemption to allow a person or business to do something that is otherwise unlawful under the AD Act, for example advertising for female employees only.

Exemptions can also be granted from the operation of a specified provision of the AD Act. An exemption can be granted for a temporary period of up to five years and can be renewed for further periods of up to five years. (See also s 113 of the AD Act and rule 80A of the *Industrial Relations (Tribunals) Rules 2011*).

Refer to the QHRC website to view information on [Tribunal exemptions](#).

To apply for an exemption or renew an existing exemption under the AD Act use [Form 83](#) -Application for exemption or renewal of exemption.

### 3.3 Application for an order protecting Complainant's interest

At any time before a complaint is referred to the QIRC, either the Complainant or the Human Rights Commissioner may apply to the QIRC for an order prohibiting a person from doing an act that might prejudice:

- the investigation or conciliation of the complaint; or
- an order that the QIRC might make after a hearing.

[See s 144 of the AD Act]

You will need to complete [Form 84](#) - Application for an order protecting Complainant's interests.

### 3.4 Application for review of the QHRC decision about complaint lapsing

An application may be made under s 169(3) of the AD Act to review a QHRC decision. This must be made within 28 days of being notified that the Queensland Human Rights Commissioner has lapsed the matter.

To make an application in relation to a complaint lapsing, you will need to complete [Form 86](#) - Application for review of Commissioner's (ADC). A copy of the decision about the complaint lapsing must be provided with the application.

## Part 4: Referrals from the Queensland Human Rights Commission

### 4.1 What is a referral?

Referrals are sent to the QIRC by the QHRC via a [Form 85](#) - Referral of a matter. These referrals are made in accordance with either s 155(4), s 164A, s 166 or s 167 of the AD Act.

Under s 164A or s 166 of the AD Act, if a conciliation in the QHRC has been held and the work-related complaint has not been resolved, the Complainant may give the QHRC written notice requiring the Queensland Human Rights Commissioner to refer the complaint to the QIRC.

Further, under s 167 of the AD Act, if the Queensland Human Rights Commissioner has not finished dealing with a complaint six months after informing the Complainant and the Respondent that the complaint has been accepted, either the Complainant or the Respondent may, by written notice, request the complaint be referred to the QIRC.

Section 155(4) provides for the Queensland Human Rights Commissioner to refer an investigation which cannot be resolved by conciliation, to the QIRC as if it were a complaint.

A referral will contain documentation which previously formed part of the complaint made with the QHRC such as the Complaint Form, details of the complaint and any attachments associated with that complaint (for example correspondence exchanged between the parties directly relevant to the complaint).

### 4.2 Who are the parties to a referral?

The person who files the original complaint to the QHRC is referred to as the Complainant.

The party who is resisting the complaint is called the Respondent. There may be more than one Respondent to a complaint.

### 4.3 Are there any time limits?

The QIRC must accept a complaint that is referred to it by the Queensland Human Rights Commissioner, unless the complaint was made to the Queensland Human Rights Commission more than one year after the alleged contravention of the AD Act.

If the complaint was made more than one year after the alleged contravention, the QIRC may deal with the complaint if the QIRC considers that, on the balance of fairness between the parties, it would be reasonable to do so.

#### 4.4 What happens once the referral is received by the Registry?

Once the referral is sent to the Industrial Registry by the QHRC via Form 85, it will be processed and a new file will be created with your details and a matter number will be given to the file. The matter number will look similar to this: AD/2021/246.

When contacting the Registry, be sure to use your matter number as a reference so your matter can be located easily. The Registry will also date stamp the Form 85. This means that it will be stamped and dated as in Figure 1.

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



Figure 1 – Date Stamp

After your file is received, the Registry will send you and the Respondent/s a stamped copy of the referral and a directions order.

**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 5: 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 these types of matters.

### 5.1 What is a directions order?

The Commission administers its matters via directions orders. Directions Orders are the 'road-map' for how your matter 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, mention or hearing.

A directions order is a formal document which directs the conduct of the 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 matter.

#### 5.1.1 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.

### 5.2 Example of first directions order

The first directions order is issued by the Industrial Registry on or about the day the referral was received by the QIRC.

The first directions order is quite straightforward in that it deals only with the issue of representation. Even though the referral may outline whether or not parties were represented at the conciliation before the QIRC, it may not necessarily be the case that the representation continues. Therefore, the QIRC needs to establish which party/parties, if any, wish to have legal representation in the QIRC.

This directions order will state:

*'That any party seeking to be legally represented file in the Industrial Registry and serve on the other party/parties an application for leave to be represented (Form 4)', by a certain date.*

A [Form 4](#) is an Application in existing proceedings and may be found on the QIRC website.

This form will need to be completed by the legal representative and filed on or before the date stated in the directions order should you wish to be legally represented. This form will also need to be accompanied by a [Form 34](#) - Lawyer's notice of address for service.

Should no objection be received, the QIRC will generally issue an Order granting legal representation pursuant to s 530(1)(c) of the *Industrial Relations Act 2016*.

### 5.3 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.

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.

**EXAMPLE - Further Directions Order - unrepresented party/parties**

The following is an example of a further directions order issued, should either the Complainant or Respondent/s **not** be legally represented. The first step in the process in these instances is a conciliation conference.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Anti-Discrimination Act 1991*

John Smith  
*Complainant*

v

The Business Pty Ltd  
*First Respondent*

and

Bob Jones  
*Second Respondent*

*(Matter No. AD/2020/436)*

REFERRAL OF A COMPLAINT PURSUANT TO SECTION 166

**FURTHER DIRECTIONS ORDER**

FURTHER TO the Directions Order issued by the Industrial Registry on 28 August 2020, IT IS ORDERED:-

1. That there be a conciliation conference before Industrial Commissioner White at the Queensland Industrial Relations Commission, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane on Friday, 28 September 2020 at 2.00 p.m. The Industrial Registry is located on Level 21, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane.

**Any enquiries in relation to this matter are to be made directly to [qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au)**

Dated 1 September 2020.

Registry Officer  
For the Industrial Registrar

**EXAMPLE - Further Directions Order - Unrepresented party/parties - if the matter is not resolved after the initial conciliation conference**

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Anti-Discrimination Act 1991*

John Smith  
*Complainant*

v

The Business Pty Ltd  
*First Respondent*

and

Bob Jones  
*Second Respondent*

*(Matter No. AD/2020/436)*

REFERRAL OF A COMPLAINT PURSUANT TO SECTION 166

**FURTHER DIRECTIONS ORDER**

After the conference held on 28 September 2020, IT IS ORDERED: -

1. That the Complainant file in the Industrial Registry and serve on the Respondents a statement of facts and contentions (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs), by 4.00 pm on 19 October 2020.
2. That the Complainant's statement of facts and contentions must:
  - (a) if the complaint referred by the Queensland Human Rights Commission (the QHRC) contained allegations of direct, and, or in the alternative, indirect discrimination, identify the attribute or attributes, within the meaning of s 7 of the *Anti-Discrimination Act 1991* (the AD Act), upon which each allegation is made;
  - (b) for a complaint of **direct** discrimination:
    - (i) identify the section or sections of the AD Act alleged to have been contravened;
    - (ii) identify the name or names of the persons alleged to have contravened the AD Act;
    - (iii) if the Complainant relies upon an actual person as the comparator, state the name of the comparator and why that person is an appropriate comparator;
    - (iv) in the alternative, if the Complainant relies upon a hypothetical comparator as the appropriate comparator, describe the hypothetical comparator;
    - (v) describe how the Complainant contends they were treated less favourably, than the appropriate comparator, by the person or persons alleged to have contravened the AD Act;
  - (c) for a complaint of **indirect discrimination**:
    - (i) identify the section or sections of the AD Act alleged to have been contravened;
    - (ii) identify the term the Complainant alleges was imposed by the Respondents (the term);

- (iii) state why the Complainant could not comply or was not able to comply with the term;
- (iv) state how the Complainant contends a higher proportion of persons without the Complainant's attribute could comply or were able to comply with the term; and;
- (v) state why the term is not reasonable;
- (d) if the complaint referred by the QHRC included an allegation of **sexual harassment**:
  - (i) state the name of the person or persons who engaged in the conduct alleged to be sexual harassment within the meaning of s 119 of the AD Act;
  - (ii) state the exact circumstances upon which the Complainant relies to claim the conduct alleged was sexual harassment within the meaning of s 119 of the AD Act;
- (e) if the complaint referred by the QHRC included an allegation of making an **unlawful request for information**:
  - (i) state the name of the person or persons who engaged in the conduct alleged to be an unlawful request for information within the meaning of s 124 of the AD Act;
  - (ii) state the exact circumstances upon which the Complainant relies to claim the conduct alleged was an unlawful request for information within the meaning of s 124 of the AD Act;
- (f) if the complaint referred by the QHRC included an allegation of **victimisation**:
  - (i) state the name of the person or persons who engaged in the conduct alleged to be victimisation within the meaning of s 130 of the AD Act;
  - (ii) state the exact circumstances upon which the Complainant relies to claim the conduct alleged was victimisation within the meaning of s 130 of the AD Act;
- (g) if the complaint referred by the QHRC included any other allegation of **a work-related contravention of the AD Act**:
  - (i) state the name of the person or persons who engaged in the conduct alleged to be the work-related contravention within the meaning of the AD Act;
  - (ii) state the section of the AD Act alleged to have been contravened; and
  - (iii) state the exact circumstances upon which the Complainant relies to claim the conduct alleged was a work-related contravention of the AD Act;
- (h) having regard to s 209(1) of the AD Act, state all the orders sought by the Complainant;
- (i) if compensation is an order sought by the Complainant, specify:
  - (i) if general damages are sought, the amount of general damages claimed;
  - (ii) if economic loss is claimed:
    - A. whether the economic loss claimed is past economic loss and/or future economic loss;
    - B. the exact circumstances in which the loss or damage was allegedly suffered;
    - C. the amount of past economic loss and/or future economic loss that is claimed; and
    - D. how the Complainant worked out or estimated the amount of past and/or future economic loss;

(iii) if any other type of compensation is sought by the Claimant, specify:

- A. the nature of that compensation; and
- B. the reason for seeking that compensation; and
- C. how the Complainant worked out or estimated that amount of compensation; and

(i) if the Complainant claims interest, the Complainant must specify:

- (i) the amount or amounts on which interest is claimed;
- (ii) the interest rate or rates claimed;
- (iii) the day or days from which interest is claimed; and
- (iv) the method of calculation.

3. That the Respondents file in the Industrial Registry and serve on the Complainant their response to the Complainant's statement of facts and contentions (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs), by 4.00pm on 9 November 2020.
4. That the parties supply to each other, but not file in the Industrial Registry, a list of documents in their possession or under their control directly relevant to a matter in issue in the proceeding, by 4.00pm on 23 November 2020.
5. That the Complainant supply to the Respondents, but not file in the Industrial Registry, **copies of those documents** contained in the list disclosed which the Respondents request for which the Complainant has no legal claim to privilege, by 4.00pm on 7 December 2020.
6. That the Respondents supply to the Complainant, but not file in the Industrial Registry, **copies of those documents** contained in the list disclosed which the Complainant requests for which the Respondents have no legal claim to privilege, by 4.00pm on 7 December 2020.
7. That there be a conciliation conference before Industrial Commissioner White at the Queensland Industrial Relations Commission, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane on **14 December 2020 at 2.00 p.m.** The Industrial Registry is located on Level 21, 66 Eagle Street, (Cnr Elizabeth and Creek Streets) Brisbane.

**Any enquiries in relation to this matter are to be made directly to [qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au)**

Dated 28 September 2020.

A.B. White.  
Industrial Commissioner.

For more information: **'Statement of Facts and Contentions'** see 5.5 on page 21 below.

**'List of documents'** see 5.7.1 on page 26 below.

**'Copies of those documents'** see 5.7.2 on page 27 below.

## 5.4 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 should 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, 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.

## 5.5 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 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.

There are two different forms used in the Commission in relation to statements of facts and contentions:

### **Form 85A - Complainant's statement of facts and contentions**

A 'Fact' is:

- an issue that caused the complaint;
- an essential fact that is relevant to the complaint.

'Contentions' must clearly and concisely specify the issues in dispute in this matter. Examples of what contentions may be are:

- whether the Complainant was discriminated against on the basis of any of the **attributes** specified in s 7 of the AD Act, namely:
  - sex;
  - relationship status;
  - pregnancy;
  - parental status;
  - breastfeeding;
  - age;
  - race;
  - impairment;
  - religious belief or religious activity;
  - trade union activity;
  - lawful sexual activity;
  - gender identity;
  - sexuality;
  - family responsibilities;
  - association with, or relation to, a person identified on the basis of any of the above attributes;
- whether the Complainant was discriminated against on the basis of the attribute pursuant to s 8 of the AD Act;
- whether the Complainant was directly or indirectly discriminated against within the meaning of ss 9, 10 or 11 of the AD Act (regarding direct or indirect discrimination); or
- whether the Complainant was discriminated against in the work or pre-work area pursuant to Division 2 of the AD Act.

### **Form 85B- Response to the Complainant's statement of facts and contentions**

This form is used by the Respondent to respond to the Complainant's Statement of Facts and Contentions.

Any application to amend a Statement of Facts and Contentions must be made within seven (7) days before the hearing. If the amendments are significant then you may encounter some opposition. The Commission may allow or disallow a proposed amendment.

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

The type of alleged discrimination encountered will determine what you should include in your statement. It may be broken down into the following:

### 5.6.1 Direct discrimination

Direct discrimination, on the basis of an **attribute** (outlined at s 7 of the AD Act, see Glossary also) happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different (see s 10 of the AD Act).

If your claim is in relation to direct discrimination, you will need to:

- identify the section or sections of the AD Act alleged to have been **contravened** (meaning contradicted or 'gone against' the AD Act);
- identify the name or names of the persons alleged to have contravened the AD Act;
- if the Complainant relies upon an actual person as the **comparator** (i.e. someone who is in the same or similar situation to the Complainant, but who does not have the same protected characteristic), state the name of the comparator and why that person is an appropriate comparator;
- in the alternative, if the Complainant relies upon a **hypothetical comparator** (i.e. when there is not an **actual** person you can compare yourself with) as the appropriate comparator, describe the hypothetical comparator; and
- describe how the Complainant contends that they were treated less favourably, than the appropriate comparator, by the person or persons alleged to have contravened the AD Act.

### 5.6.2 Indirect discrimination

Indirect Discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a **term** (i.e. condition, requirement or practice, whether or not written, for example employer imposing a height restriction even though it does not effect work performance):

- (a) with which a person with an attribute does not or is not able to comply; and
- (b) with which a higher proportion of people without the attribute comply or are able to comply; and
- (c) that is not reasonable (see s 11 of the AD Act).

If your claim is in relation to indirect discrimination, you will need to:

- identify the section or sections of the AD Act alleged to have been contravened;
- identify the term the Complainant alleges was imposed by the Respondent/s;
- state why the Complainant could not comply or was not able to comply with the term;
- state how the Complainant contends a higher proportion of persons without the Complainant's attribute could comply or were able to comply with the term; and
- state why the term is not reasonable.

### 5.6.3 Sexual harassment

Sexual harassment is when a person:

- (a) subjects another person to an unsolicited act of physical intimacy; or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- (c) makes a remark with sexual connotations relating to the other person; or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person.

This is done with the intention of offending, humiliating or intimidating the other person (see s 119(f) of the AD Act).

If your claim is in relation to sexual harassment, you will need to:

- state the name of the person or persons who engaged in the conduct alleged to be sexual harassment within the meaning of s 119 of the AD Act; and
- state the exact circumstances upon which the Complainant relies to claim the conduct alleged was sexual harassment within the meaning of s 119 of the AD Act.

### 5.6.4 Unlawful request for information

Pursuant to s 124 of the AD Act, a person must not ask another person, either orally or in writing, to supply information on which unlawful discrimination might be based.

If your claim is in relation to an unlawful request for information, you will need to:

- state the name of the person or persons who engaged in the conduct alleged to be an unlawful request for information within the meaning of s 124 of the AD Act; and
- state the exact circumstances upon which the Complainant relies to claim the conduct alleged was an unlawful request for information within the meaning of s 124 of the AD Act.

### 5.6.5 Victimization

In accordance with s 130 of the AD Act, victimisation happens if the Respondent does an act, or threatens to do an act, to the detriment of the complainant.

If your claim is in relation to victimisation, you will need to:

- state the name of the person or persons who engaged in the conduct alleged to be victimisation within the meaning of s 130 of the AD Act; and
- state the exact circumstances upon which the Complainant relies to claim the conduct alleged was victimisation within the meaning of s 130 of the AD Act.

### 5.6.6 A work-related contravention of the *Anti-Discrimination Act 1991*

The AD Act establishes a legal responsibility on employers to provide workplaces free from discrimination. This applies to all aspects of work (whether it be full-time, part-time, casual etc), including recruitment, employment benefits, training, transfers, promotion and dismissal.

If your complaint is in relation to a **work-related contravention** of the AD Act, you will need to:

- state the name of the person or persons who engaged in the conduct alleged to be the work-related contravention within the meaning of the AD Act;
- state the section of the AD Act alleged to have been contravened; and
- state the exact circumstances upon which the Complainant relies to claim the conduct alleged was a work-related contravention of the AD Act.

### 5.6.7 Other

In accordance with s 209 of the AD Act, there are a number of **orders** the Commission may make if the Commission decides that the Respondent/s has/have contravened the AD Act. You should also state in your Statement of Facts and Contentions the order/s you are seeking from the Commission. Some orders the Commission may make are:

- an order requiring the Respondent/s not to commit a further contravention of the AD Act;
- an order requiring the Respondent/s to pay to the Complainant an amount the Commission considers appropriate as compensation for loss or damage caused by the contravention;
- an order requiring the Respondent to do specified things to redress loss or damage suffered by the Complainant;
- an order requiring the Respondent to make a private apology or retraction;
- an order requiring the Respondent to make a public apology or retraction;
- an order requiring the Respondent to implement programs to eliminate unlawful discrimination;
- an order requiring a party to pay interest on an amount of compensation; and/or
- an order declaring void all or part of an agreement made in connection with a contravention of the AD Act.

If **compensation** is sought by the Complainant, the Complainant should specify:

- if general damages are sought, the amount of general damages claimed;
- if economic loss is claimed:
  - whether the economic loss claimed is past economic loss and/or future economic loss;
  - the exact circumstances in which the loss or damage was allegedly suffered;
  - the amount of past economic loss and/or future economic loss that is claimed; and
  - how the Complainant worked out or estimated the amount of past and/or future economic loss;

- if any other type of compensation is sought by the Complainant:
  - the nature of that compensation; and
  - the reason for seeking that compensation; and
  - how the Complainant worked out or estimated that amount of compensation;
- if the Complainant claims interest, the Complainant must specify:
  - the amount or amounts on which interest is claimed;
  - the interest rate or rates claimed;
  - the day or days from which interest is claimed; and
  - the method of calculation.

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

'**Disclosure**' refers to the process of providing relevant documents to other parties.

The provision of a list of documents and copies is also called disclosure.

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.

### 5.7.1 List of documents

Parties in a matter must advise each other of all the documents that they are in possession of, or have under their control, and which are relevant to the matter. 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 head office of the Respondent employer 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.

[Form 23](#) - List of Documents - Unless otherwise directed, this form should only be exchanged between the parties and not filed in the Registry.

### 5.7.2 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.

### 5.7.3 Non-party documents

During the process you may need to request documents from individuals or organisations (apart from the Respondent), which may assist 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.

## Part 6: Conferences

This part of the guide covers conferences before the Commission. Some parties may have already participated in a conciliation conference before the QHRC. However, the process in the Commission is a little different.

### 6.1 What is a conference?

A conference is an informal meeting between the parties, and a Member of the Commission, with an aim of helping all parties to better understand their respective positions in the matter and/or achieve a settlement. A conference may also be beneficial in providing information, and explaining the steps, with regards to the process of these matters in the Commission.

If a matter proceeds beyond the first conference, the same Member of the Commission will chair the second conference (which is listed via the Further Directions Order) to explore, refine and narrow any issues in dispute between the parties. At that conference, the parties have the opportunity to address the Member on the issues they feel should be clarified. The Member 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, however, may assist the parties to understand their prospects should the matter proceed to hearing. The Member of the Commission who chairs such a conference will not be the Member who hears the matter.

Conferences may even result in a settlement and the matter being discontinued. Should a settlement be reached, you should discontinue the matter by filling out a [Form 27](#) - Request to discontinue proceeding.

### 6.2 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.

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 are general points about what you can expect and may guide your preparation for the conference.

## 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 matter.

### 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 date has been organised 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. The Notice of listing will 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 a matter for 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 may 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 Burden of proof

Generally, in accordance with s 204 of the AD Act, it is for the Complainant to prove, on the balance of probabilities, that the Respondent contravened the AD Act. This means that the Complainant bears the responsibility of proving the Respondent has subjected the Complainant to discrimination. 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>

In the case of indirect discrimination, the Respondent must prove, on the balance of probabilities, that a term complained of (see Part 5.2.6) is reasonable.

### 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, 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, ask the presiding Member.

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

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 questions 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.

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 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 listing 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 Complainant 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 7.10.

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

## 7.6 Notices

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

There are five forms relevant to the issue of notices in matters:

- 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, Division 2, Subdivisions 7 and 7A, of the *Industrial Relations (Tribunals) Rules 2011* governs the use of the notices.

### 7.6.1 What are the different notices for?

The notices generally require people to do things 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.

#### 7.6.1.1 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 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 whom 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 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.

#### 7.6.1.2 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. 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.

#### 7.6.2 Forms

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

### 7.7 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. 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 7.10 of this guide.

### 7.8 An outline of the evidence

The further directions order may require 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 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.

### 7.9 What is a trial plan?

In some cases, usually where a hearing is listed for four (4) 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 is 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.

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.

### 7.10 How does oral evidence work?

In these matters, all witness evidence is provided orally. The directions order may require that you provide a one-page 'outline of evidence' for each of the witnesses to each of the parties, or that an affidavit be filed.

There is an established process for the presentation of oral evidence before any court, Commission, or tribunal. It has three phases:

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

#### 7.10.1 Evidence-in-chief

All witnesses must give evidence under oath or an affirmation to the Commission (see Part 7.4). The Complainant will generally give evidence first.

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 your argument.

As part of the evidence-in-chief, you should 'tender' (meaning to make an exhibit) to the Commission any documents relevant to the complaint. As stated above, documents not tendered at the hearing will not be considered as evidence and the Member of the Commission hearing the matter 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.

#### 7.10.2 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.

#### 7.10.3 Re-examination

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

#### 7.10.4 Remainder of the witnesses for the Complainant

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 Complainant 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 prior to the hearing and once the hearing dates are advised in the further directions order. In circumstances where an attendance notice to give evidence is issued, you will be required to pay witness allowances and expenses for that person.

For more information about an attendance notice to give evidence see Part 7.6 of this guide.

#### 7.10.5 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, if the Commission allows.

Where expert witnesses are called, the party calling the witness will need to pay the expenses of the expert witness (for more information see Part 10.1) and arrange, in advance, 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) as required, the party calling the expert witness should request that an attendance notice to give evidence be issued by the Commission well in advance of the hearing date/s. For more information about an attendance notice to give evidence see Part 7.6 of this guide.

#### 7.10.6 Respondent's case

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

#### 7.11 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 in support of their case.

The Complainant will usually make its submissions first, followed by the Respondent. The Complainant may then make a submission in reply addressing any issues of law, if relevant.

If submissions are to be in writing, the Member of the Commission hearing the matter may issue directions for the filing of written submissions at the end 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 matters 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, generally within three months of hearing.

The orders the Member may make in their decision are (but not limited to):

- an order requiring the Respondent/s not to commit a further contravention of the AD Act;
- an order requiring the Respondent/s to pay to the Complainant an amount the Commission considers appropriate as compensation for loss or damage caused by the contravention;
- an order requiring the Respondent to do specified things to redress loss or damage suffered by the Complainant;
- an order requiring the Respondent to make a private apology or retraction;
- an order requiring the Respondent to make a public apology or retraction;
- an order requiring the Respondent to implement programs to eliminate unlawful discrimination;
- an order requiring a party to pay interest on an amount of compensation; and/or
- an order declaring void all or part of an agreement made in connection with a contravention of the AD Act.

The Member may also make an order dismissing a complaint if the complaint is found to have no merit, or has been made frivolously or vexatiously, or without reasonable cause.

### 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 published and 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.

The decision will also be emailed to you on that day. If you do not have an email address it will be sent to you by post on the day on which it is released.

## 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

Depending on the matters at issue and the duration of the proceeding, hearings before the Commission may be expensive. Barristers, solicitors, medical experts, and witnesses may be involved.

More specific information in relation to costs in these matters may be found at s 548 and Schedule 2 of the *Industrial Relations Act 2016*, however generally each party to a proceeding must bear their own costs for the proceeding. There is provision, however, for the QIRC to make an order requiring a party to the proceeding to pay all or part of the costs incurred by another party (either by way of a fixed amount or an amount as assessed in accordance with a court scale), if the QIRC considers it would be in the interest of justice to do so.

### 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 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 high 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 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: 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.

### 11.1 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.

## 11.2 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 parties to your matter.

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, and advice

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

### 13.1 Legislation

If you are looking for the authoritative Government issued copies of the relevant legislation ([Anti-Discrimination Act 1991](#) 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 advice through the following services:

#### **Queensland Human Rights Commission ([qhrc.qld.gov.au](http://qhrc.qld.gov.au))**

The QHRC itself as a number of resources on their website, including a free information and enquiry service. They are able to provide confidential information about your rights and responsibilities, however they are not able to provide legal advice.

#### **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.

#### **Basic Rights Queensland ([brq.org.au](http://brq.org.au))**

Basic Rights Queensland provide a free advice, advocacy and legal service to vulnerable people in matters including disability discrimination and women's employment issues.

#### **Queensland Advocacy Incorporated ([qai.org.au](http://qai.org.au))**

Queensland Advocacy Incorporated are an independent organisation assisting people throughout Queensland with disabilities (including mental illness, intellectual disability or cognitive impairment).

#### **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.

## Part 14: Glossary

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

### 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 proceeding 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 on page 32).

**Agreed Trial Plan:** See Part 7.9 on page 35.

**Attributes:** (See s 7 of the AD Act)

- sex;
- relationship status;
- pregnancy;
- parental status;
- breastfeeding;
- age;
- race;
- impairment;
- religious belief or religious activity;
- trade union activity;
- lawful sexual activity;
- gender identity;
- sexuality;
- family responsibilities;
- association with, or relation to, a person identified on the basis of any of the above attributes;

**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.

**Burden of proof:** It is for the Complainant to prove, on the balance of probabilities, that the Respondent contravened the Act (See s 204 of the AD Act)

**Comparator:** Someone who is in the same or similar situation to the Complainant, but who does not have the same protected characteristic.

**Complainant:** The person who is the subject of the alleged contravention of the Act.

**Contravention:** Unlawful discrimination or sexual harassment or conduct prohibited by Chapter 4 or 5 of the AD Act.

**Cross-examination:** See Part 7.10.2 on page 36.

**Damage:** Includes the offence, embarrassment, humiliation, and intimidation suffered by the person.

**Direct Discrimination:** On the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different (see Part 5.6.1 on page 23 and s 10 of the AD Act).

**Directions order:** See Part 5 on page 15.

**Disclosure:** See Part 5.7 on page 26.

**Evidence-in-chief:** See Part 7.10.1 on page 35.

**Exemptions:** See Part 3.3 on page 11.

**File and serve:** See Part 2.3 on page 10.

**Further directions order:** See Part 5.3 on page 16.

**Gender identity:** In relation to a person means that the person identifies, or has identified as a member of the opposite sex by living or seeking to live as a member of that sex; or is of indeterminate sex and seeks to live as a member of a particular sex

**General damages:** Includes pain and suffering, mental anguish, future losses due to loss of earning capacity.

**Indirect Discrimination:** on the basis of an attribute happens if a person imposes, or proposes to impose, at term:

- (a) with which a person with an attribute does not or is not able to comply; and
- (b) with which a higher proportion of people without the attribute comply or are able to comply; and
- (c) that is not reasonable (See Part 5.6.2 on page 23, and s 11 of the AD Act).

**List of documents:** See Part 5.7.1 on page 26.

**Oath:** For example, swearing an oath - making a promise to a deity (e.g. God) of truthfulness (see Part 7.4 on page 32).

**Parties:** See Part 4.2 on page 13.

**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 7.10.3 on page 36.

**Respondent:** The party who is resisting the complaint is called the Respondent. There may be more than one Respondent to a complaint.

**Seek leave:** Means to ask the Court or 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.

**Sexual harassment:** When a person:

- (a) subjects another person to an unsolicited act of physical intimacy; or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- (c) makes a remark with sexual connotations relating to the other person; or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person.

This is done with the intention of offending, humiliating or intimidating the other person (see s 119 of the AD Act).

**Submissions:** See Part 7.11 on page 37.

**Suppression:** The onus is on the parties to make an application for a suppression order to, for example, suppress certain evidence and/or names/identities.

**Term:** Includes condition, requirement or practice, whether or not written (see s 11 of the AD Act and Part 5.6.2 - Indirect Discrimination, page 23).

**Work-related matter:** A complaint or other matter relating to, or including, work or the work-related area.

## APPENDIX A – Practice Direction - Electronic Filing and Hard Copies of Documents

### PRACTICE DIRECTION NUMBER 3 OF 2021

#### INDUSTRIAL REGISTRAR

#### ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

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

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

In this Practice Direction:

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

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

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

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

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

**M.P. Shelley**  
Industrial Registrar  
24 March 2021

## 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