

Payment instead of taking long service leave application guide

Queensland Industrial Relations Commission



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

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Part 1: Purpose

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

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

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

This guide is written for self-represented parties.

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

Part 2: Introduction and overview

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

2.1 What is the Queensland Industrial Relations Commission?

The Commission has jurisdiction over the following areas:

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

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

There are four types of Members at the Commission:

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

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

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

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

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

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

2.2 What is the Industrial Registry?

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

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

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

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

Part 3: Applications

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

3.1 What is an application?

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

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

3.2 Basis of an application

There are two grounds on which you can make a LSL Payment Application:

1. Financial Hardship; or
2. Compassionate.

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

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

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

3.3 Who are the parties to an application?

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

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

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

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

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

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

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

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

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

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

You must also complete the sections with your Employer's details; the date that your employment commenced; the ground/s on which you are applying; the amount of long service leave that you are applying for; and you must sign the application (electronic signature is accepted). If you wish to provide further information with your application, you may do so. You will also have an opportunity to provide further detail through an affidavit (see Part 5).

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

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

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

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



Figure 1 – Date Stamp

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

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

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

Part 4: Directions order

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

4.1 What is a directions order?

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

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

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

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

4.2 The directions order

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

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

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

In most instances, the directions order in these matters will require the Applicant to file an **Affidavit** - see 4.4 as to what to include in your affidavit.

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

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

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016

John Citizen
Applicant

Matter No. EC/2021/712

APPLICATION FOR PAYMENT OF LONG SERVICE LEAVE

DIRECTIONS ORDER

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

1. That the **Applicant** provide to the Industrial Registry by **12 noon on 1 March 2021** a Form 20 - Affidavit containing:
 - (a) a list of assets and liabilities; and
 - (b) a list of total income (from all sources) and expenditure on a fortnightly or monthly basis; and
 - (c) a copy of 2 recent payslips; and
 - (d) the grounds on which the application is made (i.e whether it is for compassionate reasons or as a result of financial hardship) and how the money will be used.
2. That the **Employer** provide to the Industrial Registry AND provide to the Applicant, by **12 noon on 5 March 2021** a statement containing the following information:
 - (a) the Employer's full business name, entity/group name, ABN and/or ACN, responsible for the employment of the Applicant;
 - (b) the date the Applicant's continuous service with the Employer commenced;
 - (c) the present nature of the Applicant's employment e.g. part-time, full-time;
 - (d) the Applicant's present entitlement to long service leave (e.g. the full entitlement accrued to-date) represented in:
 - hours; and
 - days; and
 - weeks
 - (e) the **Gross** and **Net** monetary value of the amount of long service leave applied for by the Applicant (see page 2 of the application at section 4.4) and confirmation that the monetary value is the cash equivalent of long service leave represented in:
 - hours; and
 - days; and
 - weeks
 - (f) the title of the Industrial Instruments which apply to the Applicant (i.e. Award, Certified Agreement).
3. The **Applicant** is to provide to the Industrial Registry AND provide to the Employer by **12 noon on 8 March 2021**, a statement in reply if the Applicant disagrees with the information provided by the Employer as referred to in Order 2 above.
4. Upon receipt of all information, the matter will be considered by a Member of the Queensland Industrial Relations Commission and determined on the papers, unless otherwise directed.

Dated 24 February 2021

Registry Officer
For the Industrial Registrar

Part 5: Affidavit

The Directions Order issued in these matters may include a direction for the Applicant to file an affidavit in support of the application. This means you will need to prepare a [Form 20-Affidavit](#).

The more information and supporting material that you provide in your affidavit the faster your matter will be progressed.

5.1 What is an affidavit?

An affidavit is a written and sworn, or affirmed, document which is prepared by a party or witness in a matter. An affidavit sets out facts in a neutral tone so that the Commission can examine them objectively when making a decision or order.

The facts that are set out in an affidavit which, if accepted by the Commission, form part of the evidence for your application. This means that it is important for you to take the time to clearly, and simply, state the facts which are relevant to your application.

5.2 Why do I need to provide an affidavit?

In order to approve your application, the Commission needs to be able to satisfy itself that you are in financial hardship and/or need to access a payout of your long service leave on compassionate grounds. This information needs to be provided in a written way and sworn or affirmed to give weight to the information you are providing.

5.3 How to set out an affidavit

An affidavit must:

- be in the approved form ([Form 20](#));
- be written in the first person;
- identify the person making the affidavit, the residential or business address, or place of employment of the person making the affidavit, and state whether the affidavit is sworn or affirmed;
- be divided into consecutively numbered paragraphs, with each paragraph, as far as is practical, covering one idea each;
- include the day on which, and the place where, the affidavit was sworn/affirmed; and
- set out the facts that you will rely on and which are within your knowledge and are relevant.

Should you refer to any additional documents within your affidavit, you should attach those documents to your affidavit by way of an exhibit to your affidavit. Please see [Form 21](#) - Certificate of Exhibit to affidavit.

It is strongly recommended that you include all the below information in your affidavit so that the Commission can have a clearer picture of your financial position.

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

You may wish to use something similar to the table below:

List all assets (House, Car, Furniture and contents, rental property, etc.)	Approximate Amount \$
List all liabilities (Mortgage, Loans, credit cards, debts, etc.)	Approximate Amount \$
List all sources of income (Payslips, shares, royalties, rental property income, etc.)	Approximate Amount \$
Expenditure (Mortgage repayments, bills, groceries, living expenses, etc.)	Approximate Amount \$

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

- House
- Car
- Caravan
- Shares
- Money in the bank
- Superannuation
- Collectibles

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

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

- Personal Loan
- Credit Card Debt
- Car Loan
- Mortgage
- State Penalties Enforcement Register (SPER) Debt

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

- Salary from employment
- Dividends paid by shares
- Interest generated from money in accounts
- Pension/Government Allowance
- Scholarship
- Income from weekend activities, i.e. Market Stall, Coaching etc.

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

- Utility Bills
- Car Maintenance
- Council Rates or Body Corporate Fees
- Grocery Shopping
- School Fees
- Entertainment/Dining Out
- Professional Memberships
- Clothing
- Insurance
- Medical Costs

5.5 'A copy of 2 recent payslips'

If you are suffering from financial hardship you should, at a minimum, provide documents which show what is causing the hardship (i.e. if you cannot meet a loan repayment then you should provide a statement of the loan's balance) and evidence of your income and where it is spent.

5.6 The grounds on which the application is made

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

5.7 Finding a Justice of the Peace and other witnesses for forms

An affidavit requires that your signature is witnessed by a Justice of the Peace, Commissioner for Declarations or a lawyer. You will most likely find a Justice of the Peace or a Commissioner for Declarations at a bank, or a post office. Alternatively, you can search for a Justice of the Peace or a Commissioner for Declarations who is nearest to you at:

[Queensland Government - Find a Justice of the Peace](#)

5.8 Filing and serving documents

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

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

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

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

Need more help preparing your affidavit?

The links below provide useful guides on preparing affidavits, even though they are for different jurisdictions:

- Caxton Legal Centre – [Preparing Affidavits for the Magistrates Court – Queensland Law Handbook Online](#)
- Family Court of Australia & Federal Circuit Court of Australia – [Preparing an affidavit - Federal Circuit Court of Australia](#)

Remember to:

Use the [Form 20](#) - Affidavit to draft your affidavit

Use the [Form 21](#) - Certificate of exhibit - to use as a 'covering page' to each attachment you wish to attach to your affidavit.

Part 6: Order for payment

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

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

Frequently Asked Questions

Does it cost anything to make an application?

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

Am I eligible to apply?

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

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

What is financial hardship or compassionate grounds?

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

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

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

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

How long does my application take to process?

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

Do I have to come to the Commission?

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

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

qirc.registry@qirc.qld.gov.au

1300 592 987

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

PRACTICE DIRECTION NUMBER 3 OF 2021

INDUSTRIAL REGISTRAR

ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

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

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

In this Practice Direction:

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

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

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

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

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

M.P. Shelley
Industrial Registrar
24 March 2021

Contacts:

 www.qirc.qld.gov.au

 1300 592 987

 qirc.registry@qirc.qld.gov.au

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