

# Public service appeal guide

Queensland Industrial Relations Commission



## Document Details

Security Classification	OFFICIAL		
Date of Review of Security Classification	October 2020		
Authority	Registrar, Industrial Registry		
Author	Industrial Registry		
Document Status	Final	Consultation Release	<input checked="" type="checkbox"/> Final Version

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### Acknowledgements

This version of the document, *Public service appeal guide* was developed and updated by the Registry of the Queensland Industrial Relations Commission with assistance from the Public Service Commission.

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## Part 1: Purpose

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

This guide sets out an overview of the procedures that the Queensland Industrial Relations Commission (commission) will usually adopt in managing public service appeals made under Chapter 7 of the *Public Service Act 2008* (Qld).

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

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

This guide is written for self-represented and non-legally represented parties.

## 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 try and assist parties to understand their respective positions. Conferences are generally more informal. Matters that do not settle at conferences usually go to a hearing. A hearing is a formal process presided over by a member of the commission.

There are four types of members at the commission:

- The President, who is also a judge of the Supreme Court of Queensland
- 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: Your Honour
- Commissioners: 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 member 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 administrative support body for the commission and the Industrial Court of Queensland (court), 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. They can assist you with identifying which form to use in certain situations and other procedural matters.

Contact the registry by email ([qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au)), address your message to the Industrial Registrar (i.e Dear Registrar).

## Part 3: Appeals

This part of the guide covers how to appeal a decision, time limits for appealing and other topics related to commencing a public service appeal. Generally, it is important to consider your conduct during your appeal. See Appendix B starting on page 28 for more detail about the Codes of conduct.

### 3.1 What is an appeal?

Public service appeals are appeals against decisions made in relation to a public service employee. Appeals are governed by Chapter 7 of the *Public Service Act 2008* (Qld) (the Act). The types of decisions that can be appealed against are set out in s 194 of the Act. Some decisions are specifically excluded from appeals, they are all set out in s 195 of the Act. For further information on what can and cannot be appealed against see below.

### 3.2 Who can appeal?

Who can appeal a decision is determined by your employment status and how you are affected by the appeal. The following table covers who can appeal.

Type of Decision	Who may appeal
<b>A decision to take or not take, action under a directive</b>	<ul style="list-style-type: none"><li>• an appeal may be made by:<ul style="list-style-type: none"><li>○ a public service employee</li><li>○ a fixed term temporary employee</li><li>○ a casual employee</li><li>○ a general employee</li></ul></li><li>• the appellant must be directly affected and aggrieved by the decision to take action or a failure to act</li><li>• The person must reasonably use the departments individual employee grievances process prior to being able to lodge an appeal</li></ul>
<b>A discipline decision</b>	<ul style="list-style-type: none"><li>• a current employee who is directly aggrieved by the decision to discipline</li><li>• a former employee who is directly aggrieved by a disciplinary declaration made under section 188A</li><li>• a person is eligible to lodge an appeal against a discipline decision without previously using the department's individual employee grievances process</li></ul>
<b>A decision regarding the rectifying a procedural defect of the handling of a work performance matter</b>	<ul style="list-style-type: none"><li>• The employee the subject of the work performance matter to the extent the direction effects that employee</li></ul>
<b>A suspension without pay decision</b>	<ul style="list-style-type: none"><li>• A public service officer who is the subject of the suspension without pay decision</li></ul>



<b>A promotion decision</b>	<ul style="list-style-type: none"> <li>• a public service officer</li> <li>• a tenured general employee</li> <li>• the appellant must be directly affected and aggrieved by the decision to take action or a failure to act</li> <li>• Clause 5.2(c) of the appeals directive sets out the provisions that an employee must comply with before making a promotion appeal</li> </ul>
<b>A transfer decision</b>	<ul style="list-style-type: none"> <li>• a public service officer who is the subject of the transfer decision</li> <li>• the person must use the department's individual employee grievances procedure prior to being able to lodge an appeal.</li> </ul>
<b>A conversion decision</b>	<ul style="list-style-type: none"> <li>• An appeal may be made against a decision under section 149B of the Act that a fixed term temporary employee or casual employee's employment in a department is to continue as a fixed term temporary or casual employee. An Appeal may be made by: <ul style="list-style-type: none"> <li>○ a temporary general employee who is the subject of the decision</li> <li>○ a casual employee who is the subject of the decision</li> </ul> </li> <li>• A public service employee acting in a position at higher classification level under 149C for a continuous period of at least 2 years</li> </ul>
<b>A fair treatment decision</b>	<ul style="list-style-type: none"> <li>• An appeal may be made against a decision a public service employee believes is unfair and unreasonable</li> <li>• An appeal may be made by a public service employee who is aggrieved by the decision.</li> <li>• The person may reasonably use the department's individual employee grievances process prior to lodging an appeal.</li> </ul>
<b>A decision under another Act</b>	An appeal may be made about anything else against which another Act allows a person to appeal. The relevant Act will determine the conditions of the appeal (who may appeal, decisions that may be appealed and whether the decision is subject to the relevant department's employee complaints management process).

**Please Note:** Other than in respect of a disciplinary finding decision and a discipline decision, the person must use the department's individual employee grievances process prior to being able to lodge an appeal. Refer to Directive 11/20 – Individual employee grievances clause 5.1

### 3.3 What can be appealed?

Decisions that can be appealed are grouped into categories. The broadest category, consisting of a group of disparate decisions is referred to as the other category. The following table sets out what can be appealed in each appeal category.

Appeal category	What is covered by the category
Promotion decisions	<p>A decision to promote a public service officer if the person satisfies the following requirements:</p> <ul style="list-style-type: none"><li>• must have applied for a vacancy to which one of the following persons was promoted:<ul style="list-style-type: none"><li>○ a public service officer</li><li>○ a tenured general employee</li><li>○ a tenured public sector employee of a public sector unit listed in schedule 1 of the <i>Public Service Regulation 2008</i></li></ul></li><li>• the person's application for the vacancy must have been received before the deadline of the receipt of applications</li><li>• the person's appeal notice must be filed with the Industrial Registry no later than 21 days after the day on which the promotion of the person was notified in the gazette</li><li>• the person must continue to be entitled to appeal.</li></ul>
"Other" decisions	<p>This is the broadest appeal category and covers decisions made by departments about:</p> <ul style="list-style-type: none"><li>• transfer employee complaints</li><li>• conversions for fixed term temporary employment</li><li>• conversions for casual employment</li><li>• conversion for higher classification levels after 2 years</li><li>• a decision under section 88IA to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter, to the extent the direction affects the employee</li><li>• fair treatment (including disciplinary findings and decisions to suspend a person without pay)</li><li>• disciplinary decisions</li><li>• a former employee may appeal a disciplinary declaration made under section 189 of the Act, including if the decision that would have been taken was termination of employment</li><li>• suspension without pay</li><li>• a decision under a directive issued in accordance with section 53 or 54 of the Act</li><li>• a decision under another Act allowing an appeal to a member of the commission.</li></ul>

#### 3.3.1 What about suspension without pay decisions?

An employee can lodge an appeal against a decision to suspend them without pay if they believe it is unfair and unreasonable.

### 3.3.2 Applications under the *Public Interest Disclosure Act* 2010

Section 47 of the *Public Interest Disclosure Act* 2010 allows an employee to make an application for relocation on the ground that it is likely a reprisal will be taken against the public service employee if the employee continues in the employee's existing work location and the only practical way to remove or substantially remove the danger of reprisal is to relocate the employee.

A member of the commission will only direct that the employee be relocated if satisfied there are grounds for doing so. With the employee's consent, the relocation can be to either the employee's department or to another department. The relocation of the employee to another department can only occur if the chief executive of that department consents.

### 3.4 What cannot be appealed?

Appeal category	What cannot be appealed?
General Decisions	<ul style="list-style-type: none"> <li>• a decision of the Governor in Council</li> <li>• a decision of a Minister</li> <li>• a decision about superannuation benefits or workers' compensation</li> <li>• a decision about probation</li> <li>• a decision to terminate the employment of a public service officer employed on probation</li> <li>• a decision about the classification level of employment, unless the decision is declared under a directive to be a decision that may be appealed</li> <li>• a decision to promote, transfer, redeploy or second a person as a chief executive, senior executive or senior officer</li> <li>• a decision of the commission chief executive relating to reviewing a procedural aspect of the handling by a department of a work performance matter at the request of an employee under section 88IA, other than to the extent allowed under section 194(1)(ba)</li> <li>• a decision under section 149 not to convert the employment basis of a fixed term temporary employee or casual employee</li> <li>• a decision under section 149C not to appoint an employee to a position at a higher classification level, if the employee has been seconded to or acting at the higher classification level for less than 2 years</li> <li>• a non-appealable appointment This is an appointment: <ul style="list-style-type: none"> <li>○ that is not a promotion</li> <li>○ to a role remunerated in excess of the maximum salary applicable to the AO8 classification with the relevant Department</li> <li>○ to a role which is exempt from advertising in accordance with the directive relating to recruitment and selection</li> <li>○ to a role which is entry level as defined by the directive relating to recruitment and selection (Directive 12/20)</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• a person cannot appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department</li> </ul>
Discipline decisions	<ul style="list-style-type: none"> <li>• a disciplinary action decision to terminate the employee's employment.</li> </ul>
Promotion decisions	<ul style="list-style-type: none"> <li>• if the relevant public service officer has been redeployed within one year before the promotion</li> <li>• the promotion is to a classification level that is not higher than the officer's classification level immediately before the redeployment</li> </ul>
Other decisions	<ul style="list-style-type: none"> <li>• a recruitment and selection decision. Unless it is: <ul style="list-style-type: none"> <li>○ a decision not to apply the directive relating to transfer within and between classification systems.</li> <li>○ a decision not to appoint an employee requiring placement because they are assessed as unsuitable</li> <li>○ a decision not to appoint (or second) a current public service employee because of their disciplinary history</li> </ul> </li> <li>• a decision to fill a vacancy as an identified role, the process for assessing and the decision about whether the mandatory attribute is held or not held.</li> <li>• A fair treatment decision <ul style="list-style-type: none"> <li>○ made under chapter 5, part 7 (mental or physical incapacity)</li> <li>○ made under chapter 6, part 2 (disciplinary action), other than: <ul style="list-style-type: none"> <li>– a finding under section 187 that a disciplinary ground exists for the person</li> </ul> </li> <li>○ relating to the recruitment or selection of a public service employee</li> <li>○ relating to a person's work performance, other than a decision about the person's work performance that is recorded in a formal way as part of a periodic performance review</li> <li>○ relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of the grievance</li> <li>○ relating to the development or performance management of a chief executive or senior executive.</li> </ul> </li> </ul>

### 3.5 Basis of an appeal

Public service appeals are conducted as a review of the decision which is the subject of the appeal. The member of the commission who decides your appeal will be deciding whether the decision made was fair and reasonable.

For an appeal against a promotion or disciplinary decision the member must decide the appeal on the basis of the evidence that was before the decision maker at the time that the decision was made. However, the member may allow other evidence to be taken into account.

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

There are only ever two parties to a public service appeal. You, the public service employee and the relevant department or government body that you work for.

You will be described as the appellant. The State body that you work for will be described as the respondent.

### 3.7 Are there any time limits?

There are time limits on appealing decisions. An appeal notice (Form 89 – Appeal Notice – *Public Service Act 2008*) must be given and actually received by the Industrial Registrar before 5.00pm on the day that is 21 days after:

- for a promotion decision—the day the decision is publicly notified
- otherwise—the day the appellant was given the decision appealed against.

However, the commission member may, at any time extend the time for the appeal notice to be filed if you can satisfy the member that there is a reasonable ground for extending the time. The following table is a list of when an appeal can be lodged.

Type of Appeal	Timeframe for lodgement
A discipline decision	By 5.00pm, within 21 days after the Appellant received the discipline decision (disciplinary findings and/or disciplinary action decisions)
A promotion decision	By 5.00pm, within 21 days after the appointment that is being appealed against is publicly notified.
Other decisions	By 5.00pm, within 21 days after the Appellant received the decision that is being Appealed against.
Temporary employment	Within 21 days of the employee receiving notice that their status will remain as a temporary employee. If the chief executive has failed to review the temporary employee's temporary status, within 28 days of the employee being eligible for their employment status to be reviewed.
Teacher transfers	Within 21 days of receipt of the Teacher Transfer Review Panel's review decision.

### 3.8 How to appeal - Form 89 – Appeal Notice – *Public Service Act 2008*

For Appeals not started before the commencement of the *Public Service and Other Legislation Amendment Act 2020* on 14 September 2020, and where the appeal period has not ended, a Form 88 will need to be filed. Please refer to transitional provisions of the *Public Service Act 2008*, section 297.

Appeals commence at the commission by filing a Form 89 – Appeal Notice – *Public Service Act 2008*. You can access Form 89 from [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au) under the forms tab or from the public service appeal page.

Form 89 and all other forms can be filed at the registry via the following methods:

- **By e-mail:** [qirc.registry@qirc.qld.gov.au](mailto:qirc.registry@qirc.qld.gov.au)
- **In person over the counter:** Industrial Registry  
Level 21 Central Plaza Two  
66 Eagle 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 89, the registry will be in contact with you requesting you provide an email address. If you do not have an email address, then the registry will communicate with you by post.

The office hours of the registry are 8.30am to 4.45pm Monday to Friday, excluding public holidays and the compulsory Christmas to New Year closure. However, the Form 89 can be filed up until 5.00pm on days that the registry is open.

You will be unable to file other documents outside of office hours, on public holidays or closures.

If you are filing by email, and what you are filing is quite large, the Industrial Registry may require you to provide a number of hard copies too.

See: **APPENDIX A** to this guide on page 41, Practice Note 1 of 2018 *ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS*.

### 3.8.1 Completing the Form 89

Accurately completing Form 89 is important.

The Form 89 requires you to tick a number of boxes. Please ensure that you have selected the correct option as it will have an impact on the further conduct of your matter.

There are three parts to the Form 89:

Part A – Appeal against a promotion

Part B – Appeal against one of the following decisions

Part C – What decision is being appealed

If you are appealing against a promotion decision you will not need to complete Part A. For all other types of decisions, you will not need to complete Part B.

Part A requires you to attach a copy of the relevant gazette notice for the relevant appointment that you are appealing. Your gazette notice must be attached for your Form 89 to be processed by the registry.

Part B requires you to attach a copy of the decision that you are appealing against. That might be a letter or a more formal document which provides reasons to you. The copy of the decision must be attached for your Form 89 to be processed by the registry.

Part C requires that you state the grounds on which you are appealing. This means that you must outline why you do not think that the decision reached was fair or reasonable.

Do not attach supporting documents to the Form 89, other than the relevant decision. Supporting documents will not be accepted for filing with the Form 89.

If the member requires more information, then it will be requested later.

### 3.9 What happens once the Form 89 is filed in the registry?

Once your completed Form 89 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: PSA/2018/600.

Use that number when contacting the registry so staff can locate your file easily. The registry will also date your Form 89. This means that it will be stamped and dated as per Figure 1.

The Industrial Registrar's date stamp represents the date of filing of the form in the registry. If your form is received by the registry after office hours (see 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 the relevant contact/s at your employer a copy of the stamped Form 89.

The Form 89 will then be allocated to a member of the commission. The member will issue a directions order which sets out the further conduct of the matter. In some matters, such as disciplinary appeals, the directions order will stay the operation of the decision so that the effectiveness of the appeal is preserved. For more information about the directions order see part 4 of this guide.

Depending on the matter in question, the parties may be asked for all relevant information and written submissions supporting their case.

### 3.10 Filing and serving documents

It is important to understand what the words "file" and "serve" mean for the conduct of your matter.

**File**—means that you must provide the document stated in the directions order to the Industrial Registry. You must do this in the way that the Industrial Registry 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.



## Part 4: Directions order

This part of the guide covers what a directions order is and explains the way in which they are issued.

### 4.1 What is a Directions Order?

The commission usually issues a directions order at the beginning of the appeals process, shortly after the appeal is filed. Directions orders provide a "road map" outlining how your appeal will be conducted, when documents are due to be filed, which documents should be filed and provided to the other party, and if/when you may need to come to the commission for a conference or hearing.

A directions order itself is a formal document that 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 appeal.

On the following page you will find an example directions order. The directions order in your appeal may look different to this one depending on how the member who has carriage of your appeal decides to conduct the proceedings.

### 4.2 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, 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](mailto:qirc.registry@qirc.qld.gov.au) and explaining why the extension is sought. A brief email will be sufficient.

You should also ask the other party whether they consent to the extension of time. Within your request for an extension you must inform the registry, or the commission of the other party's attitude to the extension.

If the other party consents to the extension, then it will most likely be allowed. If the extension is not consented to, then the commission member with carriage of your appeal will determine whether or not the extension should be allowed. The member may also request that the parties provide further information.

### 4.3 Example directions order

#### QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Public Service Act 2008*  
*Industrial Relations Act 2016*

John Citizen  
*Appellant*

v

State of Queensland (Department of Administrative Affairs)  
*Respondent*

(Matter No. PSA/2020/800)

#### APPEAL AGAINST A DECISION PURSUANT TO SECTION 194 OF THE *PUBLIC SERVICE ACT 2008*

#### DIRECTIONS ORDER

AFTER reading the Appeal in the above matter filed with the Industrial Registry on 30 April 2020, IT IS ORDERED:

1. That the decision subject of the Appeal is, pursuant to s 566(1) of the *Industrial Relations Act 2016*, stayed until the determination of the Appeal or further order of the Commission.
2. That the Appellant file in the Industrial Registry, and serve on the Respondent, written submissions (*of no more than five pages in length and any relevant attachments*) in support of the Appeal by **4.00 pm on Friday 8 May 2020.**
3. That the Respondent file in the Industrial Registry, and serve on the Appellant, written submissions (*of no more than five pages in length and any relevant attachments*) in response to the Appellant's submissions by **4.00 pm on Friday 15 May 2020.**
4. That, if needed, the Appellant file in the Industrial Registry, and serve on the Respondent, written submissions (*of no more than three pages in length and any relevant attachments*) in reply to the submissions of the Respondent, by **4.00 pm on Friday 22 May 2020.**
5. That the matter will be dealt with on the papers pursuant to s 451(1) of the *Industrial Relations Act 2016* unless otherwise ordered.

Dated 1 May 2020

D. WHITE,  
Industrial Commissioner.

## Part 5: Legal representation and support

A party can be represented by someone else (e.g. a union official, advocate or family member) during the appeal process leading up to the conference or hearing. At a conference or a hearing:

- a party can appear personally or by an agent (e.g. a union official, advocate, friend or family member)
- a lawyer cannot represent a party if, in so doing, they have been instructed to act as the party's lawyer and would be subject to the *Legal Profession Act 2007*.

Each party is responsible for the costs of their own representation.

The act stipulates that a party to a promotion appeal may only be represented at a conference or hearing with the permission of the commission member who has been allocated the appeal.

Any party to an appeal is entitled to attend with a support person. The role of a support person is to provide emotional and other support to the party, not to speak or take an active role in the proceedings. A support person who attempts to represent a party or otherwise interrupt proceedings may be asked to leave by the commission member.

## Part 6: Conferences

A conference is an informal meeting between the parties and a member of the commission, with an aim of assisting the parties to understand their respective positions in the matter and possibly settling the matter.

### 6.1 Overview

If a matter is listed for a conference, the parties are expected to make themselves available to attend at the time and on the date scheduled.

Section 211 of the *Public service Act 2008* states that attending an appeal proceeding is part of the appellant's duties as an employee – this includes attending a conference. As the appellant you are also entitled to be paid travel expenses and allowances reasonably incurred in attending an appeal proceeding (see section 212). This does not apply to an appeal against a disciplinary declaration under section 194(1)(b)(ii).

The commission member will consider all submissions made by the parties and will ensure both sides have a fair chance to express their case. The member will determine the format of the conference.

### 6.2 What can I expect at a conference?

Conferences are informal and are held in a conference room at the commission. You will be seated around a large table with the other party, a member of the commission and the member's associate. Conferences are not usually recorded, however the member may decide to record some things if the member believes that it may assist the parties. If the conference is recorded, a transcript of proceedings may be made available to the parties.

What occurs at a conference is entirely dependent on how complicated the matter is, how prepared the parties are, and how the member decides to approach it all. There are some general points which might guide you on what to expect.

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. That is not why conferences are held. Instead, the member is helping the parties to better understand their respective positions and come to an agreeable outcome.

In some conferences the member may provide an opinion about the merits of the matter and the prospects of either side in the appeal. If the matter does progress to a hearing, then the conduct of the matter will be more formal. The procedures in a hearing are determined by the member who has carriage of the matter for hearing.

## Part 7: Settlements and decisions

In most appeals the member who heard the matter will not make a decision immediately, instead, the member will reserve his or her decision. This means that the decision and the reasons for that decision will be provided to the parties at a later date. Currently, members aim to have decisions to parties within three months of the hearing. Public service appeals tend to have a fast turn-around time and will usually be released to the parties not long after the member has all of the information requested.

### 7.1 Publication of decisions

Once the member has made a decision, a written copy will be released to the parties and the Public Service Commission via email or post. Decisions made on appeals which were filed after 14 September 2020 are publicly available via the Supreme Court Library website at <https://www.sclqld.org.au>

### 7.2 Settlements

Parties are free to reach an agreement themselves at any time during the appeal process up until the final decision is issued by the commission member. If a settlement is reached or the appellant no longer wishes to proceed with the appeal for any reason, the appellant should withdraw the appeal by filing a Form 27 Notice of Discontinuance which may be found on the website here: <https://www.qirc.qld.gov.au/forms>.

## Part 8: Appealing a decision of a member

For appeals commenced prior to 14 September 2020, if you are dissatisfied with the outcome of an appeal, you may be able to seek a review of the decision under the *Judicial Review Act 1991*.

If you are dissatisfied with the outcome of an appeal heard under the *Industrial Relations Act 2016*, you may be able to file an appeal to the Industrial Court. Refer to section 557 of the *Industrial Relations Act 2016* for when an appeal from the Commission can be made.

## Part 9: The model litigant principles

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

For a downloadable copy of the model litigant principles please visit:

<http://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>

## Part 10: Etiquette and communications

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

### 10.1 General points

Make sure you attend the Commission early to avoid delaying the proceedings.

If you are delayed for any reason it is important that you contact the Industrial 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.

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.

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 proceedings. Similarly, if you leave the hearing room while proceedings are underway then you should bow in the same way when you reach the door of the court room. You are not bowing to the member you are bowing 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, and you can read from it if you wish.

Make sure that you speak loudly enough for everyone to hear and so that, if the proceedings are being transcribed, the transcribers can clearly understand you.

In a hearing it is customary to stand when you are addressing the Commission member or questioning a witness.

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. Water is permitted.



You should show respect by dressing neatly.

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.

## 10.2 Communicating with the registry or the commission

If you communicate with the registry or the commission for any reason connected with your matter you must also inform the other parties of what you are communicating.

If you are sending an email to the registry or a member's associate you must copy in the other parties to your appeal.

If you call the registry or a member's associate you must also relay what you spoke to the registry or the Commission about to the other parties to your appeal.

If you fail to copy in or convey your communications to the other 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 other parties will not be viewed favourably by the registry or the commission.**

## Part 11: Glossary

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

### 11.1 Frequently used terms

**Adjourn/Adjournment:** When a conference 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 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.

**Act:** the *Public Service Act 2008*.

**Appeal:** an appeal started against a decision as specified in sections 193, 194, 196 of the Act.

**Appeal Notice:** Form 89 filed in the Industrial Registry

**Appellant:** a person who starts an appeal against a decision as specified in sections 193, 194, 196 of the Act.

**Directive:** rulings about specific employment matters issued by the Public Service Commission Chief Executive or the Minister for Industrial Relations.

**Department:** the department, agency or other unit of government which has made the decision that is subject of an appeal.

**Employee:** a Queensland public service officer or other entitled employee.

**Parties:** the appellant and the department in each appeal.

**Public Service Officer:** a person employed under the act as defined in section 8 of the Act.

## Appendix A – PN/2018/1 Electronic filing and hard copies of documents

### PRACTICE NOTE NUMBER 1 OF 2018

#### INDUSTRIAL REGISTRAR

#### ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

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

This Practice Note must be complied with. However, the Industrial Registrar may, in appropriate circumstances, waive compliance with this Practice Note. 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 Note:

**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 and 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 of the documents 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 Note will commence operation on Monday 4 June 2018.

**M. P. Shelley**  
Industrial Registrar  
5 April 2018

## 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>1</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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<sup>1</sup> <https://ajja.org.au/wp-content/uploads/2017/12/GUIDE-TO-JUDICIAL-CONDUCT-3rd-Edition.pdf>

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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.
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.