

Public service appeal 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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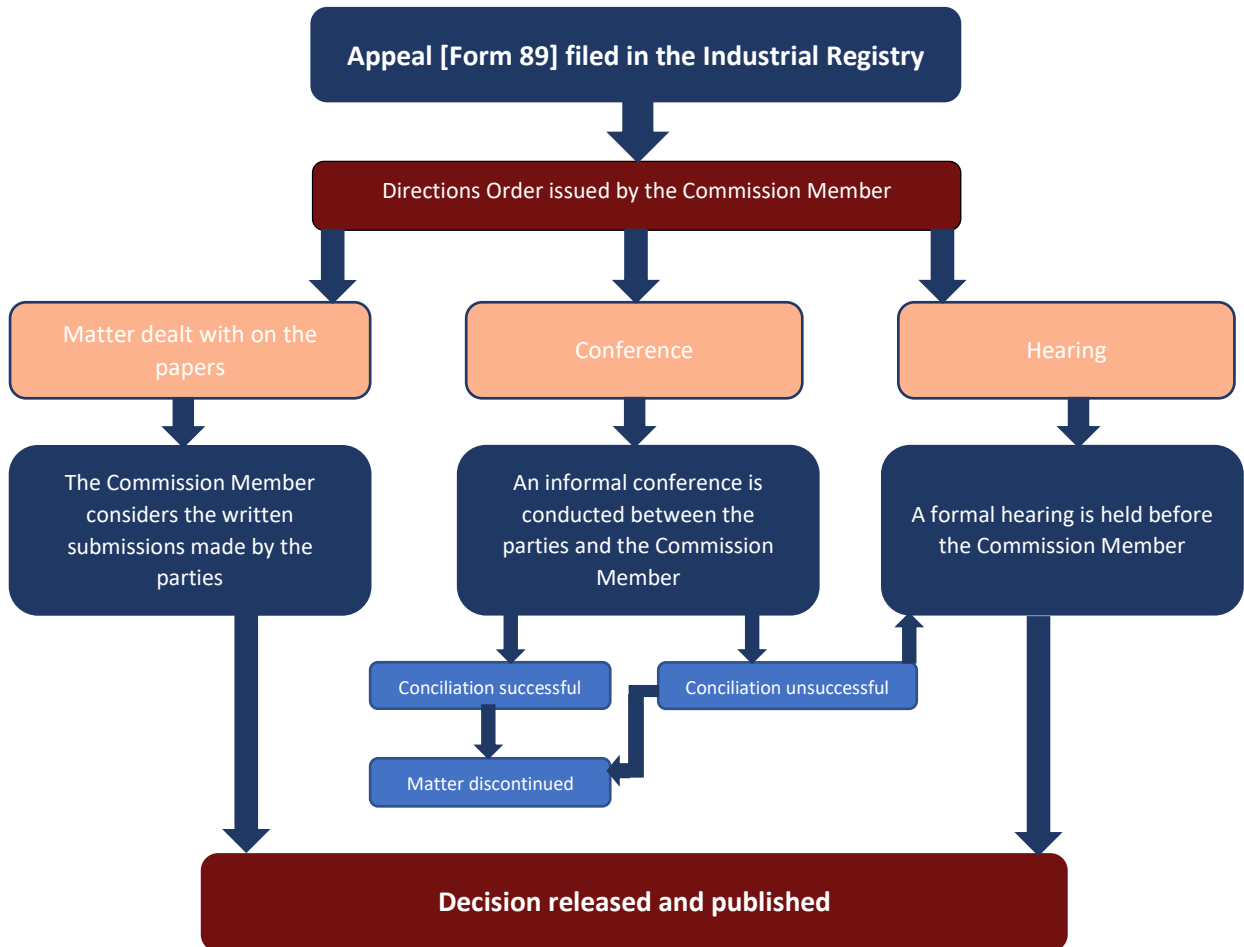
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Overview: Public Service Appeal



Part 1: Purpose

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

This guide sets out an overview of the procedures that the Queensland Industrial Relations Commission (Commission) 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 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);
- 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 referred to as 'Commissioner'.

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

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

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

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 materials 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 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.

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

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

Part 3: Appeals

This part of the guide covers how to appeal a decision of your employer, time limits for appealing and other topics related to commencing a public service appeal.

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 PS Act) and Chapter 11 of the *Industrial Relations Act 2016* (IR Act). The types of decisions that can be appealed against are set out in s 194 of the PS Act. Some decisions are specifically excluded from appeals, they are all set out in s 195 of the PS Act. For further information on what can and cannot be appealed against see below.

3.2 Who can appeal?

Section 196 of the PS Act outlines who may appeal a decision. The eligibility to appeal is determined by the Appellant's employment status and the effect a decision of the employer may have on an Appellant's employment.

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

Type of Decision	Who may appeal
A promotion decision	<ul style="list-style-type: none"> • A public service officer; • a tenured general employee; • the Appellant must be directly affected and aggrieved by the decision to take action or a failure to act; • clause 5.2(c) of the appeals directive sets out the provisions that an employee must comply with before making a promotion appeal.
A transfer decision	<ul style="list-style-type: none"> • A public service officer who is the subject of the transfer decision; • the person must use the department's individual employee grievances procedure prior to being able to lodge an appeal.
A conversion decision	<ul style="list-style-type: none"> • An appeal may be made against a decision under s 149B of the PS 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"> ○ a temporary general employee who is the subject of the decision; ○ a casual employee who is the subject of the decision; • a public service employee acting in a position at higher classification level under 149C of the PS Act for a continuous period of at least two years.
A fair treatment decision	<ul style="list-style-type: none"> • An appeal may be made against a decision a public service employee believes is unfair and unreasonable; • an appeal may be made by a public service employee who is aggrieved by the decision; • the person may reasonably use the department's individual employee grievances process prior to lodging an appeal.
A decision under another Act	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

Directives in relation to public service employment matters may be found on the Queensland Government website [here](#).

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"> • must have applied for a vacancy to which one of the following persons was promoted: <ul style="list-style-type: none"> ○ a public service officer; ○ a tenured general employee; ○ a tenured public sector employee of a public sector unit listed in schedule 1 of the <i>Public Service Regulation 2008</i>; • the person's application for the vacancy must have been received before the deadline of the receipt of applications; • 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; • the person must continue to be entitled to appeal.
"Other" decisions	<p>This is the broadest appeal category and covers decisions made by departments about:</p> <ul style="list-style-type: none"> • transfer employee complaints; • conversions for fixed term temporary employment; • conversions for casual employment; • conversion for higher classification levels after two years; • a decision under s 88IA of the PS Act 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; • fair treatment (including disciplinary findings and decisions to suspend a person without pay); • disciplinary decisions; • a former employee may appeal a disciplinary declaration made under s 189 of the PS Act, including if the decision that would have been taken was termination of employment; • suspension without pay; • a decision under a directive issued in accordance with s 53 or 54 of the PS Act; • a decision under another Act allowing an appeal to a Member of the Commission.

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">• A decision of the Governor in Council;• a decision of a Minister;• a decision about superannuation benefits or workers' compensation;• a decision about probation;• a decision to terminate the employment of a public service officer employed on probation;• a decision about the classification level of employment, unless the decision is declared under a directive to be a decision that may be appealed;• a decision to promote, transfer, redeploy or second a person as a chief executive, senior executive, or senior officer;• 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 s 88IA of the PS Act, other than to the extent allowed under s 194(1)(ba) of the PS Act;• a decision under s 149 not to convert the employment basis of a fixed term temporary employee or casual employee;• a decision under s 149C of the PS Act 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 two years;• a non-appealable appointment. This is an appointment:<ul style="list-style-type: none">○ that is not a promotion;

Appeal category	What cannot be appealed?
	<ul style="list-style-type: none"> ○ to a role remunerated in excess of the maximum salary applicable to the AO8 classification with the relevant Department; ○ to a role which is exempt from advertising in accordance with the directive relating to recruitment and selection; ○ to a role which is entry level as defined by the directive relating to recruitment and selection (Directive 12/20); ● 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.
Discipline decisions	<ul style="list-style-type: none"> ● A disciplinary action decision to terminate the employee's employment.
Promotion decisions	<ul style="list-style-type: none"> ● If the relevant public service officer has been redeployed within one year before the promotion; ● the promotion is to a classification level that is not higher than the officer's classification level immediately before the redeployment.
Other decisions	<ul style="list-style-type: none"> ● A recruitment and selection decision. Unless it is: <ul style="list-style-type: none"> ○ a decision not to apply the directive relating to transfer within and between classification systems; ○ a decision not to appoint an employee requiring placement because they are assessed as unsuitable; ○ a decision not to appoint (or second) a current public service employee because of their disciplinary history; ● 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; ● a fair treatment decision <ul style="list-style-type: none"> ○ made under Chapter 5, Part 7 of the PS Act (mental or physical incapacity); ○ made under Chapter 6, Part 2 of the PS Act (disciplinary action), other than: <ul style="list-style-type: none"> – a finding under s 187 that a disciplinary ground exists for the person; ○ relating to the recruitment or selection of a public service employee; ○ 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; ○ relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of the grievance; ○ relating to the development or performance management of a chief executive or senior executive.

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 based on the evidence that was before the decision maker at the time the decision was made. However, the Member may allow other evidence to be considered, if appropriate

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, agency, 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 received by the Industrial Registrar no later than 5.00 pm on the day that is the 21st day after:

- for a promotion decision - the day the decision is publicly notified; or
- 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 they are satisfied 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 5.00 pm, within 21 days after the Appellant received the discipline decision (disciplinary findings and/or disciplinary action decisions).
A promotion decision	By 5.00 pm, within 21 days after the appointment that is being appealed against is publicly notified.
Other decisions	By 5.00 pm, 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*

Appeals are commenced 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 under the 'Forms' tab or from the [Public service appeals](#) page.

Form 89 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

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.

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 (i.e. discipline, transfer, conversion, suspension, fair treatment etc.); and

Part C – What decision is being appealed (i.e. the reasons/grounds for appeal).

If you are appealing against a promotion decision you will need to complete Parts A and C. For all other types of decisions, you will need to complete Parts B and C.

Part A requires you to attach a copy of the relevant gazette notice (e.g. Queensland Government Gazette) for the relevant appointment that you are appealing. Your gazette notice must be attached to your Form 89 in order for it to be processed by the Registry. Copies of Queensland Government Gazettes may be found [here](#).

Part B requires you to attach a copy of the Respondent's 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 the reasons 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, usually via a Directions Order.

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.

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 89. This means that it will be stamped and dated as in Figure 1.

The Industrial Registrar's date stamp represents the date of filing of the form in the Registry. If your form is received by the Registry after office hours (as outlined in Part 3.8) then it will not be stamped until the next business day.



Figure 1 – Date Stamp

After your Appeal is received, the Registry will send you and the Respondent a copy of the stamped Form 89.

The Appeal 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.

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.

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 Registry. You must do this in the way that the Registry or Member (via directions order) requires.

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

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

Part 4: Directions order

This part of the guide covers what a Directions Order is 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 attend 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 proceeding and what documentation they require from the parties.

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, you must seek an extension from the Commission. An extension can be sought by submitting the request in writing to qirc.registry@qirc.qld.gov.au and explain 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 known.

If the other party consents to the extension, depending on the circumstances, the extension will most likely be allowed. If the extension is not consented to, then the Commission Member will determine whether or not the extension should be allowed. The Commission 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/2021/800)

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 2021, 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 2021.**
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 2021.**
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 2021.**
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 2021

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*.

[See s 530A 'Representation - public service appeals' of the *Industrial Relations Act 2016*]

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

The IR 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.

If a party is required to attend the Commission, they are entitled to be accompanied by a support person if they wish. 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 the aim of assisting the parties to understand their respective positions in the matter and possibly settle the matter. A conference may also be beneficial in providing information to the parties as well as an explanation of the steps with regards to the process of these matters in the Commission.

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 considered part of the Appellant's duties as an employee – this includes attending a conference. As the Appellant, you may be entitled to be paid travel expenses and allowances reasonably incurred in attending an appeal proceeding (see s 212 of the PS Act). However, this does not apply to an appeal against a disciplinary declaration under s 194(1)(b)(ii) of the PS Act.

The Commission Member will consider all submissions made by the parties and will ensure both parties have a fair chance to put forward those submissions. The Member will determine the format of the conference.

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 may be recorded and transcribed (by a Transcription Provider 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.

Parties are not permitted to record any proceedings themselves.

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 a further directions order may need to be issued to allow the parties to file further material. Further, the Member may provide an opinion about the merits of the matter and the prospects of 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 allocated the matter for hearing.

Part 7: Hearings

Not all public service appeal matters proceed to a hearing. Most matters are dealt with by the Member 'on the papers' which basically means without the need for a formal hearing. Should the matter proceed to hearing however, the following is some brief information with regards to how hearings are conducted in the Commission.

Hearings are formal and are conducted in a court room. Witnesses may be 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 does a matter proceed to hearing?

At a conference the Member may establish whether the parties would like the matter to proceed to be heard and determined. Alternatively, a Member, after receiving material or submissions from the parties, may determine the matter would be best dealt with by way of a hearing.

Once a hearing date has been organised, 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 The hearing

A hearing in the Commission is a formal process where parties put forward arguments and 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.

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.

7.3 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 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 Appellant will open their 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.

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

7.4 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.

Part 8: Settlements and decisions

The Member who heard the matter may 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.

8.1 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 published on the Supreme Court Library website and are publicly accessible on the Supreme Court Library of Queensland's website [here](#).**

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.

As all decisions are published documents, the onus is on the parties to make an application for a suppression order to, for example, suppress certain evidence and/or names/identities, prior to the decision release.

8.2 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 - Request to discontinue which may be found on the website here: [Form 27](#).

Part 9: Appealing a decision of a Member

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.

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*.

Part 10: 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 the [Department of Justice and Attorney-General website](#).

Part 11: Etiquette and communications

This part of the guide covers small points of etiquette for conferences 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 first seek leave of the Member and, if permitted, you must 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.
- At the beginning of proceedings, 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.

11.2 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 (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 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 or convey your communications with other parties will not be viewed favourably by the registry or the commission.

Part 12: Finding legislation and directives, 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.

12.1 Legislation

If you are looking for the authoritative Government issued copies of the relevant legislation ([Public Service Act 2008](#) and [Industrial Relations Act 2016](#)) then you can find a free version online at the Queensland Legislation Website: 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.

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.

12.2 Directives

Directives in relation to public service employment matters may be found on the Queensland Government website [here](#).

12.3 Cases

If you are looking for relevant cases of the Commission or the Industrial Court, the Supreme Court Library Queensland has published Public Service Appeal decisions made by the Commission since September 2020. The Commission's decisions can be found [here](#).

The Industrial Court's decisions can be found [here](#).

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

12.4 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. Even though you are not able to be legally represented in your appeal, you may be able to obtain information through the following services:

Public Service Commission (www.qld.gov.au)

Queensland Government - working in the public service (www.forgov.qld.gov.au)

This is a valuable resource relating directly to public service employment. It contains links to all Queensland Government directives, policies, circulars, and guidelines.

Legal Aid Queensland (LAQ) (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)

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.

Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) (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.

12.5 Interpreters

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

Part 13: Glossary

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

13.1 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 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.

Appeal: an appeal started against a decision as specified in sections 193, 194, 196 of the PS 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 PS 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 Respondent in each appeal.

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

Appendix A – Practice Direction 3 of 2021 - Electronic filing and hard copies of documents

PRACTICE DIRECTION NUMBER 3 OF 2021

INDUSTRIAL REGISTRAR

ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

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

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

In this Practice Direction:

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

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

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

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

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

M.P. Shelley
Industrial Registrar
24 March 2021

Appendix B – Codes of Conduct



INDUSTRIAL COURT OF QUEENSLAND QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CODES OF CONDUCT

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.

CODE OF CONDUCT FOR MEMBERS OF THE COMMISSION

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* (3rd Edition) published for the Council of Chief Justices of Australia and New Zealand by the Australasian Institute of Judicial Administration¹

CODE OF CONDUCT FOR PERSONS APPEARING BEFORE THE COMMISSION

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".

CODE FOR PARTIES AND THEIR REPRESENTATIVES

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.


¹ <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

 1300 592 987

 qirc.registry@qirc.qld.gov.au

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