

Unfair dismissal and reinstatement application guide

Queensland Industrial Relations Commission



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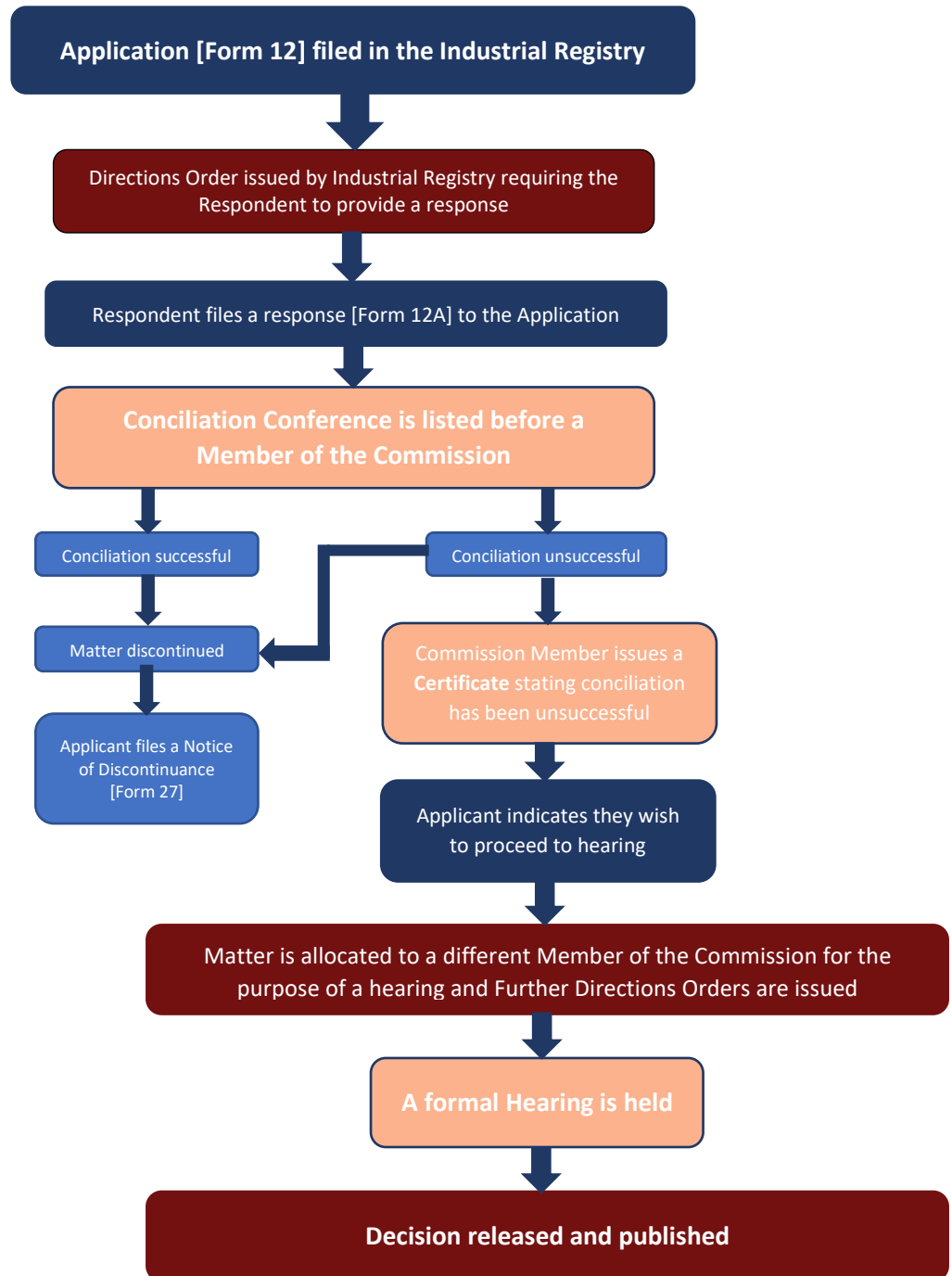
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Overview: Unfair dismissal and reinstatement



Part 1: Purpose

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

This guide sets out an overview of the procedures that the Queensland Industrial Relations Commission (Commission) will usually adopt in managing reinstatement applications made under s 317 of the [Industrial Relations Act 2016 \(Qld\)](#).

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

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

This guide is written for self-represented parties.

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

Part 2: Introduction and overview

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

2.1 What is the Queensland Industrial Relations Commission?

The Commission has jurisdiction over the following areas:

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

In dealing with most of those jurisdictions the Commission holds conferences to assist parties to understand each other. Conferences are generally more informal. Matters that do not settle at conference usually go to a hearing. A hearing is a formal process presided over by a Member of the Commission.

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 Presidents are referred to as 'Your Honour';
- Industrial Commissioners are referred to as 'Commissioner'.

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

Each 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.

2.2 What is the Industrial Registry?

The Registry is the support body for the Commission and the Industrial Court of Queensland (Court). It is where forms and documents are filed for a matter. The Registry is headed by the Industrial Registrar and is supported by the Deputy Registrar and staff of the Registry (Registry Officers). The Commission and Registry are located at:

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

The staff of the Registry cannot provide parties with legal advice, but they can assist you with information concerning procedures of the Court and Commission.

If you ever need to write to the Registry or send an email (qirc.registry@qirc.qld.gov.au), 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: Applications to the Commission

This part of the guide covers applications to the Commission. How to apply, times limit for making an application and other topics related to commencing an application. Generally, it is important to consider your conduct during your application. See Appendix C for more detail about the Codes of Conduct.

3.1 What is an application?

Reinstatement applications are applications made to the Commission in circumstances where the worker believes that they have been unfairly dismissed by their employer. These applications are governed by Division 2 of Part 2 of Chapter 8 of the [Industrial Relations Commission 2016](#).

3.2 Basis on which an application is decided

The outcome of an application depends upon whether the Commission determines an employee was unfairly dismissed. If the dismissal was found to be unfair, then the Commission will be able to use the remedies set out in s 321 or 322 of the *Industrial Relations Act 2016*. Those remedies are either reinstatement, re-employment, or compensation. However, compensation may only be ordered if the Commission considers that reinstatement or re-employment would be impracticable. There are limits on how much compensation the Commission can award.

A dismissal is considered to be unfair if it was **harsh, unjust, or unreasonable**.

Section 320 of the *Industrial Relations Act 2016* lists those things which must be considered in deciding whether a dismissal was harsh, unjust, or unreasonable, such as:

- whether the employee was notified of the reason for dismissal;
- whether the dismissal related to:
 - the operational requirements of the employer's undertaking, establishment or service; or
 - the employee's conduct, capacity or performance;
- if the dismissal relates to the employee's conduct, capacity or performance:
 - whether the employee had been warned about the conduct, capacity or performance; or
 - whether the employee was given an opportunity to respond to the claim about the conduct, capacity or performance; and
- any other matters the Commission considers relevant.

Circumstances in which you may not be able to make an application include if you were:

- on probation (generally within the first three months of employment);
- a short-term casual; or
- engaged for a specific period or task.

If any of the above apply to you, you may need to seek further advice before making an application.

3.3 Who are the parties to a reinstatement application?

In a reinstatement application, there are usually only two parties – the worker who has made the application, and the organisation to which the application relates. If a worker makes an application for reinstatement they will be known as the Applicant, and the other party will be called the Respondent.

An employee organisation such as a union can also make the application for the worker. If that is the case, then the union will be the Applicant instead of the worker.

3.4 Are there any time limits for making an application?

The application must be made within **21 days** of the dismissal taking effect. However, the Commission may allow an extended period in which to apply if it is persuaded that there are reasons to allow the further time. See: s 317(2) of the *Industrial Relations Act 2016*.

3.5 How to make an application - Form 12 - Application for reinstatement

Applications commence at the Commission by filing a [Form 12](#) – Application for reinstatement. You can access Form 12 from qirc.qld.gov.au under the 'Forms' tab.

Form 12 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, **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.

3.5.1 How to complete the Form 12

Providing the appropriate amount of information in the Form 12 is important. Too much information may make it difficult for the Respondent and the Commission to understand your application. The efficient use of information is important in understanding why you have made the application.

There are a series of questions you must answer. Please ensure that all questions are answered and that all of the relevant contact information has been completed.

Form 12, at section 6, requires you to indicate the decision you are seeking. There are some pre-filled orders that mirror the relevant sections of the *Industrial Relations Act 2016* (i.e. s 321, 322 and 323).

Only attach documents to the form which are strictly relevant to the making of the application, such as an affidavit and any exhibits to the affidavit, however an affidavit is not strictly required. There will be opportunities in the future to provide further documentation in support of your application.

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

Once your completed Form 12 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: TD/2021/800.

When contacting the Registry use your matter number so your file can be located easily. The Registry will also date the Form 12. This means that it will be stamped and dated as in Figure 1.

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 Part 3.5) then it will not be stamped until the next business day.

After your file is created, the Registry will send you and the Respondent a stamped copy of the Form 12 and a Directions Order. This is the only instance where the Registry will send documents to other party for you. For more information about Directions Orders, see Part 4 of this guide.



Figure 1 – Date Stamp

3.7 Filing and serving documents

There are a number of references in the Directions Orders below to 'file' and 'serve'. It is important to understand what these terms mean.

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

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

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

Part 4: Directions order

This part of the guide covers what a Directions Order is, explains the way in which they are issued and provides further detail on particular terms and concepts within the Directions Orders that are issued in reinstatement applications.

4.1 What is a Directions Order?

The Commission administers its matters via Directions Orders. Directions Orders are the road-map for how your application will be conducted; when documents are due to be filed; which documents should be filed and provided to other parties; and, when you will need to come to the Commission for a conference or hearing.

A Directions Order is a formal document which directs the conduct of a matter. It is signed and sealed by either a Registry Officer, the Industrial Registrar, or a Member of the QIRC and sets out in numbered steps what must be completed, 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.

4.1.1 Types of Directions Order

There are several types of directions orders, all of which need to be complied with, the main being the standard directions order and a further directions order.

'Further' means another directions order.

Additional further directions orders will be numbered. Do not be alarmed if you see Further Directions Order No. 2, this is only done so parties can keep track of the most recently issued directions.

4.2 Example Directions Order

On the following page inside the black box, is a copy of the Directions Order which is issued by the Registry after your Form 12 has been stamped and processed. That Directions Order is an example of the first Directions Order issued in a reinstatement application. A Directions Order can look intimidating at first, but once you read through it you may notice that it is broken down into clear steps for each of the parties to complete.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016

John Citizen
Applicant

v

State of Queensland (Department of Administrative Affairs)
Respondent

Matter No. TD/2021/800

APPLICATION FOR REINSTATEMENT PURSUANT TO SECTION 317

DIRECTIONS ORDER

AFTER reading the Application in the above matter filed on 14 May 2021, IT IS ORDERED:

1. That the Respondent file in the Industrial Registry and serve a copy on the Applicant, a completed Form 12A – Employer's Response to Application for Reinstatement within 7 days of receipt of this Directions Order.
2. Should either party wish to be represented by an Agent, a Form 33 – Notice of appointment of agent (or in the case of a Solicitor: Form 34 – Lawyers notice of address for service) must be filed in the Industrial Registry.

NOTE:

Once these Directions Orders have been complied with the Industrial Registry will be in contact to determine dates for a conference.

Dated 17 May 2021

Delegated Officer
For the Industrial Registrar

Once the response is received from the Respondent, the matter is set down before a Member for a conciliation conference. You will be notified of this via a Notice of Listing. For more information, see Part 5 of this guide.

4.3 Example Further Directions Order

If, after the conference, the issue is not able to be resolved, the Applicant may indicate they wish to proceed to hearing. In that instance, a Further Directions Order may be issued by the Registry or the Member allocated the matter for hearing.

<p style="text-align:center">QUEENSLAND INDUSTRIAL RELATIONS COMMISSION</p> <p style="text-align:center"><i>Industrial Relations Act 2016</i></p> <p style="text-align:center">John Citizen <i>Applicant</i></p> <p style="text-align:center">v</p> <p style="text-align:center">State of Queensland (Department of Administrative Affairs) <i>Respondent</i></p> <p style="text-align:center"><i>(Matter No. TD/2021/800)</i></p> <p style="text-align:center">FURTHER DIRECTIONS ORDER</p> <p>FURTHER to the conciliation conference held on 31 May 2021 in respect of the application for reinstatement filed on 14 May 2021, IT IS ORDERED:</p> <ol style="list-style-type: none">1. That the Applicant file in the Industrial Registry and serve on the Respondent a statement of facts and contentions (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs), by <u>4.00pm on 21 June 2021</u>.2. The Applicant's statement of facts and contentions must:<ol style="list-style-type: none">(a) state whether the Applicant's dismissal related to the operational requirements of the employer's undertaking, establishment or service; or(b) state whether the Applicant's dismissal related to the employee's conduct, capacity or performance.3. If it is alleged the Applicant's dismissal related to the operational requirements of the employer's undertaking, establishment or service, the Applicant's statement of facts and contentions must state:<ol style="list-style-type: none">(a) the date the Applicant's dismissal was effective;(b) whether or not the Applicant was notified of the reason for the dismissal and if the Applicant was so notified, the material facts of that notification;(c) the reasons given by the employer for the Applicant's dismissal;(d) whether or not the Applicant was provided with any notice or payment in lieu of notice and, if so, the amount of notice or the amount of payment in lieu of notice in gross terms; and(e) any other matters that the Applicant claims the Commission should consider relevant.4. If it is alleged the Applicant's dismissal related to the Applicant's conduct, capacity or performance, the Applicant's statement of facts and contentions must:<ol style="list-style-type: none">(a) state whether the dismissal related to the Applicant's conduct or, in the alternative, the Applicant's capacity, or in the alternative, the Applicant's performance;

- (b) set out:
 - (i) the date the Applicant's dismissal was effective;
 - (ii) whether or not the Applicant was notified of the reason for the dismissal and if the Applicant was so notified, the reasons given by the employer for the Applicant's dismissal;
 - (iii) whether or not the Applicant was provided with any notice or payment in lieu of notice and, if so, the amount of notice or the amount of payment in lieu of notice in gross terms;
 - (iv) whether or not the Applicant had been warned about the Applicant's capacity, conduct or performance, and if the Applicant had been so warned, the material facts of the warning;
 - (v) whether or not the Applicant had been given an opportunity to respond to the claim about the Applicant's capacity, conduct or performance, and if the Applicant had been given such an opportunity, the material facts of the opportunity; and
 - (vi) any other matters that the Applicant claims the Commission should consider relevant.

5. The Applicant's statement of facts and contentions must:

- (a) having regard to s 321 and s 322 of the *Industrial Relations Act 2016* ('the Act') state the remedy sought by the Applicant;
- (b) if the Applicant seeks an order for reinstatement or re-employment, whether the Applicant also seeks:
 - (i) an order to maintain the continuity of the Applicant's employment or service and if so, the terms of the order sought;
 - (ii) an order that the Respondent pay to the Applicant the remuneration lost, or likely to be lost by the Applicant because of the dismissal and if so, the Applicant must:
 - A. set out the amount of remuneration lost or likely to have been lost claimed by the Applicant in gross terms; and
 - B. how the Applicant worked out or estimated that amount; and
 - C. the amount of employment benefits or wages, in gross terms, received by the Applicant since the dismissal; or
- (c) if the Applicant does not seek an order for reinstatement or re-employment and seeks an amount of compensation, the Applicant must:
 - (i) if the Applicant was employed under an industrial instrument, set out, in gross terms, the wages the Respondent would be liable to pay the Applicant for the six months immediately after the dismissal, paid at the rate the Applicant received immediately before the dismissal;
 - (ii) set out the amount of compensation, in gross terms, sought by the Applicant as compensation; and
 - (iii) having regard to s 322(3) of the Act, set out how the Applicant worked out or estimated the amount of compensation as claimed.

6. That the Respondent file in the Industrial Registry and serve on the Applicant a statement of facts and contentions in response to the Applicant's statement of facts and contentions (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs), by **4.00pm on 12 July 2021.**

7. That the Applicant supply to the Respondent by **4.00pm on 26 July 2021**, a list of documents in their possession or under their control directly relevant to a matter in issue in the proceeding.
8. That the Respondent supply to the Applicant by **4.00pm on 26 July 2021**, a list of documents in their possession or under their control directly relevant to a matter in issue in the proceeding.
9. That the Applicant supply to the Respondent by **4.00pm on 9 August 2021**, copies of those documents contained in the list disclosed which the Respondent requests and to which the Applicant has no legal claim to privilege.
10. That the Respondent supply to the Applicant by **4.00pm on 9 August 2021**, copies of those documents contained in the list disclosed which the Applicant requests and to which the Respondent has no legal claim to privilege.
11. That the Applicant file in the Industrial Registry and serve on the Respondent a list of witnesses that the Applicant proposes to call at the hearing by **4.00pm on 30 August 2021**.
12. That the Applicant serve on the Respondent, but not file in the Industrial Registry, an outline of evidence for each witness that the Applicant intends to call at the hearing (no more than 5 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs) by **4.00pm on 30 August 2021**.
13. That the Respondent file in the Industrial Registry and serve on the Applicant a list of witnesses that the Respondent proposes to call at the hearing by **4.00pm on 13 September 2021**.
14. That the Respondent serve on the Applicant, but not file in the Industrial Registry, an outline of evidence for each witness that the Respondent intends to call at the hearing (no more than 5 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs) by **4.00pm on 13 September 2021**.
15. That the Applicant file in the Industrial Registry and serve on the Respondent an outline of argument (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs) by **4.00pm on 27 September 2021**.
16. That the Respondent file in the Industrial Registry and serve on the Applicant an outline of argument (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs) by **4.00pm on 18 October 2021**.
17. That the Applicant file in the Industrial Registry and serve on the Respondent, any outline of argument in reply (no more than 5 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs) by **4.00pm on 1 November 2021**.
18. That at least ten (10) business days before the hearing, each party must give each other party any directly relevant documents the party wants to adduce as evidence at the hearing. At the hearing, a party cannot rely on a document that was not given to the other party unless leave is granted by the Commission.
19. That either party has liberty to apply on two (2) days' notice.
20. That the matter be mentioned before Industrial Commissioner White at **10.00 am on 2 November 2021** at the Queensland Industrial Relations Commission, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane.

Note 1: The Applicant or Respondent may apply to the Commission for a variation to Orders 12 and 14 above so that the evidence-in-chief of witnesses be given by affidavit.

Note 2: Strict compliance with the above Orders is required by the parties. Failure to comply with these Orders may result in a proceeding being dismissed or another Order being made which the Commission considers appropriate.

Dated 31 May 2021.

A.B. WHITE,
Industrial Commissioner.

For more information:

- List of documents and copies of documents see Part 4.5.
- Statement of evidence for each witness to be called see Part 4.7.

4.4 What if you need more time to comply with the Directions Order?

If you are unable to comply with the Directions Order in the time specified, you must seek an extension from the Commission. An extension can be sought by submitting the request in writing to girc.registry@girc.qld.gov.au and explaining why the extension is sought. A brief email is sufficient.

You should also ask the other party whether they consent to the extension of time. Within your request for extension you must inform the Registry or the Commission of the other party or parties' attitude to the extension, if known.

If they consent to the extension, then depending on the circumstances, the extension will most likely be allowed. If the extension is not consented to, the Commission will determine whether or not the extension should be allowed. The Commission may request that the parties provide further information.

4.5 What is a Statement of Facts and Contentions?

A 'Statement of Facts and Contentions' allows the Commission to quickly understand the key facts and arguments which are relevant to the matter. It helps to narrow the issues and expedite the conduct of matters. In some instances, the parties may even agree on the facts after having both provided their respective statements of facts and contentions.

The issues that must be clearly set out in a Statement of Facts and Contentions are:

- the key facts upon which the party relies;
- the contentions that the party believes should be drawn from those facts.

When drafting a Statement of Facts and Contentions, you must summarise the contentious issues between the parties in a clear and concise manner.

A Statement of Facts and Contentions should not include lengthy extracts and summaries from medical reports and/or other evidence that the party wishes to rely upon. However, it may be useful to make general reference to reports or evidence (if available) to support an asserted fact.

Do not attach supporting documents to your Statement of Facts and Contentions.

Your supporting documents will not be accepted for filing at this stage.

The only thing which you may attach to your form is your **list of stressors**.

4.5.1 What kind of facts and contentions should I include?

In short, in accordance with s 320 of the *Industrial Relations Act 2016*, the Applicant's Statement of Facts and Contentions must include the following information:

- whether the Applicant was notified of the reason for dismissal;
- whether the dismissal related to:
 - the operational requirements of the Respondent's undertaking, establishment or service; or
 - the Applicant's conduct, capacity or performance;
- if the dismissal relates to the Applicant's conduct, capacity or performance:
 - whether the Applicant had been warned about the conduct, capacity or performance; or
 - whether the Applicant was given an opportunity to respond to the claim about the conduct, capacity or performance;
- any notice, or payment in lieu of notice, provided to the Applicant; and
- any other matters the Commission considers relevant.

The Applicant's statement of facts and contentions should also include the **remedy** sought by the Applicant which, in accordance with s 321 of the *Industrial Relations Act 2016*, may be:

- reinstatement (the primary remedy);
- re-employment (if reinstatement would be impracticable); or
- compensation (if reinstatement and re-employment would be impracticable).

See the Example Further Directions Order at Part 4.3 of this guide for further information.

Please note, if the Commission determines the dismissal was unfair, unjust and unreasonable, and considers compensation to be an appropriate remedy, the Commission is not able to award an amount more than equivalent to six months' worth of entitlements the Applicant would have been entitled to prior to the dismissal (taking into account any amount paid to the Applicant on dismissal as well as any employment benefits or wages received since the dismissal).

4.6 Disclosure - List of documents and copies of documents

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

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

Disclosure is carried out by the provision of a **list of documents**.

A **document** is not just a paper document it can also mean:
tape recordings, videos, CCTV footage, e-mails etc.

4.6.1 List of documents

Parties in a matter must advise each other of all the documents that they are in possession of, or have under their control, and which are relevant to the matter. If you do not have a copy of a particular document, then you should not tell the other parties that you have it. This may be done using a [Form 23 - List of Documents](#). Unless otherwise directed, this form should only be exchanged between the parties and not filed in the Registry.

'In their possession' refers to ownership of the document. A document that a party possesses is one that they own.

'Under their control' of the person includes documents that the party has the power or authority to retrieve. Thus, relevant documents held at the office of a party's accountant or solicitor, or relevant documents held by the Respondent would have to be listed.

A document is directly relevant if it relates to an issue which is in dispute between the parties and which has the potential to advance one party's case or damage the other party's case.

The list should allow the other parties to identify the documents specifically but not necessarily to know its content. It does not need to be in a great level of detail.

Consider how you would like the list of documents that you will receive from the other party to look and how much information you would need in order to tell whether you would need a copy of the document. You should put a similar amount of detail into the list that you prepare.

4.6.2 Copies of documents

Once the parties have exchanged their respective list of documents, they will have an opportunity to consider whether they would like copies of any of the documents in the list provided.

If you would like a copy of a document, or documents, then you must write to the relevant party and ask them for the document. A copy of the document must be provided unless the party who listed it claims that it is subject to privilege. You will be unable to obtain a document if it is subject to privilege.

'Privilege' is often a term used to describe whether a party has a right to resist providing the other party with material. It is often referred to as legal professional privilege or client legal privilege and is a mechanism designed to protect certain communications and advice from disclosure, thereby encouraging a free exchange of communication between a client and the lawyer acting for a client.

The parties **must** provide copies of the documents by the time and date specified in the directions order.

4.6.3 Non-party documents

During the process you may need to request documents from individuals or organisations (apart from the Respondent), which may assist the preparation of your matter proceeding to hearing. As they are not a party to your matter, they are collectively known as '**non-parties**'. In order to obtain this information, you need to file in the Registry, for approval, a [Form 29](#) - Notice of Non-Party Disclosure.

Any **Non-Party Disclosure** should be sought as soon as possible. Any delay in obtaining or receiving directly relevant documentation will mean this material will may not be available to a party when drafting their list of documents or their statement of facts and contentions.

Once the Form 29 has been approved by the Commission or the Registrar, the notifying party (i.e. the party who filed the Form 29) must then serve the Notice of Non-party Disclosure on the party requested to provide the documents ('requested party') and also on any person who may have an interest in the requested documents and/or who may be affected if the requested documents are provided ('affected party'). See Part 7.6 of this guide for more information about the Notice of Non-Party Disclosure and other notices.

4.6.4 Example of Disclosure (document lists and copies) example

For example, a dismissed worker might say that their dismissal arose from an investigation that had not considered all of the relevant material and, consequently, arrived at the wrong conclusions. The matter in issue is whether the dismissal was unfair—in this instance it will mean showing that the dismissal was unfair because it was unreasonable as a result of a failure of the investigation. The worker would have received copies of show causes notices, letters related to the investigation, meeting agendas, and emails about all process that was undertaken in the lead-up to the termination of the worker's employment. The dismissed worker should list all of those documents as part of their list of documents because they are in the worker's possession; under the worker's control; and, they are relevant to the matter in issue.

Similarly, the Respondent will list all of the documents that it has in its possession; which are under its control; and, which are relevant to the application.

The dismissed worker will review the Respondent's list of documents and may see that they do not have copies of some of those documents or may not have seen some of the listed documents before. The dismissed worker should then request copies of those documents that they wish to be provided with. The Respondent will do the same thing. The parties must then provide to each other the respective documents requested by the deadline set out in the Directions Order. Remember, you will not be able to obtain documents if they are covered by a type of privilege.

4.7 List of names of all witnesses

The **list of names of all witnesses** should state the full names of all persons you will be calling to provide evidence in support of your case at the hearing (there is no set form for this). The people who will be on your list of witnesses should be reflected in the facts set out in your Statement of Facts and Contentions.

If you fail to call someone who could provide relevant evidence to your matter it may count against your case.

How you extract evidence from witnesses, and evidence generally, is covered at Part 7.6 of this guide.

4.8 An outline of the evidence

The Further Directions Order requires that you serve on the Respondent an '**outline of evidence**' to be given by each lay witness at the hearing. This means that for each witness you call, who is not an 'expert' (doctors, psychologists, psychiatrists, etc.), you will need to provide a brief summary of the evidence that they will provide to the Commission.

The Commission requires this so that the parties to your matter know, roughly, what evidence your witnesses will be presenting to the Commission and, likewise, so that you know, roughly, what evidence the witnesses called by the Respondent will be providing. This avoids a 'hearing by ambush' and ensures that the parties are better prepared to advance their cases.

4.9 An outline of argument

An outline of argument should provide a concise summary of what the application is about and relate it back to the evidence to be produced.

4.10 What is a trial plan?

In some cases, usually where a hearing is listed for four days or more, or where the parties seek to call an extensive number of witnesses, the Commission will generally require the parties to submit an agreed trial plan. If the Commission requires a trial plan you will be advised of that requirement.

A trial plan requires the parties to indicate the time expected for opening submissions (if required), for evidence-in-chief, cross-examination and re-examination, for each of the witnesses to be called and closing submissions for each party. Both parties are then committed to the agreed trial plan and must seek the agreement of the Commission if they wish to depart from it.

Where the parties fail to produce an agreed trial plan within the timeframe specified, each party will be required to provide their draft trial plan and the Commission will devise a trial plan for the hearing and the parties will be bound by that trial plan.

Part 5: Conferences

This part of the guide covers conferences. For reinstatement applications a conference is an informal meeting between the parties, and a Member of the Commission, with an aim of helping the parties understand their respective positions with a view to achieving a settlement in the matter.

5.1 What is a conference?

After the first set of directions have been complied with, the Registry will notify the parties of the details of a scheduled conference.

A Member of the Commission will chair the conference where the issues in dispute between the parties may be explored and refined. The parties have the opportunity to address the Member of the Commission on the issues they feel should be clarified. Although general guidance might be given, it is not the role of the Commission to provide advice about how a party may conduct their case. The Member of the Commission who chairs such a conference will not be the Member who hears the application, should the matter proceed further.

Generally, during these conferences, the parties will further explain their respective positions and the facts around the dismissal. The Commission will then help the parties with reviewing, refining and/or narrowing the issues. The Member of the Commission may also explain the hearing process.

Specifically, the conference can assist the parties to understand their prospects if the matter went to a hearing. The conference can also steer the parties towards a settlement—many conferences end with a settlement and the application being withdrawn.

Should you wish to discontinue your matter at any stage, please complete a [Form 27](#) - Request to discontinue.

5.2 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 around a large table with the other parties, a Member of the Commission, and the Member's Associate. Reinstatement application conferences are not recorded or transcribed.

Prior to the conference, the Respondent will have filed its [Form 12A](#) – Employer Response to Application for Reinstatement. This means that the Commission will have both party's version of events and will be able to discuss the application in a more precise way with both of the parties at a conference.

What will happen at a conference is entirely dependent on how complicated the matter is, how prepared the parties are, and the best way the Member decides to approach it.

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.

The conference can also assist the parties in reaching an agreement about specific issues and to discuss the nature of the evidence that may be led during the hearing, should the matter proceed. Other matters that may be discussed at the conference include the number of days that a hearing might take and the number of witnesses to be called to give evidence.

If your conference does not result in a settlement, then the Commission will issue a certificate stating that the matter has not settled and that it is not likely to settle.

You must, within six months of the receipt of the certificate, take action on your matter should you wish to proceed. Should no action be taken, your matter may lapse.

Part 6: Notices

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

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

- Form 29 – Notice of non-party disclosure
- Form 32 – Request for attendance notice
 - Form 32A – Attendance notice to give evidence
 - Form 32B – Attendance notice to produce
 - Form 32C – Attendance notice for production and to give evidence

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

6.1 What are the different notices for?

The notices generally require people to perform certain tasks for the hearing, including to attend the Commission to give evidence orally, to attend the Commission to provide a document to the Commission, or both, or to provide a document to a party. If a non-party can produce the document without having to attend the Commission, that option should be utilised first.

6.1.1 Obtaining documents

Notices can be used to obtain documents that you do not have and have not been given to you by the Respondent during disclosure but are directly relevant to the matter. You should start by filing a [Form 29](#) – Notice of non-party disclosure if you wish to obtain documents from people other than the Respondent/s. Once you have filed your forms correctly, a Member of the Commission or the Registrar will approve them, and the form will be returned to you to serve on the relevant parties.

In your Form 29, you should provide specific details about the documents you are seeking. If you are seeking email correspondence, for example, covering a period of time – ensure that the date range of the emails is directly relevant to the matter. If the date range is excessive and beyond the relevant period, you risk your notice being rejected. The non-party also has an option to object to the production of documents pursuant to rule 64E of the *Industrial Relations (Tribunals) Rules 2011*.

If you are seeking a document from a large organisation, then you must appropriately identify the person you will be serving the document upon. This person is known as the '**Proper Officer**'. To work out how to name/identify the 'Proper Officer' you should enquire with the person or organisation you are wanting documents from about who the 'Proper Officer' is.

When a Notice is served on a Queensland Government department or agency, it should not say the Proper Officer; rather, it should say 'Director-General' as this is the person with delegation to receive the document (even though it may be sent to the Legal Services section of that department or agency).

You must appropriately identify other people who are affected by the notice – there is space for this on the form. An '**affected party/person**' is someone who might also be the subject of the material or information that you are seeking, or the owner of a document other than the non-party. Affected parties may also object to the production of a document sought.

6.1.2 Attendance at the Commission

You may also want a particular person to attend the Commission, either to provide documents, or to provide oral evidence, or to do both. Medical witnesses may require a notice which requires that they attend the Commission and produce a copy of their report.

If you wish to issue attendance notices then you must also file a [Form 32](#) – Request for Attendance Notice as well as a completed Form 32A, or 32B, or 32C. Once you have filed your forms correctly, a Member of the Commission or the Registrar, will approve them and the forms will be returned to you to serve on the relevant parties.

Part 7: Hearings

Hearings are formal and are conducted in a court room. Witnesses are called, documents are tendered as evidence (Exhibits) and parties make submissions. The length of a hearing will be dependent upon the complexity of the issue/s, the number of witnesses etc.

The parties must ensure all oral evidence, documentation and/or other material on which they intend to rely upon at the hearing is ready to be presented at the hearing. Any documentation/material not presented at the hearing will not be in evidence and will not be considered by the presiding Member when deciding your matter.

7.1 How do I get to a hearing?

At a conference the Member may establish whether the parties would like the matter to proceed and be heard and determined. If the Member is satisfied that the matter should go to a hearing, the file will be allocated to a different Member for hearing. The Member who was allocated your matter for the conference will not be the Member who hears and determines the matter.

If the Member does not address the issue of whether or not there will be a hearing and you would like to proceed to a hearing, you may request that the matter be heard. The request for the matter to be heard must be made within six months of the conference. You can do this by following rule 65 of the [Industrial Relations \(Tribunals\) Rules 2011](#). That rule requires you to write to the Commission and request that a time, date and place for the hearing be fixed. This may be done in writing to the Industrial Registry (qirc.registry@qirc.qld.gov.au).

Once a date has been organised and a Member has been allocated the file, you will receive a Further Directions Order (see Part 4.3). Once these directions have been complied with, you will be advised with regards to a hearing date.

7.2 What is a mention?

Sometimes the Commission will list a matter for mention prior to the set hearing dates. The aim of a mention is to ensure that all directions have been complied with and that the parties are ready to proceed to hearing without delay.

Mentions are also used to resolve small procedural or preliminary issues that may arise during the course of a matter. That might involve a party flagging a particular issue and wanting this addressed by the Commission.

7.3 What do I need to prove?

It is important to note that the '**onus of proof**' is on the Applicant. That means that if you are making an application, then you bear the responsibility of proving certain things. When proving something

you must meet the standard of proof. In reinstatement applications the standard of proof is the balance of probabilities. In short, this is often referred to as the 'Briginshaw principle', meaning that the Commission must be satisfied of the relevant matters on the balance of probabilities, to a comfortable degree, based on clear and cogent evidence.¹

However, the standard of proof can be higher depending on the gravity of the circumstances which led to the dismissal. The onus of proof can be reversed and can fall on the Respondent if there are very serious allegations made against the dismissed worker.

You must establish that the dismissal was unfair by demonstrating that it was **harsh, unjust or unreasonable**. As outlined in Part 4.5, s 320 of the *Industrial Relations Act 2016* lists the things that must be considered in deciding whether a dismissal was harsh, unjust, or unreasonable.

The things the Commission must consider are:

- whether the employee was notified of the reason for dismissal;
- whether the dismissal related to:
 - the operational requirements of the employer's undertaking, establishment or service;
 - the employee's conduct, capacity or performance;
- if the dismissal relates to the employee's conduct, capacity or performance:
 - whether the employee had been warned about the conduct, capacity or performance;
 - whether the employee was given an opportunity to respond to the claim about the conduct, capacity or performance; and
- any other matters the Commission considers relevant.

You should also consider what information you will need to provide to the Commission to enable it to properly consider the above matters.

7.4 The hearing

A hearing in the Commission is a formal process where parties put forward arguments and other information (known as submissions) that are based on the evidence before the Commission. The evidence before the Commission will be the oral evidence of witnesses and the documents provided by the parties during the hearing (tendered as Exhibits).

As with conferences, a typed record of what was said in the hearing is produced for later reference, this is known as the transcript. Parties to matters before the Commission may obtain copies of the transcript free of charge. If you wish to receive a copy of the transcript you must complete the transcript order form available on the Commission's website ([Transcript Request Form](#)).

¹ *Briginshaw v Briginshaw* [1938] 60 CLR 336

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 12.



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, be sure to 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.

7.5 Preparing for a hearing

Once it has been decided that the matter will be dealt with by way of a hearing you will need to ensure that any witnesses you intend to call are present at the hearing. You will also need to bring any documents which you intend to present to support your case. Also ensure that you have multiple copies of those documents to provide the Member, the other party, and the witness (if required).

You are responsible for any allowance for attendance and expenses for the witnesses you intend to call (pursuant to rule 62 of the *Industrial Relations (Tribunals) Rules 2011*). These expenses are to be

paid to the witness a reasonable period before the day the person is required to attend. The Commission may treat the failure to pay expenses or allowances as a lawful excuse to not appear to give evidence (for more information, see Part 10.1).

You should arrive at the location of the hearing with plenty of time to spare before the listing time for the matter. The Associate can show you where to sit if you ask and will answer any procedural questions that they can.

Usually the Applicant will open its case first. This means that you will have an opportunity to provide to the Commission your evidence so long as it is directly relevant to the matter and not excluded for any particular reason. Documents which you wish to provide to the Commission in support of your case must be tendered 'through a witness'. This means that you ask a particular witness questions about a document that they have knowledge of, and then you have the document tendered and it will become an exhibit. Specific information regarding evidence can be found at Part 7.10.

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

7.6 How does oral evidence work?

In these matters, all witness evidence is usually provided orally. The Further Directions Order may require that you provide an 'outline of evidence' for each of the witnesses to each of the parties, or that an affidavit be filed.

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

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

Each of these three phases is repeated for each witness. The three phases are explained in greater detail below. The Member may guide you through these phases.

7.6.1 Examination-in-chief

All witnesses must give evidence under oath or an affirmation to the Commission (see Part 7.4). Even if the chief evidence of the witness is provided in an affidavit format, they will be required to appear at the Commission and be sworn or affirmed. If the witness has provided an affidavit containing all of their evidence, the examination-in-chief will be an exercise in having the witness state that the affidavit is their own. The Applicant will generally give evidence first, followed by the witnesses they intend to call.

The evidence-in-chief is your opportunity to obtain from your witness all of the facts and statements that the witness can provide in support of your argument.

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

If the Respondent, or any other party to the proceeding, is calling a witness, they will do the evidence-in-chief for that witness.

7.6.2 Cross-examination

After the examination-in-chief has finished, the party who did not call the witness will conduct the cross-examination. Cross-examination is an opportunity to question the witness in order to test the evidence of the witness provided in the examination-in-chief.

7.6.3 Re-examination

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

7.6.4 Remainder of the witnesses for the Applicant

After you have concluded giving your evidence, you will then have the opportunity to call any other witnesses in support of your case. If witnesses do not freely agree to become witnesses, then the Applicant must request that an attendance notice to give evidence be issued by the Commission to compel that person to attend the hearing and give evidence. This is done prior to the hearing and once the hearing dates are advised in the further directions order. In circumstances where an attendance notice to give evidence is issued, you will be required to pay witness allowances and expenses for that person.

For more information about an attendance notice to give evidence see Part 6 of this guide.

7.6.5 Expert evidence

In some instances, depending on the content of the matter, both parties may consider presenting medical or expert evidence to support their case. This will be done by calling expert witnesses such as general practitioners or specialist practitioners (i.e. psychiatrists, orthopaedic surgeons, engineers, accountants etc.). Whilst lay witnesses must give evidence in person, generally, expert witnesses may give evidence over the phone, if the Commission allows.

Where expert witnesses are called, the party calling the witness will need to pay the expenses of the expert witness (for more information see Part 10.1) and arrange, in advance, for the expert witness to give evidence at a pre-determined time during the hearing.

It is important to note that presenting a medical report on its own cannot be considered without having the expert witness give evidence **orally** to support that document and being available for cross-examination by the other party.

To ensure an expert witness attends the hearing (either in person or via telephone) as required, the party calling the expert witness should request that an attendance notice to give evidence be issued by the Commission well in advance of the hearing date/s. For more information about an attendance notice to give evidence see Part 7.6 of this guide.

7.6.6 Respondent's case

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

7.7 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 a summing up of important points in the hearing) addressing the elements in support of their case.

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

If submissions are to be in writing, the Member of the Commission hearing the matter may issue directions for the filing of written submissions at the end of the hearing itself. Those directions may be in a formal directions order, like those you will have previously received, or they may be made orally at the conclusion of the parties' evidence.

Part 8: Decisions

In most applications, the Member who heard the matter will not make a decision immediately, instead the Member will 'reserve' their decision. This means that the decision, and the reasons for that decision, will be provided to the parties at a later date in writing.

8.1 Publication of decisions

Once the Member has written a decision, a copy will be emailed to the parties. Unless a suppression order has been issued, **all decisions are published on the Supreme Court Library website** and are **publicly accessible** - [Supreme Court Library Queensland](#) -

Decisions are 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.

Part 9: Appealing a decision of the Commission

If you disagree with the decision of the Commission in your matter, you may appeal the decision to the Industrial Court of Queensland.

If you choose to appeal the decision, you must do so within the appeal period, being 21 days from the date that the decision of the Commission was released – this date will be on the front page of the decision.

9.1 How do you appeal to the Industrial Court of Queensland?

You must use [Form 5](#) – Application to Appeal if you wish to appeal the Commission's decision to the Industrial Court of Queensland. Form 5 asks you to state the grounds of appeal. Generally, you can only appeal on two grounds:

- An error of law (this means that the Member may have misapplied the law or a legal principle to the facts).
- An excess, or want, of jurisdiction (this means that the Member may have made a decision that is not within their power to make).

If you wish to go beyond those two grounds, then you must seek the leave of the Industrial Court to do so. You can do this within the Form 5 noting that you are seeking leave to appeal on grounds other than those in s 557(1) and pursuant to s 557(2) of the [Industrial Relations Act 2016](#).

Part 10: Costs

Hearings before the Commission or the Industrial Court of Queensland can be expensive. Barristers, solicitors, experts and witnesses are all involved and can all incur expenses you may be required to cover if you are unsuccessful.

In unfair dismissals, costs are not automatically awarded to the losing party. Costs may be awarded on application – see s 545 of the *Industrial Relations Act 2016* for more information.

If costs are awarded this means that the unsuccessful party will be required to pay the costs of successful party. Costs include the cost of obtaining legal advice and legal representation, any expenses in calling witnesses (flights etc.) and the outlays for expert reports and opinions.

10.1 Witness attendance, expenses, and conduct money

Witnesses who attend the Commission are entitled to have their reasonable expenses of travelling to the Commission paid by the person who calls them to the Commission. Those witnesses are also entitled to an allowance which would be payable to a witness in a civil action in the Supreme Court. This allowance is paid daily and is referred to as 'conduct money' (see Part 3 of the [Uniform Civil Procedure \(Fees\) Regulation 2019](#)). You should research the amount of conduct money which should be paid as it may change over time.

Expert witnesses are entitled to a high rate of conduct money. The longer the expert is required, the more conduct money they will be entitled to.

These expenses are to be paid to the witness a reasonable period prior to the day the person is required to attend.

If you do not pay the reasonable expenses of the witness and do not provide them with the required conduct money, the witness will have a lawful reason for not attending the Commission.

Part 11: The model litigant principles

Queensland Government 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 12: Etiquette and communications

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

The Commission is a formal environment and you are expected to behave respectfully to all, as well as follow rules and procedures.

There is no need to be nervous when you have to speak. The Member is there to listen to you and will ask you questions if they need further clarification or if they did not understand something that you said.

12.1 General points

- Make sure you attend the Commission early to avoid delaying the proceeding.
- If you are delayed for any reason prior to commencement of proceedings, it is important that you contact the Registry as early as possible to ensure a message is sent to the Associate.
- If you have a mobile phone, make sure it is switched off in the conference or hearing room.
- Do not record proceedings (audio or visual). If applicable, a transcript of proceedings will be supplied to the parties.
- When the Commission Member enters the room, those present will be asked to stand. If it is a hearing you should stand when you are addressing the Member. Be sure to address the Member correctly. The President, Vice President and Deputy President should be referred to as 'Your Honour', and Industrial Commissioners should be referred to as 'Commissioner'.
- In a hearing it is customary to bow to the bench by slightly inclining your head and bending slightly at the hips at the beginning of the proceeding. Similarly, if you should need to leave the hearing room while the proceeding is underway, you should bow in the same way when you reach the door of the court room. You are not bowing to the Member, but to the coat of arms behind the Member which is symbolic of the Crown's authority.
- The Member will ask for appearances. Simply state your name slowly and say that you are appearing for yourself. The Member may ask you to spell your name – this will be so that the transcript can accurately reflect the spelling of your name.

- Whether it is a conference or a hearing, the Commission Member may ask each of the parties, in turn, for a brief statement describing what the matter is about. It is a good idea to have this prepared in advance, you can read from it if you wish.
- Make sure you speak loud enough for everyone to hear and so that if the proceeding is being transcribed, the transcribers can clearly understand you.
- Do not speak when a witness is taking an oath or an affirmation.
- Do not interrupt the other party or the Commission Member when they are speaking.
- Do not eat or chew while in the hearing. Drinking water (only) is acceptable.
- You should show respect by dressing neatly although you do not have to wear a suit.
- You may notice parties who are familiar with the Commission using phrases such as 'If the Commission pleases', as a newcomer to the Commission you are not expected to necessarily follow such practices.
- Should you wish to observe another trial to gain a further understanding as to how matters before the Commission are run, you may check the [Hearing Lists](#) on the website. Please be advised however that conferences are not open for public observation, only hearings.

12.2 Communicating with the Registry or the Commission

If you communicate with the Registry or the Commission for any reason in connection with your matter, you must also inform the other party of what you are communicating (see the [Code of Conduct](#) for persons appearing before the Commission).

Associates should only be directly contacted if the matter is urgent or if directed by a Member. All contact and correspondence should be made via the Registry.

If you are sending an email to the Registry or a Member's Associate (via the Registry) you **must** copy in the other parties to your matter

If you telephone the Registry, you must also relay what you spoke to the Registry about to the other parties to your matter.

If you fail to copy in or convey your communication to the other party/parties in your matter, then the Registry or the Member's Associate may inform the other parties of what you have sent or told the Registry or the Commission.

Constant failures to copy in or convey to other parties will not be viewed favourably by the Registry or the Commission.

Part 13: Finding legislation, cases and advice

13.1 Legislation

If you are looking for the authoritative Government issued copy of the relevant legislation ([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

13.2 Cases

If you are looking for relevant cases of the Commission or the Industrial Court, the Supreme Court Library Queensland has published all decisions made by the Commission since 2014. The Commission's decisions can be found here: [Supreme Court Library - Commission decisions](#).

The Industrial Court's decisions can be found here: [Supreme Court Library - Industrial Court decisions/judgements](#).

AustLII also publishes the Commission and the court's decisions: www.austlii.edu.au.

13.3 Advice and Resources

As mentioned throughout this guide, the Registry and Associates are unable to provide you with legal advice with regards to your matter. You may be able to obtain information or advice through the following services:

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.

Queensland Law Society (QLS) (qls.com.au)

QLS may assist you in finding a solicitor or law firm. They have a "Find a Solicitor" tool on their website.

Queensland Council of Unions (QCU) (queenslandunions.org)

The QCU is a peak body for the Queensland trade union movement. They may be able to direct you to an appropriate union who may be able to assist.

Part 14: Glossary

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

14.1 Frequently used terms

Adjourn/Adjournment: When a conference, mention, or hearing is adjourned it is ended either definitely or until a later time when it will be resumed. In many conferences and hearings, the Member will "adjourn the Commission" either so that the Member can leave the room so that parties can have a discussion or because that particular part of the proceedings is over.

Affected Person: An affected person may be a person about whom information is sought or may be the owner of a document sought through, for example, a notice of non-party disclosure.

Affidavit: An Affidavit is a sworn written statement of fact. Affidavits provide a factual account of an event, or a thing, and are written from the witnesses' perspective about things that the witness saw or heard (See Appendix B).

Affirmation: An affirmation is made in lieu of an oath in certain circumstances, confirming something to be true/promise of truthfulness (see Part 7.4).

Agreed Trial Plan: See Part 4.10.

Applicant: A person or employee organisation who filed an application for reinstatement in the Registry under section 317 of the *Industrial Relations Act 2016*.

Balance of probabilities: The standard to which you must prove your case – i.e. you must present evidence which allows the Commission to find that it was more probable than not that something happened or that something caused your injury.

Cross-examination: See Part 7.6.2.

Directions order: See Part 4.

Disclosure: See Part 4.6.

Examination-in-chief: See Part 7.6.1.

File and serve: See Part 3.7.

Further Directions Order: See Part 4.3.

List of documents: See Part 4.6.1.

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

Onus of proof: See Part 7.3.

Parties: See Part 3.3.

Privilege: Legal professional privilege or client legal privilege is a mechanism designed to protect certain communications from disclosure and thereby encourages a free exchange of communication between a client and the lawyer acting for a client (see Part 4.6.2).

Proper Officer: A Proper Officer is someone who is authorised to act on behalf of, or has responsibility for specific functions of, a Company (see Part 6.1.1).

Re-examination: See Part 7.6.3.

Seek leave: Means to ask the Commission whether you may do something – for example, this may be seeking leave to be legally represented, or seeking leave to amend a filed document.

Self-Represented Litigant: A person, and not a company or organisation, who is not represented by a lawyer, agent or industrial organisation.

Submissions: See Part 7.7.

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 – Preparing an affidavit

What is an affidavit?

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

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

How to set out an affidavit

There are two rules governing affidavits in support of applications, they are rules 11 and 52 of the [Industrial Relations \(Tribunals\) Rules 2011](#). Those rules require that an affidavit complies with the following:

1. The affidavit must be in approved form, use Form 20 – Affidavit.
2. The affidavit must be written in the first person, for example:

I said to John that I was not happy about his conduct. John said to me that he did not care.

3. The affidavit must identify the person making the affidavit, the residential or business address, or place of employment of the person making the affidavit, and state whether the affidavit is sworn or affirmed. There are spaces on the Form 20 – Affidavit which allow you to provide this information.
4. Be divided into consecutively numbered paragraphs, with each paragraph, as far as is practical, covering one idea each, for example:

[1] I have been employed as a teacher at Brisbane City State School for 20 years.

[2] On 1 February 2001 I was teaching my allocated class, 6A, when I was assaulted by a student. The student who assaulted me was Jack Sims.

[3] All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only, and my means of knowledge and sources of information on the face of this my affidavit.

5. If the affidavit is being sworn by one person for another person that information will need to be included too.

6. The day on which and the place where the affidavit was sworn will need to be completed. There is room for this in the form.
7. Generally, an affidavit should set out all the facts that you will rely in and which are within your knowledge and are relevant.

What to include

Your supporting affidavit should cover the facts and circumstances leading to the dismissal and facts and circumstances of the dismissal and the making of the application.

Signing an affidavit

Affidavits are signed by both the person whose affidavit it is (also known as the deponent) and the witness (the person taking the affidavit). Both the person making the affidavit and the witness need to sign every page of the affidavit. There is space on the Form 20 for both signatures to be on every page. The witness needs to be a "qualified witness" which means that it must be witnessed by a lawyer, Justice of the Peace, or Commissioner for Declarations.

Exhibits in an affidavit

You may wish to refer to exhibits, which you will attach to the document, during the course of your affidavit. Those exhibits must be covered by a certificate (Form 21) which you will need to complete and place in front of every exhibit. The Form 21 will need to be witnessed by a qualified witness too.

Further guides

The links below will take you to useful guides on preparing affidavits, even though they are for different jurisdictions:

- Caxton Legal Centre – [*Preparing an Affidavit for the Magistrates Court*](#)
- Family Court of Australia & Federal Circuit Court of Australia – [*Preparing an affidavit*](#)
- Legal Aid Queensland - [*How to prepare your affidavit - Legal Aid Queensland*](#)

Appendix C – 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 Administration²

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.


² <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

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