

Workers' compensation appeal guide

Queensland Industrial Relations Commission



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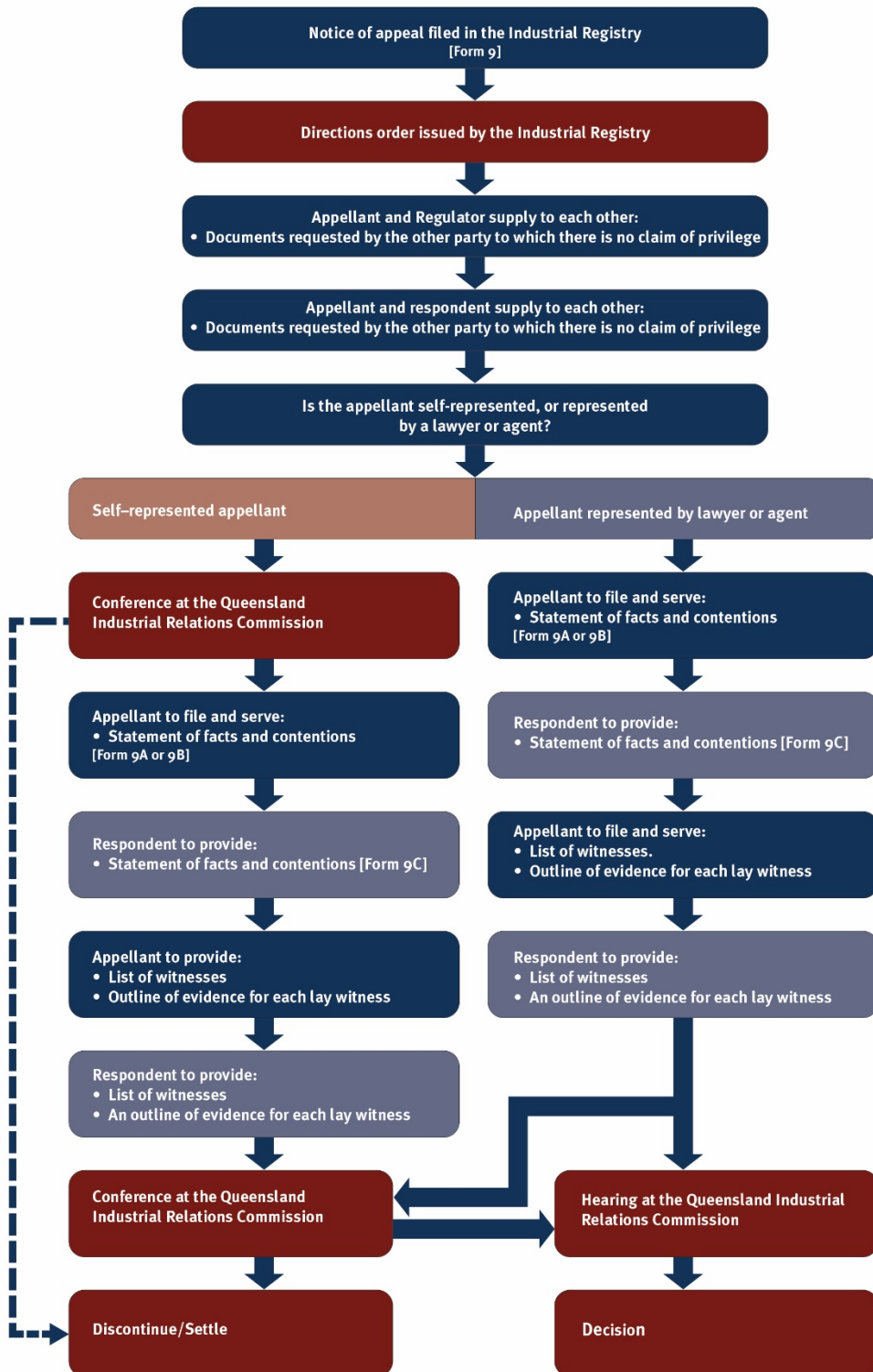
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Overview: Workers' Compensation Appeal



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) usually adopts when managing workers' compensation appeals under section 549 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

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

These black boxes indicate items of importance.

This guide is written for self-represented parties.

Legally represented parties, or parties represented by an agent, should note that the procedures outlined in this guide are centred on the directions orders issued in instances where the appellant 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
- The Vice President
- Deputy Presidents
- 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
- Commissioners are Commissioner.

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

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

Associates should only be directly contacted if the matter is urgent or if the commission directs you to contact the associate instead of the registry.

In most instances you should contact the registry before you contact the member's associate. If the associate is free you will be put through.

2.2 What is the Industrial Registry?

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

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

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

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

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

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").

Part 3: Appeals to the commission

This part of the guide covers appeals to the commission. How to appeal, times limits for appealing and other topics related to commencing an appeal. Generally, it is important to consider your conduct during your appeal. See Appendix B starting on page 45 for more detail about the Codes of conduct.

3.1 What is an appeal?

Appeals to the commission are appeals against decisions made by the Workers' Compensation Regulator (regulator). Appeals are governed by Part 3 of Chapter 13 of the *Workers' Compensation and Rehabilitation Act 2003 (Qld)*.

3.2 Basis of an appeal

Workers' compensation appeals are conducted on a *de novo* basis. This means that the matter is heard from the beginning and that the Commission can consider new or fresh evidence obtained during the appeal process and is not limited to the information that was before the previous decision maker (e.g. WorkCover Queensland). It is important to remember that the commission will make its decision based on all of the evidence presented during the hearing.

The commission does not revisit the decisions of WorkCover Queensland/self-insurer and/or the regulator, or review the correctness of those decisions.

If you are unhappy with a review decision made by the Regulator then you may appeal the decision to the commission.

3.3 Who are the parties to an appeal?

A claimant, worker or employer may appeal the decision of the Regulator.

The person who files the appeal is called the appellant. In most cases the appellant will be the claimant or worker who is the subject of the appeal. This means that you, as the worker who is appealing, will be called the appellant.

The party who is resisting the appeal is called the respondent. The regulator is a respondent in all workers' compensation appeals as all of the appeals arise from decisions made by the Regulator.

There can be more than one respondent. For example, if the employer is the appellant and the claimant or worker wishes to be a party to the appeal there will be two respondents. The Regulator will be the first respondent and the claimant or worker will be the second respondent.

Employers are not permitted to be the respondents in an appeal made by a claimant or worker.

3.4 Are there any time limits?

There are time limits on appealing decisions of the Regulator or an insurer.

Within 20 business days of the day that you receive notice of the Review Decision, you must file a notice of appeal with the Registry.

See section 550 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

Although the time frame to file a notice of appeal is 20 business days, you may be able to ask for an extension of time.

The Commission is not able to grant any extensions of time however the Regulator has the power to do this and may allow you further time to file a notice of appeal.

To do this, you will need to contact the Regulator and ask them whether they will allow you further time to file a notice of appeal. The Regulator will inform you of the information you need to provide them when requesting an extension of time to file a notice of appeal.

3.5 How to Appeal – Form 9 Notice of Appeal

Appeals commence at the commission by filing a Form 9 - Notice of Appeal. You can access Form 9 from qirc.qld.gov.au under the Forms Tab, or from the Workers' Compensation Appeals page.

Form 9 and all other forms can be filed at the registry via the following methods:

- **By e-mail:** qirc.registry@qirc.qld.gov.au

- **In person over the counter:** Industrial Registry
Level 21 Central Plaza Two
66 Eagle St
Brisbane Qld 4000

- **By post:** Industrial Registry
GPO Box 373
Brisbane Qld 4001

- **By fax:** (07) 3221 6074

In most instances the registry will communicate with you by email. If you have not provided an email address on your Form 9 then the registry will be in contact with you requesting that you provide an

email address. If you do not have an email address then the registry will communicate with you by post.

The front counter of the registry is open from 8.30am-4.45pm, Monday to Friday, excluding public holidays and the compulsory Christmas to New Year closure. Documents can be filed digitally up until 5.00 pm on a weekday that the registry is open. You will be unable to file documents on public holidays, or closures, or outside of office hours.

3.5.1 Completing the Form 9

Providing the appropriate amount of information in the Form 9 is important. Too much information may make it difficult for the respondent and the commission to understand your appeal. The efficient use of information is important in understanding why you have appealed the Regulator's decision and why your appeal should be allowed.

Form 9 requires that you state the decision being sought, clearly and concisely.

The Form also requires that you complete a number of sections.

Section "5. Grounds of the appeal" asks you to state the grounds on which you are appealing. This means that you should set out why you think the Regulator's decision is incorrect. A ground of appeal is where you outline what the error is and how it is wrong.

For example, did the review officer rely on incorrect information, known as a factual error; or, did the review officer rely on the wrong section of the legislation or the wrong legal decision, which is known as a legal error.

In section "6. Facts relied on" you should state, as simply as possible, the facts which are relevant to your matter. Relevance is the key thing you need to consider as not all facts are relevant. For example, you may think that the Commission needs to know your entire employment history but this may not be relevant to your appeal.

Do not attach supporting documents to Form 9, other than the Regulator's decision. Your supporting documents will not be accepted for filing.

3.6 What happens once the notice of appeal is filed in the registry?

Once your completed Form 9 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: WC/2018/567

When contacting the registry use your matter number so your file can be located easily. The registry will also date your Form 9. 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 (see above) then it will not be stamped until the next business day.



Figure 1 – Date Stamp

After your file is created the registry will send you and the respondent a stamped copy of the Form 9 and a directions order. This is the only instance where the registry will send documents to other parties for you. For more information about the directions order see Part 4 of this guide.

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

Some forms require your signature to be witnessed by a justice of the peace, commissioner for declarations, lawyer or other qualified person. This is because you will be swearing to the accuracy of your appeal. There are consequences for knowingly misleading the commission.

A justice of the peace or a commissioner for declarations can be found at a bank or a post office. Alternatively, you can search for a justice of the peace or a commissioner for declarations who is near you at: www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/about-justice-of-the-peace

3.8 Filing and serving documents

There are a number of references in the two directions orders below to "file" and "serve". It is important to understand what these words 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 requires.

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

Part 4: Directions order

This part of the guide covers what a directions order is, 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 workers' compensation appeals.

4.1 What is a directions order?

The commission organises workers' compensation appeals around directions orders. They are the road-map for how your appeal 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 sets out in numbered steps what must be done, by when, and by which party.

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

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

4.1.1 Types of directions order

There are several types of directions orders, all of which need to be complied with, including:

- the standard directions order
- a further directions order
- an amended directions order
- a further amended directions order.

Further means another directions order.

Amended means that the directions order has changed slightly. A date may have been moved or a correction may have been made. Additional 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 which directions order is which.

4.2 Example of first 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 9 has been stamped and processed by the registry. That directions order is an example of the first directions order issued in a workers' compensation appeal. The directions order can look intimidating at first, but once you read through it you may notice that it is broken down into

clear steps for each of the parties to complete. The text following the directions order directs you to other parts of this guide for further detail.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workers' Compensation and Rehabilitation Act 2003

John Citizen
Appellant

v

Workers' Compensation Regulator
Respondent

Matter No. WC/2018/400

APPEAL AGAINST DECISION OF RESPONDENT PURSUANT TO SECTION 549

DIRECTIONS ORDER

AFTER reading the Appeal in the above matter filed on 06 March 2018, IT IS ORDERED:

1. That the Appellant supply to the Respondent **by 4.00 pm on 3 April 2018**, a list of documents in their possession or under their control relevant to a matter in issue in the proceedings.
2. That the Respondent supply to the Appellant **by 4.00 pm on 3 April 2018**, a list of documents in their possession or under their control relevant to a matter in issue in the proceedings.
3. That the Appellant supply to the Respondent, **by 4.00 pm on 9 April 2018**, copies of those documents contained in the list disclosed which the Respondent requests for which the Appellant has no legal claim to privilege. Copies of documents already provided to the Respondent in the Review or Appeal process need not be further copied and provided.
4. That the Respondent supply to the Appellant, **by 4.00 pm on 9 April 2018**, copies of those documents contained in the list disclosed which the Appellant requests for which the Respondent has no legal claim to privilege. Copies of documents already provided to the Appellant in the Review or Appeal process need not be further copied and provided.
5. That there be a section 552A conference before Deputy President Smith at the Queensland Industrial Relations Commission, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane **on 19 April 2018 at 11:00 am**. The Industrial Registry is located on Level 21, 66 Eagle Street, (Cnr Elizabeth and Creek Streets) Brisbane.

Dated 09 March 2018

Delegated Officer
for the Industrial Registrar

For more information: "List of documents" see 4.5.1 on page 17 below.

"Copies of those documents" see 4.5.2 on page 18 below.

4.3 Example of further directions order

Once your matter has had a 552A conference the registry will issue a further directions order. An example of such an order is set out below. The text following the directions order directs you to other parts of this guide for further detail.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workers' Compensation and Rehabilitation Act 2003

John Citizen
Appellant

v

Workers' Compensation Regulator
Respondent

Matter No. WC/2018/400

APPEAL AGAINST DECISION OF RESPONDENT PURSUANT TO SECTION 549

FURTHER DIRECTIONS ORDER

AFTER the conference held on **19 April 2018**, IT IS ORDERED:

1. That the Appellant is to file in the Industrial Registry and serve on the Respondent a **Statement of Facts and Contentions** detailing clearly and concisely the key facts upon which the Appellant relies and the contentions that the Appellant believes should be drawn from those facts **by 4.00 pm on 17 May 2018**.

NOTE:

- a. For psychiatric/psychological injuries, facts must include a concise **List of Stressors** the Appellant asserts led to the sustaining of the psychiatric/psychological injury.
 - b. Other than a **List of Stressors**, there should be no supporting or additional documents attached to the **Statement of Facts and Contentions**. Supporting or additional documents attached to the form will not be accepted for filing in the Industrial Registry.
2. That the Respondent is to file in the Industrial Registry and serve on the Appellant a **Statement of Facts and Contentions** detailing clearly and concisely the key facts upon which the Respondent relies and the contentions that the Respondent believes should be drawn from those facts **by 4.00 pm on 14 June 2018**.

NOTE:

- a. There should be no supporting or additional documents attached to the **Statement of Facts and Contentions**. Supporting or additional documents attached to the form will not be accepted for filing in the Industrial Registry.
3. That the Appellant file in the Industrial Registry and serve on the Respondent a **list of names of all witnesses** to be called by the Appellant in the hearing, **by 4.00 pm on 5 July 2018**.
 4. That the Appellant serve on the Respondent, but not file in the Industrial Registry, an **outline of the evidence** to be given by each lay witness at the hearing (one A4 page per witness), as well as any **expert reports** that will be relied upon **by 4.00 pm on 5 July 2018**.
 5. That the Respondent file in the Industrial Registry and serve on the Appellant a **list of the names of all witnesses** to be called by the Respondent in the hearing, **by 4.00 pm on 26 July 2018**.
 6. That the Respondent serve on the Appellant, but not file in the Industrial Registry, an **outline of the evidence** to be given by each lay witness at the hearing (one A4 page per witness), as well as any **expert reports** that will be relied upon **by 4.00 pm on 26 July 2018**.
 7. That there be a second section 552A conference before (Member) at the Queensland Industrial Relations Commission, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane **on 3 August 2018 at 11:00 am**. The Industrial Registry is located on Level 21, 66 Eagle Street, (Cnr Elizabeth and Creek Streets) Brisbane.

Dated 20 April 2018

Delegated Officer
for the Industrial Registrar

For more information about: "Statement of Facts and Contentions" see 4.6 on page 19 below.
"List of stressors" see 4.8 on page 22 below.
"List of names of all witnesses" see 4.9 on page 23 below.
"An outline of evidence" see 4.10 on page 23 below.
"Expert reports" see 4.11 on page 23 below.

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 qirc.registry@qirc.qld.gov.au and explaining why the extension is sought. A brief email will be enough.

You should also ask the other party, or parties' 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 they consent to the extension then 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 List of documents and copies of documents

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

Disclosure is done 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.

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

4.5.1 List of documents

Parties in a matter (the appellant or the respondent/s) must tell each other about all of 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 the document then you should not tell the other parties that you have it.

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

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

A document is 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 parties 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.

4.5.2 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. There are different types of privilege. One kind of privilege is client legal privilege. This is communication between a legal professional and their client where the legal professional is providing advice or the client is requesting advice. Another kind of privilege is where a legal professional produces a document where its dominant purpose was to either give or obtain legal advice.

Privilege can also be claimed if it is against self-incrimination. When it is claimed, it means that a person is not obliged to answer a question or produce a document that may mean that the person is exposed to a criminal conviction or civil penalty.

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

4.5.3 Non-party documents

During the appeal process you may need to request documents from individuals or places, which may assist the preparation of your appeal towards hearing. As they are not a party to your appeal, 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 immediately sought once the Notice of Appeal is filed. Any delay will mean that all of the relevant material will 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, 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 6 of this guide for more information about the Notice of non-party disclosure and other notices.

4.5.4 Disclosure (document lists and copies) example

For example, an injured worker may say that their injury arose from their employment because of the way they were treated when being disciplined by their managers, but the employer may say that the treatment was reasonable and that, therefore, the injury is not capable of being compensated. As the issue in dispute is whether the injured worker has been treated reasonably while being disciplined, documents that may be relevant will be those such as show cause notices, letters relating to the disciplinary process, meeting agendas and notes, emails about the discipline and documents relating to events that lead up to the worker being disciplined.

Similarly, the Workers' Compensation Regulator will list all of the documents they consider are relevant in the appeal. These documents usually come from the workers' compensation claim file (usually the WorkCover Queensland claim file), documents that were submitted to the Review Unit of the regulator and sometimes documents that the regulator has requested after the appeal is filed.

The injured worker may review the respondent's list of documents and notice that they do not have copies of some of the documents or may not have seen some of the documents before. The injured 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 each other with 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.

4.6 What is a Statement of Facts and Contentions?

There are two types of "Statement of Facts and Contentions", embodied in two different forms: **Form 9A - Appellant's statement of facts and contentions psychiatric and/or psychological injuries**, and **Form 9B - Appellant's statement of facts and contentions physical and/or psychiatric/psychological secondary injuries**. These two forms are the only ones that you can use to provide your statement of facts and contentions to the Commission. You must choose the appropriate form that relates to your matter:

- Form 9A - if your appeal relates to a psychiatric or psychological injury. The commission requires the relevant parties to complete a Statement of Facts and Contentions in an effort to

narrow the issues and expedite the conduct of matters. Sometimes the parties even agree on the facts after having both provided their respective statements of facts and contentions.

- Form 9B - if your appeal relates to a physical injury or a psychiatric or psychological injury which arose from a physical injury you sustained during the course of your employment.

Do not attach supporting documents to your Statement of Facts and Contentions. Your supporting documents will not be accepted for filing.

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

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 reference to the reports and/or evidence (if available) to support an asserted fact. Where possible, a Statement of Facts and Contentions should list the medical reports and/or any other evidence intended to be relied on at the hearing.

You will be bound by the content of your Statements of Facts and Contentions. As will the other parties. You will not be allowed to depart from the statement filed. You will not be able to amend the statement without the approval of the commission.

Any application to amend a Statement of Facts and Contentions must be made within seven (7) days before the hearing or seven (7) days of the section 552A conference whichever is the latter. If the amendments are significant then you may encounter some opposition.

4.7 What kind of facts and contentions should I include?

The following lists are examples of the most common issues in dispute between parties in appeals. The lists are not exhaustive and your matter may concern different, or extra, topics than those outlined below.

4.7.1 Physical injury and/or secondary psychiatric/psychological injury to a physical injury:

- whether the Appellant was a worker within the meaning of section 11 of the Act

- whether the Appellant sustained an injury within the meaning of section 32 of the Act
- whether any physical injury was an aggravation of a pre-existing injury
- whether any physical injury (or aggravation) arose out of, or in the course of, employment
- whether employment is a significant contributing factor to any physical injury (or aggravation)
- whether the psychiatric injury is a secondary injury to any physical injury or whether it is a stand-alone injury
- whether the psychiatric injury arose out of, or in the course of, employment
- whether employment was a significant contributing factor to the psychiatric injury.

4.7.2 Psychiatric and/or psychological injury which can be excluded if it arose out of, or in the course of, reasonable management action taken in a reasonable way:

- whether the Appellant was a "worker" within the meaning of section 11 of the Act
- whether the Appellant sustained an injury within the meaning of section 32 of the Act
- whether the psychiatric injury arose out of or in the course of employment
- whether employment was a significant contributing factor to the psychiatric injury
- whether the psychiatric injury is excluded because it arose out of/or in the course of reasonable management action taken in a reasonable way
- whether the psychiatric injury is excluded because of the perception of the worker's expectation or perception of reasonable management action being taken against the worker.

If you are a "worker" as defined in section 11 of the *Workers' Compensation and Rehabilitation Act 2003*, then you will need to identify each and every work event that you assert led to the sustaining of the psychiatric/psychological injury for which you claim workers' compensation in your Statement of Facts and Contentions.

4.8 List of stressors – for psychological or psychiatric injuries

Unlike physical injuries, where it can be relatively easy to pinpoint the cause or particular activity which led to the injury, psychological and psychiatric injuries can occur over a lengthy period of time and may involve many different factors. Because of this the commission requires that you identify the factors, known as "stressors", which caused your psychological or psychiatric injury. You must include a list of stressors in your facts. If your list of stressors is too long for the facts section of the form then you will be allowed to attach the list to your form – this is the only thing which you may attach to your form.

Your list of stressors must state the individual events and issues which caused your injury. The stressors must be numbered, and must identify the matter number, and the parties in the matter. It is not an opportunity for you to give a lengthy outline about why your appeal should succeed.

The member who hears your matter will use the list to guide proceedings. The list also acts as a useful guide for the member to understand which issues may have contributed to your injury.

Your list should set out the stressors, which you say led to your injury, into easy to read and understandable pieces. The list must also:

- Identify the stressors numerically
- Provide a date, or date range, for each stressor
- Provide a short title for each stressor
- Briefly describe each stressor.

Here is an example of how you can set out your list of stressors:

Matter No. WC/2018/500 Citizen v Workers' Compensation Regulator			
No.	Date	Title	Description
1	28.02.17	February assault	Mr. Bloggs, my direct supervisor, assaulted me at a workplace function. The function was to celebrate meeting targets. The function started at 6pm. Ms. Jones, Ms. Smith, and Mr. Green, all saw the assault. The assault occurred at 10pm in the office kitchen.
2	3.03.17	March confrontation	Mr Bloggs came to my desk at 10:30am and yelled at me for not having finished the February report by the deadline. Other people witnessed this event. I felt terrible after he yelled at me and went home sick immediately after he left my desk.
3	Etc.	Etc.	Etc.

4.9 List of names of all witnesses

The **list of names of all witnesses** should state the full names of all persons you will be calling to provide evidence in support of your case at the hearing. The people who will be on your list of witnesses should be reflected in the facts set out in your Statement of Facts and Contentions.

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

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

4.10 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 (one A4 page per witness)". This means that for each witness you call, who is not an "expert" (doctors, psychologists, psychiatrists, etc.), you will need to provide a single A4 page summary of the evidence that they will provide to the commission. You do not need to fill the entire A4 page, it is just a brief overview of the material they will cover.

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

4.11 Expert Reports

Each of the experts that you will be calling in a matter (doctors, psychologists, psychiatrists, etc.) should have prepared and supplied to you a report about your injury. You must supply those reports to the other parties in the matter. Likewise, the respondent/s in the matter must supply you with the reports of the experts that they will be calling. This ensures that all parties are able to fully understand the case. In some instances parties settle after they have had an opportunity to view the expert reports obtained by the other parties. See also "Expert evidence" in part 7 of this guide for further information.

4.12 What is a trial plan?

In some cases, usually where a hearing is listed for four (4) days or more, or where the parties seek to call an extensive number of witnesses, the commission will generally require the parties to submit an agreed trial plan. If the commission requires a trial plan you will be advised of that requirement.

A trial plan requires the parties to indicate the time expected for an opening statement (if required, an opening statement is generally sets out a 'road map' about what how a party expects the evidence to unfold), for evidence-in-chief, cross-examination and re-examination, for each of the witnesses to be called and closing submissions for each party. 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 workers' compensation appeals a conference is an informal meeting between the parties, and a member of the commission, with an aim of helping all parties to understand their respective positions in the matter and what needs to be done before the hearing.

5.1 What is a section 552A conference?

The first set of directions contains listing for a conference. That first conference is held so that a member of the commission can explain the steps that will be required for the upcoming processes.

Usually the same member of the commission will chair the second conference (which is listed via the Further Directions Order) to explore and refine any issues in dispute between the parties. At that conference, the parties have the opportunity to address the member of the commission on the issues they feel should be clarified. The member of the commission will also explain the hearing process. Although general guidance may be given, it is not the commission's role to provide advice about how a party may conduct their case. The member of the commission who chairs such a conference will not be the member who hears the appeal.

Generally, by the second conference (which is listed at the end of the Further Directions Order), all parties provide further information to each other and the member of the commission will then help the parties to review, refine or narrow down the issues.

No commercial settlement is possible at the conference. Conferences for workers' compensation matters are not intended to facilitate conciliations. Following the conference the respondent may decide to review its position or consider conceding the appeal where new information is presented. Alternatively, you may withdraw your appeal. The more likely outcome of a conference is that parties will have a better understanding of the issues to be addressed at a hearing and the processes involved in a hearing.

Specifically, the conference can assist in understanding whether any elements of section 32 of the Act can be agreed. The particular elements of section 32 of the Act are set out in Part 7 below. It is important to remember that workers' compensation appeals before the commission are heard over again from the beginning. This is sometimes referred to as an appeal 'de novo'. This means that, even though the Regulator may have previously accepted an element of section 32, it does not mean that this element will be accepted by the respondent at the appeal stage.

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.

The conferences will usually be recorded but the member may decide to "go off the record" if the member believes that it may assist the parties.

Conferences are not adversarial – this means that it is not about "winning" the conference or stating a case at the conference so that you convince the member that your side of the matter is correct. That is not why conferences are held. Instead, the member is effectively checking in with the parties to ensure that the matter is progressing and that the parties are complying with the directions. It is also an opportunity for the parties to ask questions of a member of the commission.

In some conferences it may become apparent that the directions order may need to be amended to allow further time for the filing of additional, or new, material or for parties to amend their statement of facts and contentions.

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

What will happen at a conference is entirely dependent on how complicated the matter is, how prepared the parties are, and how the particular member decides to approach it all. The above information are general points about what you can expect and may guide your preparation for the conference.

Part 6: Notices

There are four kinds of notices which you can use to compel people who are not parties to the proceedings to do something for the purposes of providing information to the commission.

6.1 The notices

There are five forms relevant to the issue of notices in workers' compensation appeals:

- 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, Subdivisions 7 and 7A, of the *Industrial Relations (Tribunals) Rules 2011* governs the use of the notices. Forms 32, 32A, 32B, and 32C are all covered by Subdivision 7. Form 29 is covered by Subdivision 7A.

6.2 What are the different notices for?

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

6.2.1 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 relevant to the application. 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. 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.

6.2.1.1 Date range

In your Form 29 you should be specific in the documents that 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 relevant to the appeal. If the date range is excessive and beyond the relevant period you risk your notice being rejected by the registry. You may also find that the non-party who is subject to the notice will object. The *Industrial Relations (Tribunals) Rules 2011* cover the ways and the grounds on which a non-party can object.

6.2.1.2 Proper Officer

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 Qld Government department, 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).

It is not sufficient, in the example of obtaining documents from a Queensland government department, to address your notice to "the State of Queensland".

6.2.1.3 Affected Party

You must appropriately identify other people whom are affected by the notice – there is space for this on the form. An "affected party" 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.

6.2.2 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. In workers' compensation appeals 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.

6.2.3 Forms

You will find the forms mentioned above on the website of the Queensland Industrial Relations Commission – qirc.qld.gov.au

Part 7: Hearings

Hearings are formal and are conducted in a court room. Witnesses are called, documents are tendered as evidence and parties make submissions.

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 appeal.

7.1 How do I get to a hearing?

At a conference the member may establish whether the parties would like the matter to be heard. If the member is satisfied that the matter should go to a hearing the file will be returned to the registry for allocation 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. 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. You can write to the commission by writing to the registry at qirc.registry@qirc.qld.gov.au.

A second set of directions will be issued, an example of which is provided above at 4.3 Example further directions order. Once the directions order has been complied with the registry will contact you and the other party or parties requesting dates for hearing availability.

Once a date has been organised and a member has been allocated the file, you will receive a Notice of listing which sets out when the hearing will be, where it will be held and who will be hearing the appeal. The Notice of listing will also contain any other information which might be specific to your appeal.

7.2 What is a mention?

Sometimes the commission will list matters for a mention approximately two weeks before 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. Assuming that all of the directions in the issued directions orders have been complied with, the commission will then allocate the matter to a member of the commission for the hearing of the appeal.

Mentions are also used to resolve small procedural issues that occur during the course of a matter. That might involve a party flagging a particular issue and wanting to talk to the commission about that issue in court with the other party/parties present.

7.3 What do I need to prove?

It is important to note that the **onus of proof** is on the Appellant. That means that if you are appealing a decision then you bear the responsibility of proving certain things. When proving something you must meet the standard of proof. In workers' compensation appeals the standard of proof is the balance of probabilities. The balance of probabilities means that it is more likely than not to have occurred.

7.3.1 Physical injuries

Generally speaking, you must prove the following elements of section 32(1) of the *Workers' Compensation and Rehabilitation Act 2003*:

- (a) that you were a worker within the meaning of section 11 of the *Workers' Compensation and Rehabilitation Act 2003*
- (b) that you sustained a personal injury
- (c) that your injury arose out of, or in the course of, the employment
- (d) that your employment was a significant contributing factor to the injury.

If the appellant is the employer, it must then prove that the injury does not meet the elements specified in section 32(1) of the *Workers' Compensation and Rehabilitation Act 2003*.

7.3.2 Psychiatric and/or psychological disorders

If your injury is a psychiatric or psychological disorder, then you must prove the following elements of section 32(1) of the *Workers' Compensation and Rehabilitation Act 2003*:

- (a) that you were, or are, a worker within the meaning of section 11 of the *Workers' Compensation and Rehabilitation Act 2003*
- (b) that you sustained a personal injury
- (c) that your injury arose out of, or in the course of, the employment
- (d) that your employment was a significant contributing factor to the injury.

In addition to being able to prove the elements under s 32(1) of the *Workers' Compensation and Rehabilitation Act 2003*, you must also show that any "psychological or psychiatric injury" was not

connected to management action that was reasonable in the circumstances and/or conducted in a reasonable way.

Psychological/psychiatric injuries that are connected to the worker's expectation or perception of reasonable management action being taken against them are also not able to be accepted.

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.

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](#) under the Services menu.

If you are representing yourself you will sit at a table (known as the bar table) facing one or more members of the commission who will sit at a raised platform (known as the bench). The commission member's associate sits at the table immediately in front of the bench and faces the parties.

If you have any questions about procedures please ask the associate before proceedings start. Like the registry, associates do not give legal advice. If you do not understand something during proceedings ask the commission member hearing the proceedings.

You can settle and withdraw your appeal any time during the proceedings by agreement with the other parties involved.

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.

As the appellant you will be responsible for any "witness expenses" for the witnesses you call. These expenses are to be paid in advance unless otherwise agreed.

You should arrive at the location of the hearing with plenty of time to spare before the listing time for the matter. The member's associate can show you where to sit if you ask and will answer any procedural questions that he or she can.

Usually the appellant will open its case first. The respondent will open its case when you have closed yours. This means that you, as the appellant, will have an opportunity to provide to the commission

all of the evidence that you want so long as it is relevant 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.

7.6 How does oral evidence work?

In workers' compensation matters, all witness evidence is provided orally. There are no affidavits or witness statements. This is why the directions order only requires that you provide a one-page "outline of evidence" for each of the witnesses to each of the parties.

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 done by the party who called the witness)
- Cross-examination (This phase is done by the other party or parties)
- Re-examination (This phase is done by the party who called the witness)

Each of these three phases is repeated for each witness. The three phases are explained in greater detail below.

7.6.1 Evidence-in-chief

All witnesses must give evidence under oath or an affirmation to the commission. You, as the appellant will give your evidence first. The evidence is to consist of events that led to the appellant sustaining the injury. Those events should be organised in chronological order and with enough detail to prove each of the elements of section 32 of the Act that are in issue: see 7.3.1 and 7.3.2 of this guide on pages 29-30.

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

As part of the evidence-in-chief, you should tender to the commission any documents relevant to the claim. As stated above, documents not tendered at the hearing will not be considered as evidence and the member of the commission hearing the appeal will not take them into consideration when making the decision.

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

7.6.2 Cross-examination

After the examination-in-chief has finished, the side which did not call the witness will conduct the cross-examination. A cross-examination is an opportunity 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 did the examination-in-chief will then do the re-examination. A 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 appellant

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 appellant 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 should be done 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 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

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, orthopedic surgeons, engineers, accountants etc.). Whilst lay witnesses must give evidence in person, generally, expert witnesses may give evidence over the phone.

Where expert witnesses are called, the party calling the witness will need to pay the expenses of the expert witness 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. For more information about an attendance notice to give evidence see Part 6 of this guide.

7.6.6 Respondent's case

After you have called all of your witnesses your case will be closed. The respondent will then open its case and call its witnesses. For each witness the respondent calls you 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 summing up of important points in the hearing) addressing the elements of section 32 of the Act and any other relevant sections of the Act in support of their case. The respondent will usually make its submissions first and then you, as the appellant, will be able to make submissions afterwards. Your submissions may include comments on the respondent's submissions. Following your submissions, the respondent may make a submission in reply addressing any legal issues that you raised in your submissions.

If submissions are to be in writing, the member of the commission hearing the appeal will issue directions for the filing of written submissions. 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 appeals the member who heard the matter will not make a decision immediately, instead the member will reserve his or her decision. This means that the decision and the reasons for that decision will be provided to the parties at a later date. Currently, members aim to have decisions to parties within three months of the hearing.

If you are waiting for a decision, but it has been less than three months since the submissions were made by the parties, you should not contact the registry or the associate. Neither the registry nor the associate will be able to provide you with an estimated timeframe for the decisions release.

8.1 Publication of decisions

Once the member has made a decision and finished writing the reasons a copy will be emailed to the parties. All decisions in workers' compensation appeals are published on the Supreme Court Library website and are publicly accessible – the names of parties are withheld in very rare circumstances.

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 are unhappy with the decision of the commission in your matter you may appeal the decision to the Industrial Court of Queensland.

If you do wish to appeal the decision you must do so within the appeal period. The appeal period is 21 days from the date that the decision of the commission was released – this date will be on the front page of the decision. 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.

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 Form 5 noting that you are seeking leave to appeal on grounds other than those in s 557(1) and pursuant to s 557(2) of the *Industrial Relations Act 2016* (Qld).

Part 10: Costs

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

In workers' compensation appeals "costs follow the event". This means that the **unsuccessful party will usually be required to pay the costs of successful party/parties**. Costs include the cost of obtaining legal advice and legal representation, any expenses in calling witnesses (flights etc.).

If a party has no legal representation then there will be no costs which are recoverable for their legal representation.

If the respondent is successful in defending the appeal then any costs ordered against you will include the costs of the respondent's barrister for the preparation of their defence of the Regulator's decision, conferencing of witnesses and their appearance in the commission on all days of the hearing. Those **costs can be considerable**.

Any costs order in workers' compensation appeal is based on regulation 132 of the *Workers' Compensation and Rehabilitation Regulation 2014* i.e. the costs in relation to barrister's or solicitor's fees are those found in the *Uniform Civil Procedure Rules 1999*, schedule 3, scale E. For the costs in relation to witness fees and expenses, the costs are to be under the *Uniform Civil Procedure (Fees) Regulation 2009*, part 4.

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".

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 each day.

You should research the amount of conduct money which should be paid as it increases over time.

If you do not pay the reasonable expenses of the witness and 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

State agencies such as the Workers' Compensation Regulator have a set of guiding principles for the conduct of litigation. Those principles are called the model litigant principles. They are not applied rigidly and they do not override any legislative requirements or authorities concerning the agency's functions.

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

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

Part 12: Etiquette and communications

This part of the guide covers small points of etiquette for conferences, mentions, directions hearings and hearings. There is no need to be nervous when you have to speak. The member is there to listen to you and will ask you questions if they need further clarification or if they did not understand something that you said.

12.1 General points

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

If you are delayed for any reason it is important that you contact the registry as early as possible to ensure a message is sent to the associate.

If you have a mobile phone make sure it is switched off in the conference or hearing room.

When the commission member enters the room those present will be asked to stand. If it is a hearing you should stand when you are addressing the member.

In a hearing it is customary to bow to the bench by slightly inclining your head and bending slightly at the hips at the beginning of the proceedings. Similarly, if you leave the hearing room while proceedings are underway you should bow in the same way when you reach the door of the court room. You are not bowing to the member you are bowing to the coat of arms behind the member which is symbolic of the Crown's authority.

The member will ask for appearances. Simply state your name slowly and say that you are appearing for yourself. The member may ask you to spell your name – this will be so that the transcript can accurately reflect the spelling of your name.

Whether it is a conference or a hearing, the commission member may ask each of the parties, in turn, for a brief statement describing what the matter is about. It is a good idea to have this prepared in advance, you can read from it if you wish.

Make sure you speak loud enough for everyone to hear and so that, if the proceedings are 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. Water consumption 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.

12.2 Communicating with the registry or the commission

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

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

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

If you fail to copy in or convey your communications to the other parties in your matter then the registry or the member's associate may inform the other parties of what you have sent or told the registry or the commission.

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

Part 13: Finding legislation and cases

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

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 cases from 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: <https://www.sclqld.org.au/caselaw/QIRC>

The Industrial Court's decisions can be found here: <https://www.sclqld.org.au/caselaw/ICQ>

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

Part 14: Glossary

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

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.

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.

Agreed Trial Plan: See 4.12 on page 23.

Amended directions order: See 4.1.1 Types of directions order on page 14.

Appellant: A person or an employer who filed an appeal in the registry under section 549 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

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 7.6.2 on page 33.

Directions order: See 4.1 on page 14.

Disclosure: See 4.5 on pages 17 to 19.

Evidence-in-chief: See 7.6.1 on page 32.

File and serve: See 3.8 on page 13.

Further amended directions order: See 4.1.1 on page 14.

Further directions order: See 4.1.1 on page 14.

List of documents: See 4.5.1 on page 17.

Onus of proof: See 7.3 on page 30.

Parties: See page 3.3 on page 10.

Re-examination: See 7.6.3 on page 33.

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, not a company or organisation, who is not represented by a lawyer, agent or industrial organisation.

Submissions: See 7.7 on page 34.

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

PRACTICE NOTE NUMBER 1 OF 2018

INDUSTRIAL REGISTRAR

ELECTRONIC FILING AND HARD COPIES OF DOCUMENTS

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

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

In this Practice Note:

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

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

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

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

1. A person may only electronically file a soft copy of a document with the Industrial Registry that is 30 pages or fewer in length.
2. If a soft copy of the document which a person seeks to electronically file is more than 30 pages then the document will not be accepted for filing until a hard copy of the document is supplied to the Industrial Registry.
3. If a person seeks to electronically file more than one document at a time, or within a short period of time, and the combined length of the documents is more than 30 pages then the documents will not be accepted for filing until a hard copy of each of the documents is supplied to the Industrial Registry.
4. If a person is required to file a hard copy of a document as a consequence of 2 or 3 above then the document will only be filed upon receipt of the hard copy by the Industrial Registry.
5. A document will only form part of the file once it is accepted for filing.
6. This Practice Note will commence operation on Monday 4 June 2018.

M. P. Shelley
Industrial Registrar
5 April 2018

Appendix B – Codes of conduct



INDUSTRIAL COURT OF QUEENSLAND **QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

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

1. Parties and their representatives have obligations to behave appropriately to both the Commission and each other, and in a way that helps provide a fair hearing for all.
2. Parties and their representatives should:
 - treat the Commission and other parties/representatives with courtesy and respect
 - act honestly, and not knowingly give false or misleading information
 - cooperate with other parties and the Commission to enable the just, efficient, timely and cost effective resolution of the issues in dispute
 - act promptly, comply with Commission directions, and minimise delay
 - take reasonable steps to make sure the costs incurred in connection with proceedings are reasonable and proportionate to the complexity and importance of the issues and amount in dispute, and
 - where appropriate, take reasonable steps to resolve disputes by agreement or to minimise the number of issues in dispute.
3. Communication with Associates
 - A party or any representative may only communicate with the Associate of a member of the Commission or Court where it is appropriate to do so.
 - Unless there is great urgency, communication must be in writing (which includes by email). In the case of such urgency, telephone communication is permitted.
 - In most cases, a party or any representative may only communicate with an Associate with the consent or prior knowledge of the other parties.
 - If the issue in the communication is uncontroversial, or unlikely to result in dispute, then consent is not required but the communication must be copied to the other parties at the same as it is sent to the Associate.