

Applying for Orders requiring a person to give evidence and/or produce documents at a hearing



What is an "Order to Attend"?

An Order to Attend is like a subpoena in a court. The purpose of the order is:

1. To require a person appear at a Tribunal Hearing to give evidence; and/or
2. To require a person to produce specific documents at a Tribunal Hearing.

You should only apply for an Order to Attend if the witness will not voluntarily come to the hearing and/or produce the documents to the hearing.

Legislation:

- *Anti-Discrimination Act 1991*, s201
- *Anti-Discrimination Tribunal Rule 2005*, s13
- *Anti-Discrimination Regulation 2005*, s3
- Practice Direction 2
- Practice Direction 1

The Act and the Rule are available from the Queensland Parliamentary Counsel at http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_A.htm and the Practice Direction is available at <http://www.adcq.qld.gov.au/tribunal/practice.html> or from the Tribunal Registry.

You cannot force a person to provide a written statement:

The Tribunal does not have the power to require a person to provide a written statement.¹

¹ *Pagura-Inglis v State of Queensland* [2004] QADT 42 at paragraph 15.

What you need to file with the Tribunal:

The Applicant must file:

1. Application for Order (Form 2);
2. Affidavit or statement in support of the Application; and
3. Draft Order to Attend (Form 7).

See the notes below about how filing and serving the Application and supporting material.

The Application and Draft Order Forms:

The Form 2 is the formal document you use to apply to the Tribunal for the orders sought, and the Form 7 is the document that is signed by the Tribunal Member or Registrar if your Application is granted. You do not sign the Form 7.

You need to set out all orders that you seek on the Form 2. For example:

1. *That Bill Bloggs of 123 Smith Street, Brisbane attend the Final Hearing of this complaint on 29 June 2008 to give oral evidence to the Tribunal and to produce the following documents:*
 - a. *The Complainant's pay slips from 1 May 2007 – 2 September 2007; and*
 - b. *Complainant's employment termination document.*

You need to set out in the Form 2 the reasons for seeking the orders, for example; "Bill Bloggs will not attend the hearing voluntarily and he can give evidence and produce documents that are relevant to my case".

In the affidavit, you then set out the details of when and how you asked Bill Bloggs to come to the hearing to give evidence, and how his evidence is relevant to your case. See the notes under "The Supporting Affidavit".

The Form 7 is the order that is signed by the Tribunal Member or Registrar if your Application is successful. If the Tribunal Member decides to make the orders, the Tribunal Registry will give you the sealed order, and you then serve it on the person to whom it is directed. If you need orders for more than one person to attend the hearing, you need to file a draft order Form 7 for each person that you require to attend.

The Supporting Affidavit:

A supporting affidavit or statement must be filed at the time you file your Application. In this affidavit you should attempt to at least set out the following points to the best of your ability:

1. State the person's current address and telephone details. You should demonstrate how you ascertained the person's contact details;
2. Outline the evidence that the person might give. You must demonstrate that the evidence is of a nature which is likely to provide some assistance to the Tribunal in the determination of the issues before it, whether they be in relation to the primary issue, be directly relevant or even go to credit. It would rarely be open to call a witness whose evidence was limited to issues of credit;²
3. Demonstrate that you have attempted to ask the person to voluntarily provide a statement for the purposes of being a witness on your behalf, and that the person has refused; and
4. Demonstrate that no other party to the complaint intends to rely on the person as a witness on their behalf.

² *Lumbergs v Q Super* [2003] QADT 20.

Filing and Serving the Application and Supporting Material:

When filing any document in the Tribunal, you must file the original and at least two copies of each document. The Tribunal keeps the original and one copy of each document.

The extra copies of the Form 2, affidavit in support and the Form 7 are stamped with the Tribunal's seal and returned to you. You must serve a sealed copy of each document on each other party to the complaint.

Hearing the Application:

The Application will be decided by a Tribunal Member. The Registrar or the Tribunal Member might make orders giving the other parties to the complaint the opportunity to file material or make submissions about the Application.

The Tribunal Member will either:

1. Determine the Application on the papers – this means there is no public hearing of the Application and the Member will decide it having regard to the material that has been filed; or
2. Set the Application down for hearing – this means that all parties would be required to appear before the Tribunal and argue why the orders should or should not be made.

Serving the Order to Attend on the Witness:

You need to serve the Order to Attend on the person to whom it is directed. It is best to deliver the order in person – you can do this yourself or engage someone else to do it for you. The person who serves the order should make an affidavit swearing to the place, date and time of service.

The witness is entitled to be paid fees and expenses – these are the same amounts payable for witnesses appearing in a court. The fees and expenses are set out in the *Uniform Civil Procedure (Fees) Regulation 1999*, part 4. This

Regulation is available from the Queensland Parliamentary Counsel at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SuprCrtQUCFR99.pdf>

Relevant Case Law:

Two cases that should be considered before making an Application for orders to attend are:

- *Pagura-Inglis v State of Queensland* [2004] QADT 42
- *Lumbergs v Q Super* [2003] QADT 20

These cases are available at <http://www.austlii.edu.au/au/cases/qld/QADT/>.