

Appeals information notice pursuant to section 121(2) of the *Queensland Civil and Administrative Tribunal Act 2009*

This notice is about only Part 8 of the *Queensland Civil and Administrative Tribunal Act 2009*. Part 8 provides generally for appeals against particular decisions of the Tribunal. The information about appeals below is also summarised in the table at the end of this notice.

Some enabling acts have special provisions for how appeals are made. You should consult the Act relevant to your matter to ensure you meet all the requirements of appealing a decision of the Tribunal.

You cannot appeal against some decisions

You cannot appeal against the following decisions:

- a decision made by the Principal Registrar or a delegate under section 35 to accept or reject an application or referral;
- a direction made by the Tribunal to the Principal Registrar under section 35 to accept or reject an application or referral;
- a decision to set aside a decision by default;
- a decision made by the Tribunal on an application to reopen a proceeding.

You may appeal against some decisions in certain circumstances

You may appeal against some Tribunal decisions to the Appeal Tribunal of QCAT or to the Queensland Court of Appeal (which is part of the Supreme Court of Queensland).

You do not generally have a right to appeal against a Tribunal decision. In most cases, you will need permission to appeal first. This is called 'leave'. Leave will only generally be given in certain circumstances.

There are also time limits on seeking leave and starting an appeal; they are also outlined below.

Who makes the decisions at the Tribunal?

Whether you need leave (permission) to appeal against a decision will partly depend on who made the decision. The decision makers of the tribunal are: (1) judicial members; (2) senior and ordinary members; (3) adjudicators; and (4) justices of the peace.

The *judicial members* of the Tribunal are:

- the president and the deputy president;
- a supplementary member who is a Supreme Court or District Court judge;
- a member who is a former judge (when they are specifically nominated by the president to make a decision as a judicial member).

Magistrates hearing QCAT matters are ordinary members. Judicial registrars hearing QCAT matters are adjudicators.

The decision will usually say what kind of person made the decision. If you are not sure what kind of person made the decision, you should check with the registry.

For more information on QCAT

Call 1300 753 228 or visit www.qcat.qld.gov.au
GPO Box 1629, Brisbane Qld 4001 Fax: 07 3221 9156
Email: enquiries@qcat.qld.gov.au ABN: 13 846 673 994

Appealing a decision of the Tribunal

Was the decision maker a judicial member?

You can only appeal a decision of a judicial member to the Court of Appeal.

You will need leave from the Court of Appeal, to appeal the following decisions:

- a cost-amount decision, only on a question of law;
- a decision on a question of fact;
- a decision on a question of mixed law and fact.

You will not need leave to appeal (that is, you can appeal “as of right”) a decision on a question of law.

Was the decision maker a senior or ordinary member, an adjudicator, or a panel of justices of the peace?

Appeals of decisions of members, adjudicators, justices of the peace can be to the Appeal Tribunal or the Court of Appeal.

Appeals to the Appeal Tribunal

You will need leave from the Appeal Tribunal to appeal the following decisions to the Appeal Tribunal:

- a decision, including a final decision, about a minor civil dispute;
- an interim decision, interlocutory decision or any other decision that is not a final decision;
- a costs order;
- a final decision on a question of fact;
- a final decision on a question of mixed law and fact.

You can appeal to the Appeal Tribunal as of right a final decision (except for a final decision about a minor civil dispute), on a question of law only.

Appeals to the Court of Appeal

You will need leave from the Court of Appeal to appeal a cost-amount decision, on a question of law only.

Appealing a decision of the Appeal Tribunal

The same appeal rights apply to a decision of the Appeal Tribunal, whether it was made by a judicial member or by a senior or ordinary member. Appeals of Appeal Tribunal decisions are made to the Court of Appeal.

You will need leave from the Court of Appeal to appeal the following decisions:

- a decision to refuse an application for leave to appeal against a Tribunal decision, on a question of law only;
- a cost-amount decision, on a question of law only;
- the final decision, on a question of law only.

Time limits

There are strict time limits to starting an appeal. If you do not start your appeal within the time limit you will need to ask for the Appeal Tribunal or Court of Appeal for an extension of time. Your request may not be granted.

| Application | Time Limit |
|---|---|
| <ul style="list-style-type: none"> • Application for Appeal Tribunal's Leave • Appeal to Appeal Tribunal as of right; • Application for Court of Appeal's Leave • Appeal to Court of Appeal as of right | Within 28 days of either: <ul style="list-style-type: none"> • the day you received notice of the decision where reasons are not required to be given; • the day you received notice of the decision where written reasons were not requested within 14 days after the decision takes effect under section 122; • the day you were given written reasons for the decision; or • if you applied to the tribunal for a renewal, reopening or correction of a mistake – the day that application was finally dealt with. |
| <ul style="list-style-type: none"> • Appeal to the Appeal Tribunal or Court of Appeal, where leave has been granted | Within 21 days from the day leave is given. |

Reasons

You may request reasons for decisions of the Tribunal however the Tribunal is not required to give written reasons for certain procedural decisions – see section 122(4). Those decisions are also summarised in the list at the end of this notice. Reasons may be requested by lodging the *Request for Reasons* form available on the Tribunal website. You must do this within 14 days of the date the decision takes effect, which is usually the date it is made (unless the decision states otherwise).

How to apply for leave to appeal, or appeal against a decision

To apply for leave to appeal or to appeal against a decision of the Tribunal to the Appeal Tribunal, you need to lodge the *Form 39 Application for leave to appeal or appeal* and pay the prescribed fee, if any.

To apply for leave to appeal or to appeal against a decision of the Tribunal or the Appeal Tribunal to the Court of Appeal, or to seek a stay of the decision being appealed against, you need to consult the *Uniform Civil Procedure Rules 1999*.

Applying to stop or stay the decision

Applying for leave to appeal or appealing against a Tribunal or Appeal Tribunal decision does not stay (stop) the operation of the original decision. However, you can apply to the Appeal Tribunal or the Court of Appeal, who may in certain circumstances make an order staying the original decision until any appeal is finally decided.

To seek a stay of the decision of the Tribunal when it is being appealed to the Appeal Tribunal, you need to lodge a *Form 44 Application to stay a decision* at the same time you lodge the Form 39.

To seek a stay of the decision of the Appeal Tribunal when it is being appealed to the Court of Appeal, you can apply either to the Appeal Tribunal or to the Court of Appeal to stay the decision. To apply to the Appeal Tribunal you need to lodge a *Form 44 Application to stay a decision*. To apply to the Court of Appeal, you need to consult the *Uniform Civil Procedure Rules 1999*.

What decisions can the body hearing the appeal make?

Appeal on a question of law only

In deciding an appeal, the Appeal Tribunal or the Court of Appeal may:

- confirm or amend the decision;
- set aside the decision and substitute their own decision;
- set aside the decision and send the matter back to the Tribunal (or the Appeal Tribunal) for reconsideration, with directions about whether to hear more evidence, and any other appropriate directions; or
- make any other order it considers appropriate, in combination with the above orders, or as a stand-alone order.

Appeal on a question of fact, or a question of mixed law and fact

In deciding an appeal on a question of fact, or a question of mixed law and fact, the Appeal Tribunal or the Court of Appeal may:

- confirm or amend the decision;
- set aside the decision and substitute their own decision.

List of decisions for which the tribunal is not required to comply with a request for written reasons

- a decision setting aside or amending a decision by default;
- a direction consolidating 2 or more proceedings;
- a direction that 2 or more proceedings be heard and decided together;
- a direction that 2 or more proceedings be heard in a particular sequence;
- a direction varying a previous direction consolidating 2 or more proceedings;
- a direction varying a previous direction that 2 or more proceedings be heard and decided together;
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- a decision regarding the taking evidence;
- a decision to act in the absence of a party who had reasonable notice of a proceeding;
- a decision adjourning a proceeding;
- a decision to extend a time limit fixed for the start of a proceeding;
- a decision to extend or shorten a time limit;
- a decision to waive compliance with another procedural requirement;
- a direction given at any time in a proceeding;
- a direction requiring a document or another thing be produced or information provided to the tribunal or a party;
- a decision requiring a document be amended.

Summary of information about appeals

| Which body made the decision? | What kind of person made the decision? | What kind of decision was it? | Is an appeal possible? | Is leave (permission) to appeal needed? | Which body gives leave (permission) to appeal and hears the appeal? |
|-------------------------------|--|--|------------------------|---|---|
| N/A | Principal registrar or delegate | Decision to accept or reject an application or referral under s 35 | No | | |
| Tribunal | Senior/ordinary member, adjudicator or JP | Direction by Tribunal to the Principal Registrar under s 35 to accept or reject application or referral | No | | |
| Tribunal | Senior/ordinary member, adjudicator or JP | Decision to set aside or amend a decision by default under s 51 | No | | |
| Tribunal | Senior/ordinary member, or adjudicator or JP | Decision on application to reopen a proceeding | No | | |
| Tribunal | Senior/ordinary member, or adjudicator | Cost-amount decision, only on a question of law | Yes | Yes | Court of Appeal |
| Tribunal | Judicial member | Decision on question of fact | Yes | Yes | Court of Appeal |
| Tribunal | Judicial member | Decision on question of mixed law and fact | Yes | Yes | Court of Appeal |
| Tribunal | Judicial member | Decision on question of law only | Yes | No | Court of Appeal |
| Tribunal | Senior/ordinary member, adjudicator or JP | Decision, including a final decision, about a minor civil dispute | Yes | Yes | Appeal Tribunal |
| Tribunal | Senior/ordinary member, adjudicator or JP | Interim decision, interlocutory decision or any other decision that is not final decision | Yes | Yes | Appeal Tribunal |
| Tribunal | Senior/ordinary member, or adjudicator | Costs order | Yes | Yes | Appeal Tribunal |
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| Appeal Tribunal | Any member | Decision to refuse application for leave (permission) to appeal against Tribunal decision, on a question of law only | Yes | Yes | Court of Appeal |
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