

GENERAL INFORMATION SHEET FOR PARTIES TO CIVIL CLAIMS

An **applicant** is not entitled to succeed in their QCAT application merely because they believe that someone has treated them unfairly, unlawfully or owes them money. The applicant must put **evidence** before QCAT which **supports** their case.

Similarly, a **respondent** who disputes a claim must present **their evidence** which they say means the applicant's claim should be refused.

It is then for the Tribunal to examine the **relevant evidence** and decide whether, under the **relevant law** at the hearing, the **applicant** has **proved their claim** on the **balance of probabilities**. The Tribunal makes its decision based on the evidence presented by each party. It also considers the submissions made by the parties about the law.

It is a fundamental principle of **natural justice** that **each party has notice** of the evidence relied on by the other party.¹ Our legal system does not operate on the basis of "trial by ambush." It is important that you give the Tribunal and the other parties to the proceeding copies of your written evidence and submissions. A party's failure to give copies of their evidence to the other parties will likely result in delay, adjournments, and in some instances, orders for costs being made against the party.

Sometimes it is possible for the Tribunal to make a decision (**without an oral hearing** being attended by the parties and their supporting witnesses) by reading and considering the evidence and the submissions which the parties have filed. This is called an "**on the papers**" hearing.

It is important for parties to understand the difference between evidence and submissions.

Evidence

"Evidence" describes the **factual information** which parties file in the Tribunal.

Evidence may take a number of forms. It can be:

- a written statement by a person in which the person **describes** what they did, saw, said, or heard; or
- a document which contains **proof of a transaction**, such as a written contract or a receipt; or
- a document which is **proof of an event**, such as a photograph; or

¹ However, in some limited circumstances, the Tribunal may make a non-publication order which affects whether other parties or members of the public has access to documents or information on the Tribunal's file.

- a document which accurately and factually demonstrates or supports something explained in a statement about what was agreed between the parties or what happened, such as a plan or a map; or
- an expert report from, for example, a doctor or an engineer.

Whatever form it takes, relevant evidence describes, explains, demonstrates or supports the parties' claims about what happened, that is, the alleged **facts of the dispute**.

Witness Statements

A Witness Statement is a statement setting out a witness' evidence in a written statement. That is, a Witness Statement **sets out the evidence of the witness about the alleged facts**. In proceedings, witness statements are usually provided by the parties to the proceeding, and also by other persons who can give an account of events that are relevant to the proceedings. A Witness Statement preferably should be a sworn document in the form of an **Affidavit or Statutory Declaration**. The form of an Affidavit is available on the QCAT website: <https://www.qcat.qld.gov.au/resources/forms>

If it is not possible to provide a sworn Affidavit or Statutory Declaration, then the Witness Statement should be signed by the person making the statement, preferably in the presence of an independent witness.

Each Witness Statement (there can be more than one) should explain the relevant facts of the dispute to the extent that the witness has personal first-hand knowledge of them—that is, **tell the story to the Tribunal about what happened**. The story should be **limited only to relevant facts**. Facts that are irrelevant to the issues to be decided cannot be considered by the Tribunal in making its decision. **All relevant documents must be attached to a Witness Statement**. The Witness Statement must explain what each document is and why it is relevant, because the relevance to the dispute may not be readily apparent to someone who is not involved in it.

All pages of a Witness Statement should be numbered consecutively (1, 2, 3 etc.) starting at the first page of the Witness Statement through to the last page of the last attachment (if any). This allows the Witness Statement to be easily followed and any attachments easily located by the Tribunal and all parties during a hearing. Photographs, plans, emails and other documents may be relevant and can be attached but must also be page numbered and described.

Consider the most succinct way of explaining the relevant events and facts of the story – both what supports your case and what you may need to explain by way of answer to your opponent's case.

Focus on the key issues - make sure you include all of the relevant evidence relied upon, but do not include irrelevant evidence.

Submissions

Submissions are different to Statements of Evidence. Statements of Evidence are about facts. **Submissions are your legal argument.**

Written submissions are your opportunity to argue your case. They allow you to **identify the law** that you believe applies to the facts and **explain how you say the law applies to the facts** of your case.