

QCAT HEARINGS

Payment of Witnesses



It is commonly known that when a person is compelled to give evidence in a proceeding to which they are not a party, they are entitled to receive payment.

There is a difference between “conduct money” and a “witness attendance allowance”:

1. Conduct money is essentially compensation for the expense that the witness will necessarily incur, in order to attend the hearing. This includes travel and accommodation expenses.
2. The witness attendance allowance is payment to compensate the time of absence from the witness' usual occupation.

This paper discusses both forms of compensation in relation to hearings conducted in the Queensland Civil and Administrative Tribunal (QCAT).

Entitlement to conduct money and attendance allowance

Section 97 of the *Queensland Civil and Administrative Tribunal Act 2009* (the Act) gives the Tribunal power to issue a notice requiring a person to attend a hearing to give evidence (most people would call this a subpoena). That section also states that a person who is given such a notice is entitled to be paid the fees and allowances prescribed by a regulation (or as decided by the Tribunal).

The fees and allowances are set out in the *Queensland Civil and Administrative Tribunal Regulation 2009* (the Regulation).

With respect to the payment of the witness attendance allowance, the Regulation distinguishes between professional or expert witnesses and non-professional witnesses, such that:

1. Non-professional witnesses over 16 years of age are entitled to an allowance of \$76.05 for each day or part of a day of necessary absence from their place of employment, practice or residence to attend a hearing (see section 11).
2. Professional or expert witnesses are entitled to \$235.70 for each full day of necessary absence from their place of employment, practice or residence to attend a hearing. However, if the period for which they are absent is 7 hours or less, the allowance is scaled depending on the necessary hours of absence, ranging from \$88.90 for 3 hours or less to \$214.30 for more than 6 hours but less than 7 hours (see section 12 for the full scale).
3. Witnesses who are Doctors employed at Public Hospitals are entitled to an allowance of \$78.15 for each day or part of a day of necessary absence from the hospital at which they are employed.

Logically, the definitions classify an expert witness as a witness who attends a hearing to give evidence of an expert nature, a professional witness as one who attends to give evidence of a

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professional nature and a non-professional witness as one who attends to give evidence of a non-professional nature.

In addition to receiving the applicable allowance, a witness is entitled to conduct money. The conduct money must be an amount sufficient to meet the reasonable expenses of complying with the notice requiring attendance. This includes any necessary travel and accommodation.

How to calculate travel and accommodation expenses?

The amount of travel expenses payable to a witness is:

1. The amount payable for fares on public transport for return travel between the witness' place of employment, practice or residence (whichever is the furthest from the tribunal) and the tribunal; or
2. If there is no public transport available, the amount calculated at the rate per kilometre payable under the *Public Service Act 2008* to a public service employee required to use the employee's private motor vehicle for official purposes, taken to the nearest whole cent.
3. If it is reasonable for the person to travel by air, the amount payable for economy class air travel by the witness to and from the tribunal.

In deciding whether public transport is available, it must be considered whether a public transport system operates by which the witness could conveniently travel to the tribunal in a reasonable time before they are required to attend the hearing and subsequently return to their place of employment, practice or residence after the hearing.

As to accommodation expenses, the amount payable is the amount calculated at the rate payable under the *Public Service Act 2008* to a public service officer.

Who is responsible to pay?

If the witness was given a notice requiring attendance on application by a party, then the Act requires that that party must pay the witness. Otherwise, the Tribunal may decide on the proportions payable by each party.

When is payment required?

The Regulation requires that the attendance allowance must be paid within a reasonable time after the witness attends the hearing.

The conduct money, however, must be paid at the time the witness is given a notice requiring them to attend, or otherwise within a reasonable time before the hearing.

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