

Building and Construction Industry Long Service Payments Committee

PROCEDURES FOR THE HEARING OF APPEALS

These procedures have been endorsed by the Building and Construction Industry Long Service Payments Committee and are to be read in conjunction with the appeal provisions in the [Building and Construction Industry Long Service Payments Regulation 2022](#). In the event of any inconsistency between these procedures and the appeal provisions of the Regulation, the appeal provisions will apply to the extent of any inconsistency.

Introduction

The Building and Construction Industry Long Service Payments Committee (Industry Committee) is empowered in accordance with Part 6 of the [Building and Construction Industry Long Service Payments Act 1986](#) (the Act), to hear appeals in respect of decisions made by the Long Service Corporation (the Corporation):

- To refuse or to cancel a registration (section 49)
- To refuse the recording of service credits (section 50)
- To limit the amount of a long service payment by operation of a deemed minimum or maximum rate of pay (section 50A)
- To make an assessment of a long service levy (section 51)
- To determine the payment of interest on a long service levy (section 52).

The intent of these procedures is to ensure that:

- The principles of natural justice and procedural fairness are observed
- Adequate notice of the appeal process is given to appellants
- Appellants are informed of the information and material required to support an appeal, and are provided opportunity to bring all relevant matters to the attention of the Committee
- The Committee is informed of all relevant facts when determining an appeal
- Comprehensive reasons are provided to appellants when the Committee makes determinations refusing appeals.

Lodgement of Appeals

1. Appeals to the Industry Committee must be lodged within 42 days after the appellant is notified of the Corporation's decision. However, an appeal may be made up to six months after notification of the Corporation's decision if the Chairperson of the Industry Committee is satisfied, on the information provided by the appellant, that exceptional circumstances exist.

What matters may be taken into account in determining exceptional circumstances?

2. Exceptional circumstances may include an incident, matter, condition or state of affairs that is out of the ordinary course or unusual, or special, or uncommon. They need not be unique, or unprecedented, or very rare, but will not be circumstances that are regularly, routinely or normally encountered by an appellant. However, a combination of ordinary factors which, although individually of no particular significance, when taken together may amount to exceptional circumstances.
3. In determining whether there are exceptional circumstances, the Chairperson may take into account the following:
 - whether the appellant became aware of the Corporation's decision before the end of the appeal period
 - any action taken by the appellant to dispute the decision before lodgement of the appeal, such as calling the helpline to dispute the Corporation's decision or to inquire about the lodgement of an appeal
 - any relevant medical condition or special disability which the appellant had at the time of notification of the Corporation's decision which affected the appellant's ability to respond to, or appeal the decision
 - the financial circumstances of the appellant at the time the Corporation's decision was notified
 - the overall merits of the application.

Engagement of legal representatives

The appeal process under the Act is designed to be low cost and there is no obligation for an appellant to engage legal representation in order to lodge an appeal application or to make submissions to the Committee.

Committee Procedures

General Principles

1. The Committee will ensure that the principles of 'natural justice' are adopted in their considerations, including avoidance of errors in law by due consideration of the legislation, precedents and previous decisions.

Lodgement of submissions and documents

2. Written submissions and other documents relevant to an appeal are to be included with an appeal application. However, an appellant may nominate in the application a later date for the production of submissions and documents that is not more than 21 days (or such other approved period) after lodgement of the application.
3. The appellant may indicate in the appeal application an intention to provide submissions to the Committee in person, via audio visual link or through their legal representative, and will be advised by the Committee Secretary of the time, date and address for attendance. Where an appellant has requested to appear via audio visual link, the Committee Secretary will send an invitation via email of the time, date and link to the Corporation's chosen application on which the meeting is to be held. An appellant (or their legal representative) will advise the Committee Secretary if an interpreter is required to attend the hearing.
4. Where the appellant has engaged a legal representative, all correspondence relating to an appellant's appeal will be directed to the appellant's legal representative, unless the Committee Secretary is advised otherwise.
5. An appellant's legal representative must, not less than 28 days before the date of the appeal hearing, confirm with the Committee Secretary instructions regarding:
 - a. the representation of the appellant; and
 - b. the attendance of the appellant and/or the representative
 - c. the provision of written or oral submissions to the Committee; and
 - d. the provision of additional documents or information to the Committee.

Decision making process

6. The strict rules of evidence do not apply in determining appeals under the Act and the Committee may inform itself on any matter which is relevant to an appeal.
7. The Committee will ensure that sufficient relevant factual and other materials are considered before making any decision. Sources of factual material will include advice from the Corporation, records of previous Committee decisions, records of advice from employers and workers, statutory declarations and related evidence from levy payers or workers.
8. Where the Committee requires further or additional information, the appellant will be notified by the Committee Secretary of the time, date and address for production of the information.
9. The parties to an appeal (and their legal representatives) are not entitled to call a person to give evidence or to cross examine any person at the hearing of the appeal.
10. The Committee may adjourn the proceedings of an appeal to consider the content of any submission, document or other information where it has not been provided by the appellant within the time required by these procedures or by the Committee.
11. All decisions of the Committee will be documented for subsequent Committees to review the reasons for a decision and its relationship with previous Committee decisions and legislative provisions.

12. The Committee will ensure that comprehensive reasons are provided to an appellant where an appeal is dismissed.
13. No costs will be awarded by the Committee on an appellant withdrawing an appeal application or on the determination of an appeal.
14. The Committee will give written notice of its decision on an appeal as soon as practicable after the decision is made.

Role of Committee Members

1. The Committee members will give priority to advancing the cause of the Committee and will follow Committee rulings on confidentiality. All matters relating to the operation of the Committee are to be held confidential by Committee members except where express agreement of a quorum of members has decided that it can be released in some agreed form.
2. The Committee members are to advise if there is any reasonable apprehension of bias or conflict of interest on their part in respect of any appeal. The remaining Committee members will decide whether the member will thereafter participate in any decision making in respect of that appeal which will be recorded by the Secretary.
3. Each Committee member's primary focus will be to further and support the purposes of the Committee, and must not act as mere channels of communication for the groups which nominated them for membership of the Committee.
4. The Committee will ensure procedural requirements of the [Building and Construction Industry Long Service Payments Act 1986](#) will be observed including quorums and relevant time frames. Where the Committee appoints a sub-Committee to deliberate upon any appeal matter no decision will be made unless the appeal is heard and determined by two or more members.

Committee Support Procedures

The Committee Secretary provides the necessary support to the Committee to bring all relevant matters to the attention of the Committee, coordinate appeal matters and ensure appellants receive the necessary advice and information to ensure procedural fairness.

The role of the Committee Secretary is to:

1. Provide information to an appellant that will advise of the documentary requirements to support an appeal, and the process the Committee will follow.
2. Provide the Committee with the documentation provided by the appellant, and with the submission prepared by the Corporation outlining the relevant issues in the appeal and facts in support of the Corporation's decision.
3. Provide the Committee with a submission prepared by the Corporation outlining a summary of previous reasons and decisions in respect of similar or identical appeal matters for the Committee's information.
4. Where the appeal has been dismissed, a full explanation of the Committee's reasons for dismissing the appeal is to be included in the advice to the appellant.
5. Inform an appellant whose appeal has been dismissed that under s.54(4) of the Act the Committee's decision is final, but that the section does not preclude professional advice being sought as the legal recourses available to the appellant if dissatisfied with the Committee's decision.
6. Record all decisions of the Committee in the Appeals Decisions Database including the reasons for the Committee's decision.
7. Ensure that Committee decisions are also brought to the attention of Corporation officers to enable action to be taken to review or rectify procedures in respect of the matter which resulted in the appeal.