



**Department of Consumer
and Employment Protection**
Government of Western Australia

Our Ref: WM0035/2000
Enquiries: Labour Relations Advisers

CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 4 OF 2005

**RECLASSIFICATION APPEALS BEFORE THE PUBLIC SERVICE ARBITRATOR:
REVISED PRACTICE DIRECTION**

The Public Service Arbitrator of the Western Australian Industrial Relations Commission has issued a revised Practice Direction dealing with reclassification appeals.

Departments and Authorities are required to give effect to the terms of the Practice Direction from 8 April 2005.

The revised Practice Direction is attached.

The Practice Direction was also published in the Western Australian Industrial Gazette on 27 April 2005 and will be made available on the Commission's website – www.wairc.wa.gov.au.

Yours sincerely

**JEFF RADISICH
EXECUTIVE DIRECTOR
LABOUR RELATIONS**

19 May 2005



WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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RECLASSIFICATION APPEALS – PRACTICE DIRECTION

GENERAL APPROACH

The Public Service Arbitrator encourages discussion between the parties and the disclosure of relevant information and documentation at all stages of the reclassification appeal process.

Before an Appellant requests that an appeal be listed for hearing, the Respondent should have made the Appellant fully aware of the reasons of the employer (including of the classification review committee) for rejecting the application for reclassification. This should include a copy of any report presented to and relied on by the employer for its consideration, however, it should be recognised that such reports are not always accepted by employers and accordingly may be of little use to the Appellant in considering his/her situation. The Appellant should have had the opportunity to consider his/her position in light of the employer's reasons before deciding to proceed with his/her appeal.

It should be borne in mind that, in determining reclassification appeals, the Arbitrator is performing an administrative review of the decision made by the employer, including the conclusions of the committee. It is not appropriate for parties to adopt an adversarial approach to the proceedings. There will be an opportunity for each party to ask questions of witnesses for the purposes of clarification and elaboration. However, this is not cross-examination in the sense usually undertaken in hearings before the Commission generally.

The appeal should be based on the material that was before the employer and not on new material not previously considered. Where an Appellant seeks to pursue an appeal based in part or in whole on new material not considered by the employer, the Arbitrator is likely to not proceed with the appeal until that has occurred.

PROCEDURE

1. At least seven (7) clear working days before the hearing of the appeal, the Appellant is to provide the Arbitrator with a written statement of the facts upon which the Appellant relies to support the appeal and any witness statements, and serve a copy of the statement on the Respondent or its representative.
2. At least three (3) clear working days before the hearing, the Respondent is to provide the Arbitrator with a written statement of the basis upon which it relies to resist or

otherwise question the appeal and any witness statements, and serve a copy of that statement on the Appellant or the Appellant's representative.

3. The material included in the parties' statements is the primary evidence to be considered. Where there is a need for oral evidence, witnesses may be asked questions by the other party with a view to clarifying or eliciting information. However, this is not an opportunity for cross-examination in the traditional sense.
4. The evidence presented to the Arbitrator should be confined to that information provided to the employer for consideration of the application for reclassification and the Respondent's reasons for refusing the application.
5. The hearing of the appeal will proceed on the following basis:
 - (a) The Appellant or agent may, if desired, make a brief opening statement to outline the basis of the appeal.
 - (b) The Appellant may give evidence to support the appeal which, in the normal course of events, will be confined to those matters raised in the written statements submitted by the Appellant and Respondent.
 - (c) The Respondent may then question the Appellant.
 - (d) The Appellant may then be re-questioned in light of the Respondent's questioning.
 - (e) The Appellant may call any other witnesses.
 - (f) The case for the Appellant then closes.
 - (g) The Respondent through its agent then opens its case and in doing so may make a brief opening statement.
 - (h) The Respondent may give evidence to support its position which, in the normal course of events, will be confined to those matters raised in the written statements submitted by the Appellant and Respondent.
 - (i) The Appellant may then question the Respondent.
 - (j) The Respondent may then be re-questioned in light of the Appellant's questioning.
 - (k) The Respondent may call any other witnesses.
 - (l) The case for the Respondent then closes.
 - (m) The parties may make brief closing statements.
6. 1.5 hours is normally set aside for each appeal.

OPERATIVE DATE

The normal practice is that reclassifications are effective from the date on which the employee formally notified the employer that a reclassification is sought.