



## PRACTICE NOTE 7 OF 2021

### Public Service Arbitrator Reclassification Applications

#### Introduction

*This Practice Note 7 of 2021 replaces Practice Note 1 of 2018, issued on 23 May 2018.*

1. Practice Note 7 of 2021 is issued by The Western Australian Industrial Relations Commission (**the Commission**) for the purpose of informing employees, employers and relevant registered organisations of the process required to be undertaken when seeking the reclassification of a position within the public sector.
2. In accordance with s 113(1) of the *Industrial Relations Act 1979* and reg 39(3) of the *Industrial Relations Commission Regulations 2005*, Practice Note 7 of 2021 is effective 14 days after the date of its publication in the Western Australian Industrial Gazette, being 23 March 2021, and remains in force until such time as it is replaced.

#### General approach

3. The Public Service Arbitrator encourages discussion between the parties and the disclosure of relevant information and documentation at all stages of the reclassification application process.
4. Before an applicant requests that an application be listed for hearing, the employer should have made the applicant fully aware of the reasons of the employer (and 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 applicant in considering their situation. Whether such a report may be relied upon in the hearing of the application will be a matter for the Public Service Arbitrator to determine. The applicant should have had the opportunity to consider their position, after assessing the employer's reasons, before deciding to proceed with their application.
5. It should be recognised that, in determining reclassification applications, the Public Service Arbitrator is performing a review of the decision made by the employer, including the conclusions of the classification review 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.



6. The reclassification application should be based on the material that was before the employer and not on new material that was not previously considered. Where an applicant seeks to pursue an application based in part or in whole on new material not considered by the employer, or the employer seeks to introduce new material or reasons for rejecting the application, the Public Service Arbitrator is likely to not proceed with the application until that new material has been considered.

## Procedure

7. Unless it is directed otherwise, the following practice applies.
8. At least seven calendar days before the hearing of the application, the applicant is to provide the Public Service Arbitrator with a written statement of the facts upon which the applicant relies to support the application and any relevant witness statement(s).
9. A copy of the applicant's written statement and any witness statement(s) will be served on the employer, or its legal practitioner or agent, by the Registrar.
10. At least three calendar days before the hearing, the employer is to provide the Public Service Arbitrator with a written statement of the basis upon which it relies to refuse or otherwise question the application and any relevant witness statement(s).
11. A copy of the employer's written statement and any witness statement(s) will be served on the applicant, or the applicant's legal practitioner or agent, by the Registrar.
12. The material included in the parties' statements is the primary evidence to be considered by the Public Service Arbitrator. 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 of a party in the traditional sense.
13. The evidence presented to the Public Service Arbitrator should be confined to that information provided to the employer for consideration of the application for reclassification and the employer's reasons for refusing the application.
14. The hearing of the application will proceed on the following basis:
  - (a) the applicant or the applicant's legal practitioner or agent may, if desired, make a brief opening statement to outline the basis of the application;



- (b) the applicant may give evidence to support the application which, in the normal course of events, will be confined to those matters raised in the written statements submitted by the applicant and the employer;
  - (c) the employer may then question the applicant;
  - (d) the applicant may then be re-questioned in light of the employer's questioning;
  - (e) the applicant may call any other witnesses;
  - (f) the case for the applicant then closes;
  - (g) the employer, or through its legal practitioner or agent, then opens its case and in doing so may make a brief opening statement;
  - (h) the employer 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 applicant and the employer;
  - (i) the applicant may then question the employer;
  - (j) the employer may then be re-questioned as a result of the applicant's questioning;
  - (k) the employer may then call any other witnesses;
  - (l) the case for the employer then closes; and
  - (m) both parties may then make brief closing statements.
15. A period of 1.5 hours is normally set aside for the hearing of each application for reclassification.

### **Operative date**

16. The normal practice is that successful reclassification applications are effective from the date on which the employee formally notified the employer that a reclassification is sought and provided sufficient information to enable a proper consideration of the application to be made.

### **Relevant legislation**

*Industrial Relations Act 1979*, ss 27, 28, Pt IIA Div 2, 113.

*Industrial Relations Commission Regulations 2005*, reg 39, Pt 12.



## Useful resources

17. The Commission's website contains additional [resources](#).

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