



Public Service Appeals

REPRESENTATION OF PARTIES

PRACTICE DIRECTION No 2 of 2014

Definitions

"Act" means the *Public Service Act 2008*.

"Appeal" means an Appeal started against a decision as specified in sections 193, 194, 196 and 197 of the Act.

"Appeal Notice" means a notice given to the Industrial Registrar to start an Appeal in accordance with section 197(1) of the Act.

"Appellant" means a person who starts an Appeal against a decision as specified in sections 193, 194, 196 and 197 of the Act.

"Senior Appeals Officer" means the Vice President of the Queensland Industrial Relations Commission appointed under section 88B of the Act as the Senior Appeals Officer.

"Appeals Officer" means a Member of the Queensland Industrial Relations Commission appointed under section 88A of the Act as an Appeals Officer.

"Department" means the Department or other unit of government which has made the decision that is subject of an Appeal.

"Parties" means the Appellant and the Department in each Appeal.

"Promotion Appeal" means an Appeal against a decision to promote a public service officer pursuant to section 194(1)(c) of the Act.

Application

This Practice Direction applies where the Senior Appeals Officer and/or an Appeals Officer decide that a hearing or a conference should be held in relation to the Appeal.

General provisions

1. A party to an Appeal may be represented by an agent who is not a lawyer and/or subject to the *Legal Profession Act 2007*. Parties to a Promotion Appeal subject to section 194(1)(c) of the Act, may be represented by an agent only with the leave of the Senior

Appeals Officer and/or an Appeals Officer. Parties to [Promotion Appeals](#) should refer to paragraphs 14-16 (below).

2. A party may only have one representative.
3. The Senior Appeals Officer and/or an Appeals Officer may determine that a particular representative is not permitted to appear at a proceeding, or participate in a hearing/conference, where the representative (for example):
 - is substantially involved in the matters relating to the Appeal (such as a witness in an investigation, or an applicant for the same vacancy);
 - is an Appellant or other party to a related Appeal;
 - has conducted themselves in relation to other parties to the Appeal, Industrial Registry staff or the Queensland Industrial Relations Commission's staff, in a way the Senior Appeals Officer and/or an Appeals Officer considers inappropriate;
 - or is, for another reason considered sufficient by the Senior Appeals Officer and/or an Appeals Officer, not an appropriate representative for the Appellant.
4. If the Senior Appeals Officer and/or an Appeals Officer determines that a particular representative should not appear at a proceeding, the party affected will be advised of that decision at the earliest opportunity.
5. As a general rule, the Senior Appeals Officer and/or an Appeals Officer will permit no more than two people per party to be present at any hearing/conference. Should further oral evidence be required, the Senior Appeals Officer and/or an Appeals Officer may allow others to participate as witnesses at particular points during the proceeding.

Appellants

6. An Appellant may choose, at their discretion, to be represented by an agent (such as a union official, industrial advocate, colleague, family member or friend). No qualification or registration of any kind is required to act as an Appellant's agent. However, where the proposed agent is a lawyer, refer to the section headed "Lawyers" below. An Appellant may also choose to represent themselves.
7. If an Appellant wishes to be represented by an agent during any stage of an Appeal, written notification must be provided to the Senior Appeals Officer and/or the Appeals Officer who has been allocated to deal with the Appeal. Inclusion of the representative's details on the Appeal Notice is sufficient.
8. The Senior Appeals Officer and/or an Appeals Officer will not accept correspondence or other communication from a person who purports to represent an Appellant unless written advice has been received first from the Appellant (such as through inclusion of the representative's details in the Appeal Notice).

9. An Appellant wishing to be represented by an agent at a proceeding (such as a hearing/conference) must advise the Industrial Registry of who will be representing them at least two (2) working days prior to the proceeding commencing.
10. Appellants should be aware that, even if they are represented, the Senior Appeals Officer and/or an Appeals Officer may ask them questions directly in a hearing/conference.

Departments

11. A Department which is a party to an Appeal is considered to be a Respondent to the Appeal and is entitled to determine how it will be represented, both at any Appeal proceeding and in relation to correspondence and other communications with the Senior Appeals Officer and/or an Appeals Officer. However, the Department must advise the Industrial Registry of who will be attending a hearing/conference on its behalf at least two (2) working days prior to the proceeding commencing.
12. The Department must ensure that at least one officer attending a proceeding has sufficient authority to make decisions in relation to the Appeal, or that there will be a readily available means of contact with an officer with such authority.
13. A Department will normally be entitled to have a maximum of two officers present at any hearing/conference, with one officer to speak on the Department's behalf and the other to provide support.

Promotion Appeals

14. Section 204(3) of the Act states that a party to a Promotion Appeal may be represented by an agent only with the Senior Appeals Officer's and/or an Appeals Officer's approval.
15. A party to a Promotion Appeal seeking to be represented by an agent must provide the Senior Appeals Officer and/or an Appeals Officer with reasons why they are requesting representation by an agent. Reasons must be provided in writing at least two (2) days prior to any Appeal proceeding.
16. The Senior Appeals Officer and/or an Appeals Officer will issue a written decision prior to the hearing on whether or not approval is given for representation. Reasons for the decision will not be provided unless requested by a party to the Promotion Appeal within seven (7) days of the decision being delivered.

Support person

17. Any party to an Appeal proceeding (such as a hearing/conference) is entitled to attend with a support person.
18. The role of a support person is to provide emotional and other support to the party. The support person's role is not to speak or take an active role in the Appeal proceeding. A support person who attempts to represent a party or otherwise interrupt proceedings may be asked to leave by the Senior Appeals Officer and/or an Appeals Officer.

Lawyers

19. Section 204(2) of the Act states that a party may not be represented by a person if:
 - a) the party has instructed the person to act as the party's lawyer; and
 - b) in so acting, the person would be subject to the *Legal Profession Act 2007*.
20. In line with this section, there is no absolute prohibition on a person who is a lawyer representing an Appellant in any proceeding before the Senior Appeals Officer and/or an Appeals Officer.
21. However, any person who is a lawyer will be required to provide the Senior Appeals Officer and/or an Appeals Officer a written statement addressing section 204(2) of the Act at least two (2) days prior to any proceeding commencing.
22. The person's written statement must indicate that they have read section 204(2) of the Act and include a declaration as to whether or not they consider they fall within the terms of section 204(2) by representing the appellant before the Senior Appeals Officer and/or an Appeals Officer.
23. If a person who is a lawyer and who proposes to represent a party refuses to provide a statement addressing section 204(2), the Senior Appeals Officer and/or an Appeals Officer will not permit them to participate in the proceeding.

**D.M. LINNANE,
Senior Appeals Officer**

**Operative Date: 15 July 2014
Practice Direction - Representation of Parties**