

## 1 Title: Managing employee complaints

## 2 Purpose:

To provide procedures for managing and resolving employee complaints.

## 3 Application:

This directive applies to:

- (i) public service officers, including senior executive and senior officers
- (ii) temporary employees engaged under section 148 of the *Public Service Act 2008*, and
- (iii) general employees engaged under section 147 of the *Public Service Act 2008*.

## 4 Legislative provision:

*Public Service Act 2008* – sections 46, 53 and 218A

## 5 Effective date: 1 November 2010

## 6 Definitions:

For the purposes of this directive:

**administrative decision** means a decision made by the agency in relation to the administration of its affairs and includes the failure to make a decision within a specified timeframe where applicable (for example, a decision to take, or not take action under a directive; a decision to transfer a public service officer).

**agency** means a department or public service office as defined in sections 7 and 21 of the *Public Service Act 2008*.

**appeals officer** as defined in section 88A of the *Public Service Act 2008*.

**employee** as defined in section 9 of the *Public Service Act 2008*.

**employee complainant** means the employee who has made an employee complaint.

**employee complaint** means a complaint made by a current public service employee who has an honest belief based on reasonable grounds that:

- an administrative decision is unfair or unreasonable, or
- the conduct or behaviour of an employee, agent or contractor is unfair or unreasonable or constitutes sexual harassment or workplace harassment, and
- the decision, conduct or behaviour has a substantial and direct adverse effect on the employee concerned.

The following decisions cannot be the subject of an employee complaint:

- a decision about the policy, strategy, nature, scope, resourcing or direction of a public service agency
- a decision to discipline
- a decision to retire an employee on the grounds of ill-health under chapter 5, part 7 of the *Public Service Act 2008*, or
- a decision that is the subject of another complaint by the same employee whether under this directive or another industrial instrument.

**employee complaints management system** means the policy, procedures, personnel and technology used by an agency in receiving, recording, responding to and reporting on employee complaints.

**parties to an employee complaint** includes the employee complainant (person making the employee complaint) and the respondent (either the agency or employee who is the subject of the employee complaint) to the employee complaint.

**personal information** as defined in section 12 of the *Information Privacy Act 2009*.

**privacy** means the management of personal information in accordance with the *Information Privacy Act 2009*.

**sexual harassment** as defined in the *Anti-Discrimination Act 1991*.

**workplace harassment** means behaviour towards a person, other than sexual harassment that:

- (i) is repeated, unwelcome and unsolicited
- (ii) the person considers to be offensive, intimidating, humiliating or threatening, and
- (iii) a reasonable person would consider to be offensive, intimidating, humiliating or threatening.

## 7 Provisions:

### 7.1 Employee complaints management system

- (a) Agencies must implement and maintain an employee complaints management system, consistent with the directive relating to complaints management systems.
- (b) An agency's employee complaints management system must<sup>1</sup>:
  - (i) comply with the requirements for dealing with employee complaints as per section 7.2 of this directive, and
  - (ii) be supported by written policies and procedures that are readily available to employees.
- (c) Responsibility for decisions relating to the management of a particular employee complaint within an agency rest with the agency, subject to any relevant legislative or directive provisions.

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<sup>1</sup> This directive does not replace, modify or revoke any legislative requirements that apply to the management of particular types of complaints (e.g. official misconduct).

- (d) Chief executives must provide the commission chief executive with information about the application of this directive in their agency as requested.

## **7.2 Employee complaints management and resolution**

### **7.2.1 General elements**

- (a) Employee complaints are to be managed and resolved:
  - (i) through local action (the first stage of a formal employee complaints process)
  - (ii) by internal review of a decision made through local action (the second stage), and/or
  - (iii) by external review of a decision made at internal review (the third stage).
- (b) Managers and supervisors are to:
  - (i) proactively identify workplace issues where possible, and
  - (ii) effectively manage workplace issues .
- (c) Employee complaints must be:
  - (i) made as soon as reasonably possible after the administrative decision, alleged conduct or alleged behaviour occurring
  - (ii) managed in accordance with the principles of natural justice
  - (iii) managed in a manner that protects privacy<sup>2</sup>, and
  - (iv) managed in accordance with the procedures detailed in section 7.2.2.
- (d) All parties to an employee complaint:
  - (i) must represent themselves during the employee complaints management and resolution process, and
  - (ii) may be supported by a person or persons of their choosing.
- (e) All parties to an employee complaint must:
  - (i) engage in the employee complaint management and resolution process in good faith, and
  - (ii) be provided with regular and timely information in relation to the progress of the employee complaint by the appropriate decision maker.

### **7.2.2 Procedures<sup>3</sup>**

#### **(a) Local action**

- (i) An employee must notify their complaint, in writing, to a person in their agency in accordance with the agency's employee complaint management policy and procedures, unless the employee's complaint is directly about an agency chief executive (see section 7.2.2(d)).

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<sup>2</sup> Subject to any legal obligations that may necessitate information being disclosed, such as the requirement to provide procedural fairness

<sup>3</sup> See Attachment 1: Flow chart for managing employee complaints

- (ii) In notifying their complaint, an employee must provide sufficient information to enable an agency to take appropriate action, and outline the action they believe would resolve the employee complaint.
- (iii) Action to resolve an employee complaint is to be taken in accordance with the agency's employee complaints management policy and procedures. This action may include, but is not limited to one or more of the following:
  - a. conducting preliminary enquiries to determine appropriate options for resolution of the employee complaint
  - b. facilitated discussion, mediation, conciliation or negotiation
  - c. investigation, or
  - d. other reasonable action in the circumstances.
- (iv) If the agency is reasonably satisfied that an employee complaint is frivolous or vexatious, does not meet the definition of an employee complaint, or where an employee unreasonably refuses to participate in local action to resolve the employee complaint:
  - a. a written decision must be provided to the employee, and
  - b. the agency may decide to take no further action in relation to the employee complaint.
- (v) Action to resolve an employee complaint must be completed as soon as possible, but within 21 days of receipt of the employee complaint unless:
  - a. the timeframe has been extended by mutual agreement between the parties (a party to the employee complaint is not to unreasonably withhold their agreement)
  - b. the agency can demonstrate that reasonable attempts have been made to progress the employee complaint, or
  - c. the employee complaint has been notified directly to the commission chief executive under section 7.2.2(d).
- (vi) In relation to an employee complaint about an administrative decision, if the agency fails to make a decision in accordance with section 7.2.2(a)(v):
  - a. the agency is taken to have confirmed the decision which formed the basis of the initial employee complaint, and
  - b. the employee complainant may make a request to the agency chief executive for an internal review.
- (vii) At the completion of local action to resolve an employee complaint, including a decision under section 7.2.2(a)(iv) the agency must provide a written decision to the employee complainant. The decision must:
  - a. detail the action taken to manage the employee complaint and the outcome of this action
  - b. the reasons for the decision
  - c. any action that the agency will take, or proposes to take, as a result of the decision, and
  - d. be capable of review.

**(b) Internal review**

- (i) If an employee complainant is dissatisfied with the decision made through local action, the employee may make a request to the agency chief executive for an internal review.
- (ii) A written request for an internal review must:
  - a. be received by the chief executive within 14 days of the employee receiving a copy of the decision made through local action
  - b. clearly state the reasons for dissatisfaction with the decision made through local action, and not merely state a belief that the decision made through local action was unfair or unreasonable, and
  - c. clearly state the action the employee believes would resolve the employee complaint.
- (iii) An internal review is to be completed by the chief executive or delegate (subject to section 7.2.2(b)(iv)) and is to determine whether the decision made through local action was fair and reasonable in the circumstances.
- (iv) If the chief executive (or delegate) is satisfied that the reasons for seeking internal review are not sufficient, or that the request for internal review is frivolous or vexatious, or the employee unreasonably refused to participate in local action to resolve the employee complaint:
  - a. a written decision must be provided to the employee, and
  - b. the agency may decide to take no further action in relation to the request for internal review.
- (v) Internal review of the decision made through local action must be completed as soon as possible but within 14 days of receipt of a written request from an employee for internal review unless:
  - a. the timeframe has been extended by mutual agreement between the parties (a party to the employee complaint is not to unreasonably withhold their agreement), or
  - b. where the chief executive can demonstrate that reasonable attempts have been made to progress the employee complaint.
- (vi) If the chief executive (or delegate) fails to make a decision in relation to the employee complaint in accordance with section 7.2.2(b)(v):
  - a. the agency is taken to have confirmed the decision made through local action, and
  - b. the employee complainant may make an application for external review.
- (vii) At the completion of internal review, the chief executive (or delegate) must provide a written decision to the employee who made the written request for internal review. This decision must:
  - a. detail the action taken to review the decision made through local action
  - b. the reasons for the internal review decision
  - c. any action that the chief executive (or delegate) will take, or proposes to take, as a result of the internal review, and

d. be capable of review.

**(c) External review**

- (i) If the employee who made the initial employee complaint is dissatisfied with the decision made at internal review, the employee may make an application for an external review<sup>4</sup>.

**(d) Employee complaints notified to the commission chief executive**

- (i) In relation to a complaint by an employee directly about a chief executive, an employee may notify the commission chief executive in writing of their employee complaint and the action they believe would resolve the employee complaint.
- (ii) The commission chief executive will take action to resolve the employee complaint in accordance with the actions listed in section 7.2.2(a)(iii).
- (iii) The commission chief executive may decide to take no further action in relation to an employee complaint if the commission chief executive is reasonably satisfied that an employee complaint is:
- a. frivolous or vexatious
  - b. misconceived or lacks substance, or
  - c. an employee unreasonably refuses to participate in action to resolve the employee complaint:
- (iv) At the completion of action to resolve an employee complaint, including a decision to take no further action under section 7.2.2(d)(iii), the commission chief executive must provide a written decision to the employee complainant. This decision must:
- a. detail the action taken to manage the employee complaint and the outcome of this action
  - b. the reasons for the decision
  - c. any action that the commission chief executive will take, or proposes to take, as a result of the decision, and
  - d. be capable of review.
- (v) If the employee who made the complaint is dissatisfied with the decision made by the commission chief executive, the employee may make an application for an external review<sup>5</sup>.

### **7.3 Transitional arrangements**

- (a) Employee grievances lodged in accordance with directive 11/07 are to be finalised in accordance with the provisions of that directive.

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<sup>4</sup> Avenues for the external review of decisions may include, but are not limited to the appeals officer (refer to the Public Service Commission directive relating to appeals), the Queensland Ombudsman, the Queensland Industrial Relations Commission and Anti-Discrimination Commission Queensland.

<sup>5</sup> Avenues for external review of decisions made by the commission chief executive include, but are not limited to, the Queensland Ombudsman, the Queensland Industrial Relations Commission and Anti-Discrimination Commission Queensland. Note: the appeals officer cannot review the decision of the commission chief executive.

# Attachment 1: Flow chart for managing employee complaints

