

## 1 Title: Appeals

## 2 Purpose:

To outline appeal rights for the review of certain decisions made affecting employment under the *Public Service Act 2008* and other specified acts.

## 3 Application:

This directive applies to:

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

In addition, Schedule B of this directive applies to:

- (i) former public service officers, former temporary employees and former general employees.

## 4 Legislative provision:

*Public Service Act 2008* – section 53; chapter 3, part 5; and chapter 7

## 5 Effective date: 1 November 2010

## 6 Definitions:

For the purposes of this directive:

**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*.

**commission chief executive** as defined in section 56 of the *Public Service Act 2008*.

**entry-level role** as defined in the directive relating to recruitment and selection.

**gazette** means (i) the *Queensland Government Gazette* or (ii) when notice of an appointment is given in a publication other than the gazette and a reference is made in a directive to the notification in the gazette of a vacancy, an appointment or a revocation, the reference must be taken to be the publication used for the notice of appointment.

**non-appealable appointment** as defined in section 195(5) of the *Public Service Act 2008*.

## 7 Provisions<sup>1</sup>:

### 7.1 *General appeal elements*

- (a) An appeal is a review of certain decisions made by an agency, and is made to the appeals officer.
- (b) The appeals officer must decide whether the agency decision was fair and reasonable.
- (c) In hearing and deciding an appeal, the appeals officer must:
  - (i) observe the principles of natural justice, and
  - (ii) act as quickly, and with as little formality and technicality, as is consistent with fair and proper consideration of the issues.
- (d) The appeals officer may give directions in setting aside certain types of appeals (see schedules C and E).
- (e) A decision on appeal is binding on all parties to the appeal.
- (f) Appeal decisions are to be published in a manner determined by the appeals officer.

### 7.2 *Decisions against which an appeal may be made*

- (a) An appeal may be made to the appeals officer against a decision provided for in section 194 of the *Public Service Act 2008* (see schedules A-F<sup>2</sup>):
  - (i) a decision to take, or not take, action under a directive (schedule A)
  - (ii) a decision under disciplinary law to discipline (schedule B):
    - a. a person (other than by termination of employment), including the action taken in disciplining the person, or
    - b. a former public service employee by way of a disciplinary declaration made under section 188A of the *Public Service Act 2008*, including if the disciplinary action that would have been taken was termination of employment
  - (iii) a decision to promote a public service officer (a promotion decision) (schedule C)
  - (iv) a decision to transfer a public service officer (a transfer decision) (schedule D)
  - (v) a decision under section 149 that a temporary employee's employment in a department is to continue as a temporary employee (a temporary employment decision) (schedule E), or
  - (vi) a decision about anything else against which another Act allows a person to appeal to the appeals officer (schedule F).

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<sup>1</sup> This directive must be read in conjunction with chapter 7 of the *Public Service Act 2008*.

<sup>2</sup> The *Public Service Act 2008* prevails over Schedules A-F of this directive to the extent of any inconsistency.

### **7.3 Decisions against which an appeal cannot be made**

- (a) An appeal cannot be made to the appeals officer against a decision provided for in section 195 of the *Public Service Act 2008* (see schedule G<sup>3</sup>).
- (b) Further to section 7.3(a), an appeal cannot be made to the appeals officer against certain appointments (a non-appealable appointment) (see schedule G).

### **7.4 Persons who are entitled to appeal**

- (a) A person may appeal against certain decisions as provided for in section 196 of the *Public Service Act 2008* (see schedules A-F).

### **7.5 Entitlements for attending an appeal**

- (a) The amount of travelling expenses and allowances to be paid to a public service officer or temporary employee in attending an appeal proceeding as part of the person's duties is to be in accordance with the directive relating to domestic travelling and relieving expenses, or as decided by the appeals officer.
- (b) Section 7.5(a) does not apply to:
  - (i) an employee who is the appellant and who is suspended from duty without pay, unless the employee's appeal is allowed, or
  - (ii) an appeal against a disciplinary declaration.

### **7.6 Employee complaints management**

- (a) For appeals in relation to:
  - (i) a decision to take, or not take, action under a directive, or
  - (ii) a decision to transfer a public service officer,an appellant must satisfy the appeals officer that he or she has sufficiently used the agency's employee complaints procedures (refer to the directive relating to managing employee complaints) before the appeal can proceed.
- (b) An appellant has sufficiently used the procedures if:
  - (i) the appeals officer is of the view that it would be unreasonable in the circumstances of the case for the appellant to comply fully with those procedures, or
  - (ii) the agency has failed to make a decision in relation to the complaint within the timeframes specified in the directive relating to managing employee complaints.

### **7.7 Transitional arrangements**

- (a) If immediately before 1 November 2010 a person could have, but has not, appealed against a decision, the person may appeal against the decision. The appeal must be made within the required period, and must be heard and decided by the commission chief executive in accordance with directive 15/09 and the Act as in force.

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<sup>3</sup> The *Public Service Act 2008* prevails over Schedule G of this directive to the extent of any inconsistency.

- (b) If an appeal has been started, but not decided, before 1 November 2010, the appeal must be heard and decided, or continue to be heard and decided, by the commission chief executive in accordance with directive 15/09 and the Act as in force.
- (c) An appeal cannot be reopened by the commission chief executive in relation to a decision on the appeal made in accordance with sections 7.7(a) or (b).
- (d) If an appeal has been reopened by the commission chief executive before 1 November 2010, the commission chief executive must continue to hear and decide the reopened appeal in accordance with directive 15/09 and the Act as in force.
- (e) If an appeal has been decided before 1 November 2010, and the appeal has not been reopened by the commission chief executive before 1 November 2010, a party to the appeal may apply to the commission chief executive to reopen the appeal within 21 days. Directive 15/09 and the Act as in force applies in relation to the reopening of the appeal and the reopened appeal.

## **Schedule A - a decision to take, or not take, action under a directive**

### **1 General elements**

- (a) An appeal may be made against a decision to take, or not take, action under a directive.
- (b) Appeals may be made by:
  - (i) a public service officer
  - (ii) a temporary employee
  - (iii) a general employee, or
  - (iv) a public sector employee of a public sector unit listed in schedule 1 of the *Public Service Regulation 2008*.
- (c) The person entitled to appeal must be directly affected and aggrieved by the decision to take action, or a failure to act.
- (d) Before lodging an appeal against this type of decision, a person must have sufficiently used the agency's employee complaints management procedures (see section 7.6).

### **2 Decisions against which an appeal cannot be made**

- (a) An appeal cannot be lodged in relation to the following:
  - (i) recruitment and selection, unless it is:
    - a. a decision regarding equivalence of qualifications
    - b. a promotion decision
    - c. a decision that a priority placement employee or registered deployee is unsuitable, or
    - d. a decision not to appoint or second a current public service employee because of an employee's disciplinary history.
  - (ii) a decision to apply, or not apply, the direct appointment provisions of the directive relating to recruitment and selection
  - (iii) identified positions<sup>4</sup>
  - (iv) job evaluation and classification level of employment<sup>5</sup>, unless it is:
    - a. a decision to defer or refuse a request, including a decision not to act on a request, for an evaluation and/or alleged deficiencies in completed job analysis and job evaluation processes of JEMS, or

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<sup>4</sup> Including the decision to designate a position as an identified position, the process by which a person is assessed as meeting the mandatory attribute of an identified position, and the decision that a person meets, or does not meet, the mandatory attribute of an identified position.

<sup>5</sup> Including the Job Evaluation Management System (JEMS) manual and methodology, the job evaluation points factor result and subsequent classification outcome of an evaluation.

- b. a decision about movement from level 2 to level 3 within the professional and technical streams in accordance with the prescribed criteria for movement, including where such movement is prevented by a decision regarding equivalence of qualifications.
- (v) performance review, executive performance management and development, or management of diminished performance, unless it is:
  - a. a final performance review
  - b. an overall executive performance management rating, or
  - c. a final diminished performance review.
- (vi) a decision to not apply the provisions of the directive relating to transfer within and between classification levels, or
- (vii) a person cannot appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department.

## Schedule B - a decision under disciplinary law

### 1 *General elements*

- (a) An appeal may be made against a decision under disciplinary law to discipline:
  - (i) a person (other than by termination of employment) including the action taken in disciplining the person, or
  - (ii) a former public service employee by way of a disciplinary declaration made under section 188A of the *Public Service Act 2008*, including if the disciplinary action that would have been taken was termination of employment.
- (b) Appeals may be made by:
  - (i) a current or former public service officer
  - (ii) a current or former temporary employee
  - (iii) a current or former general employee, or
  - (iv) a current or former employee who may be disciplined under another Act and to whom appeal rights apply under schedule 1 of the *Public Service Regulation 2008*.
- (c) The person entitled to appeal must be directly affected and aggrieved by the decision to discipline.
- (d) A person is eligible to lodge an appeal against a discipline decision without previously using the agency's employee complaints procedures

### 2 *Additional requirements*

- (a) An appeal cannot be lodged in relation to a decision to suspend an employee, except if it is in relation to a decision to suspend an employee without pay.
- (b) A notice of appeal against a decision to discipline a person must be received by the appeals officer on the 21<sup>st</sup> day after the day on which the person received written notice of the decision to discipline.
- (c) A decision to take disciplinary action against a person, other than dismissal or suspension (but not including a declaration of dismissal made against a former employee), does not take effect until:
  - (i) if the person's notice of appeal is received before the deadline – the appeals officer allows or dismisses the appeal, or
  - (ii) in any other case – 21 days after the person received the written notice of the decision.

## **Schedule C - a promotion decision**

### **1 General elements**

- (a) An appeal may be made against a decision to promote a public service officer.
- (b) Appeals may be made by:
  - (i) a public service officer
  - (ii) a tenured general employee, or
  - (iii) a tenured public sector employee of a public sector unit listed in schedule 1 of the *Public Service Regulation 2008*.
- (c) A person is eligible to lodge an appeal against a promotion decision without previously using the agency's employee complaints procedures.

### **2 Persons entitled to appeal a promotion decision**

- (a) A person entitled to appeal a promotion decision must satisfy the following requirements:
  - (i) the person must have applied for a vacancy to which one of the following persons was promoted:
    - a. a public service officer
    - b. a tenured general employee, or
    - c. a tenured public sector employee of a public sector unit listed in schedule 1 of the *Public Service Regulation 2008*
  - (ii) the person's application for the vacancy must have been received before the deadline for the receipt of applications
  - (iii) the person's notice of appeal must be received by the appeals officer no later than 21 days after the day on which the promotion of the person was notified in the gazette, and
  - (iv) the person must continue to be entitled to appeal.

### **3 Decisions against which an appeal cannot be made**

- (a) An appeal cannot be lodged in relation to the following:
  - (i) a non-appealable appointment (see section 7.3 and schedule G)
  - (ii) a promotion decision if the relevant public service officer had been redeployed within one year before the promotion, and the promotion is to a classification level that is not higher than the officer's classification level immediately before the redeployment, or
  - (iii) a promotion decision if the person was not covered by the invitation to apply in accordance with the targeted vacancy advertising provisions of the directive relating to recruitment and selection.

### **4 Appeals officer may decline to hear**

- (a) The appeals officer may decline to hear an appeal against a promotion decision in the following circumstances:

- (i) where he or she has determined that the appellant does not have an arguable case for the appeal, or
- (ii) where an appellant has failed to seek post selection feedback in accordance with the provisions of the directive relating to recruitment and selection.

## **5 Decision on appeal**

- (a) In deciding an appeal against a promotion decision, the appeals officer or delegate may set the decision aside and return the issue to the decision maker with a copy of the decision on appeal, and any directions under part 6 of this schedule that he or she considers appropriate.
- (b) The appeals officer or delegate may set the decision aside only if he or she finds that the recruitment and selection process was deficient.

## **6 Setting aside a promotion decision**

- (a) Where the appeals officer determines to set aside a promotion decision, any one or more of the following directions may be given:
  - (i) a direction that, within one month, the chief executive is to revoke the appointment arising from the promotion decision and publish a gazette notice to notify that the appointment of the appointee is revoked
  - (ii) a direction that the chief executive recommence the recruitment and selection process (including advertising the vacancy) or continue with the process from a particular time or event
  - (iii) where the chief executive is to recommence the recruitment and selection process or continue it from a particular time or event, a direction that a new selection committee is to be formed and a direction regarding the composition of the new selection committee, or
  - (iv) any other direction that the appeals officer determines is necessary to rectify any identified deficiency in the recruitment and selection process, other than a direction that the chief executive is to make an appointment to the vacancy.

## **7 Effect if promotion decision is set aside and appointment is revoked**

- (a) If the appeals officer determines to set aside a promotion decision under part 6 of this schedule:
  - (i) the officer whose appointment is revoked:
    - a. resumes the role and classification which he or she held immediately before the appointment, if his or her previous job is vacant or
    - b. in any other case, continues to be employed in the agency in which he or she was appointed with a rate of salary not less than that which he or she was paid immediately before the appointment, and
  - (ii) the appellant is not entitled to be directly appointed to the role as a result of the appeal.

## Schedule D - a transfer decision

### 1 *General elements*

- (a) An appeal may be made against a decision to transfer a public service officer.
- (b) Appeals may be made by:
  - (i) a public service officer who is the subject of the transfer decision, or
  - (ii) a public sector employee of a public sector unit listed in schedule 1 of the *Public Service Regulation 2008* who is the subject of the transfer.
- (c) Before lodging an appeal against this type of decision, a person must have sufficiently used the agency's employee complaints management procedures (see section 7.8).
- (d) Decisions are also subject to sections 133 and 134 of the *Public Service Act 2008*.
- (e) A person entitled to appeal must satisfy additional requirements (see schedule G).

## **Schedule E - a temporary employment decision**

### **1 General elements**

- (a) An appeal may be made against a decision under section 149 of the *Public Service Act 2008* that a temporary employee's employment in a department is to continue as a temporary employee.
- (b) An appeal may also be made regarding the failure of the agency to conduct a review of the status of the temporary employee.
- (c) Appeals may be made by:
  - (i) a temporary employee (excluding a person employed on a casual basis) who is the subject of the decision
  - (ii) a general employee employed on a temporary basis (excluding a person who is employed on a casual basis) who is the subject of the decision, or
  - (iii) a public sector employee of a public sector unit listed in schedule 1 of the *Public Service Regulation 2008* who is the subject of the decision.
- (d) A person is eligible to lodge an appeal against a temporary employment decision without previously using the agency's employee complaints procedures.
- (e) A person cannot appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department.

### **2 Decision on appeal**

- (a) In deciding an appeal against a temporary employment decision, the appeals officer or delegate may set the decision aside and return the issue to the decision maker with a copy of the decision on appeal and any directions under part 3 of this schedule that he or she considers appropriate.

### **3 Setting aside a temporary employment decision**

- (a) Where the appeals officer determines to set aside a temporary employment decision, any one or more of the following directions may be given:
  - (i) a direction that the chief executive conduct a review of the status of the temporary employee, or
  - (ii) a direction that the chief executive recommence the temporary employment review process or continue the process from a particular time or event, to rectify any identified deficiency in the temporary employment review process.
- (b) If the appeals officer determines to set aside a temporary employment decision, the appellant is not entitled to be directly appointed to the role as a result of the appeal.

## Schedule F - a decision under another Act

### 1 *General elements*

- (a) An appeal may be made about anything else against which another Act allows a person to appeal to the appeals officer:
  - (i) an example may include, but is not limited to, the *Police Service Administration Act 1990*.
- (b) The conditions of the appeal, including who may appeal, decisions against which appeals may not be made, and whether the decision is subject to the agency's employee complaints management procedures, is determined by the relevant Act.

## Schedule G - summary of decisions against which appeals cannot be made

1. An appeal cannot be made against any of the following decisions:
  - (a) a decision listed as a decision against which an appeal cannot be made, in any of the schedules of this directive
  - (b) a decision of the Governor in Council
  - (c) a decision of a Minister
  - (d) a decision about superannuation benefits or workers' compensation
  - (e) a decision about probation
  - (f) a decision to terminate the employment of a public service officer employed on probation
  - (g) a decision about the classification level of employment, unless the decision is declared under a directive of the commission chief executive to be a decision against which an appeal may be made
  - (h) a decision to promote, transfer, redeploy or second a person as a chief executive, senior executive or senior officer or to a role remunerated in excess of the maximum salary applicable to a public service administrative officer level eight (AO8) within the relevant agency
  - (i) a non-appealable appointment<sup>f</sup>
  - (j) a decision if the parties to the appeal would include the Public Service Commission, a commissioner or a staff member of the Public Service Commission
  - (k) a decision if it is a matter that has been heard by the Queensland Industrial Relations Commission, or
  - (l) a decision to retire a public service employee on the grounds of ill-health under chapter 5, part 7 of the *Public Service Act 2008*.
2. A person cannot appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department.

<sup>f</sup> A non-appealable appointment includes:

- (a) the appointment (including promotion) of any person to:
  - (i) a role which is in an office of a chief executive or a Ministerial office
  - (ii) an entry-level role
  - (iii) a role that complies with the direct appointment provisions of the directive relating to recruitment and selection, or
  - (iv) a role into which another officer has been redeployed or transferred at the same classification level<sup>6</sup>.
- (b) appointment of an officer whose role has had its salary, duties and designation modified by an industrial determination and who then continues to hold that role

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<sup>6</sup> A public service officer who is the subject of a transfer may lodge an appeal in relation to the decision to transfer the officer (see section 7.2).

- (c) the promotion of an officer in compliance with a progressional scheme or other scheme contained in an award, certified agreement, Ministerial directive or determination made under section 149 of the *Industrial Relations Act 1999*
- (d) the promotion of an officer pursuant to a progressional scheme or other scheme subject to an agreement between the relevant industrial organisation of employees and the chief executive (including roles that comply with the specified vacancy advertising provisions of the directive relating to recruitment and selection), or
- (e) a role that the commission chief executive has declared by gazette notice or a directive to be non-appealable on the basis that merit and equity is sufficiently protected by ways other than an appeal.