

Public Service Commission

Appeal Services

Annual report
to the Premier
2010 - 2011

10 November 2011

Dear Minister

I wish to present you with the Appeals Officer's inaugural annual report for the year 2010-2011 fulfilling the requirements of section 88D of the *Public Service Act 2008* (the Act).

This report details the comprehensive work undertaken to establish and implement an independent system for the review of certain decisions made concerning Queensland public sector employees. The new system was implemented following your Government's integrity reforms with amendments to the Act in 2010.

Commencing operation on 1 November 2010 the new system has already delivered substantial improvements in the timeliness and consistency of public sector appeal decisions. A significant change welcomed by government entities and employee organisations is the statutory requirement for the Appeals Officer to communicate appeal outcomes to all relevant stakeholders. This function is assisting with improving decision making by agencies and is also welcomed by employee organisations to help inform their advice to members.

The new provisions enable you to seek further information from the Appeals Officer after reviewing the annual report. I would welcome any request for further information on the operation of the appeals function under the Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Holm', written in a cursive style.

Katie Holm
Appeals Officer

Overview

In addition to rights under industrial relations legislation, many Queensland public sector employees have had rights of appeal against certain decisions made by their employer, to a jurisdiction specifically established for this workforce. The modern system for public sector appeal rights has its origins in the now repealed *Public Sector Management Commission Act 1990* which established the role of Commissioner for Public Sector Equity and the Classification Review Tribunal.

Since that time the amending statutes have always incorporated appeal rights, which over time, have been modified. The other significant change has been to whom the appeal is submitted for hearing and decision making. Between 1996 and 2010 appeals were made to the Public Service Commissioner, who generally delegated their power under the legislation to hear and decide appeals to public service employees.

The *Public Service Act 2008* (the Act) prescribes which decisions may be appealed against and by which type of employees. Broadly, appeals can be made against the following types of decisions:

- to take or fail to take action under a directive issued by the Commission Chief Executive or Minister for Industrial Relations;
- discipline decisions;
- promotion decisions;
- transfer decisions; and
- a decision concerning an employee's temporary employment status.

Stakeholders with an interest in public sector appeals include: the Public Service Commission; government agencies and their decision makers; employees; and employee organisations.

As you are aware, following representations made by stakeholders, in particular from employee organisations, concerning the perceived lack of independence of the public sector appeals system, your Government made a decision to establish the role of

Appeals Officer to operate independently when hearing and deciding appeals. This change was implemented by amendments to the Act which commenced operation on 1 November 2010. The changes represented an explicit move to an independent process to hear and decide appeals under the Act.

In addition to the independent nature of my role while hearing and deciding appeals, the amendments introduced a statutory duty to communicate matters arising from appeals to stakeholders and to report to the Minister on the performance of the appeal function (sections 88C and 88D of the Act).

This report represents my first report to you as the Minister responsible for the Act pursuant to section 88D(1).

Role of the Appeals Officer

All appeals under the Act are now submitted to me as the Appeals Officer. I am responsible for the management of appeals pre-hearing and the deciding of the appeal. As the Appeals Officer I have authority to delegate my functions to an *appropriately qualified* person (section 88F of the Act); the individuals with this delegation are known as Adjudicators.

The Act mandates that as Appeals Officer I must perform the functions independently, impartially, fairly and in the public interest. In performing my functions, I am not subject to direction by the Public Service Commission, the Commission Chief Executive or any Minister (section 88G(1)).

A small Registry Team provide case management of individual appeals prior to and post hearing as well as administrative support to the Adjudicators and myself.

Following the commencement of my role I developed a protocol with the Commission Chief Executive to demonstrate and emphasise the independence of the Appeals Officer's role and to establish procedures for my communication with the Public Service Commission on appeal matters. The protocol also recognises the Public Service Commission may wish to consult with me on aspects of policy development.

2010-2011 ACHIEVEMENTS

- Completed the Appeals System Review Project and implemented more streamlined case management practices significantly reducing appeal processing times (≤ 90 days reduced to ≤ 42 days)
- The delivery of all teacher transfer appeal decisions achieved, for the first time, prior to Christmas
- Publication of notable cases
- Implemented a promotion appeals trial with a focus on identifying key flaws in the recruitment decisions early in the appeal process to reduce ‘red tape’ and disruption to workgroups
- Commenced stakeholder engagement initiatives such as communiqués and workshops to communicate outcomes from appeals for sector-wide application and appeal practice changes, and
- Introduced the use of Practice Directions on key areas of procedure and concern for parties (such as representation, hearings ‘on the papers’).

with decisions and directions issued by me or an Adjudicator. A notional 12 week period is given to agencies to complete any directions and report back to Appeal Services on a standard form, pre-populated by the Registry at the time the decision is issued.

A total of 21 decisions were issued with directions in the 2010-2011 year. As at 30 June 2011 a total of five compliance notices were overdue from:

- Public Works
- Queensland Health (two outstanding notices)
- Department of Education and Training, and
- Department of Community Safety.

A letter seeking an explanation for the delay was issued to the agencies with outstanding compliance notices. Four of the five overdue notices were completed and returned. Queensland Health was sent a second reminder letter about the need for compliance and this was responded to with a completed notice a short time later. Allowing for adjustments to a new system and

The introduction of a Decision Register has enabled Appeal Services to monitor agency compliance with decisions and directions issued by me or an Adjudicator.

2010-2011 Snapshot of Appeals Business

In 2010-2011 a total of 185 appeals were received representing a small decline of 5 per cent on the previous year. There were a total of 67 hearings over the period with a total of 113 appeals not proceeding to hearing. Of the 113 which did not proceed to a hearing 36 had no right of appeal. Table 1 details the statistical information in relation to the appeals received in each appeal category and the outcomes.

The introduction of a Decision Register has enabled Appeal Services to monitor agency compliance

procedure, I consider this to be a good result which I expect to be improved on by agencies in the next reporting period.

Strengthening the Independence of the Appeals System

Given that Appeal Services has an important client interface, I was very keen to seek the views of stakeholders about the operations of the service. I convened a Stakeholder Workshop on 11 November 2010 with unions and agencies to discuss identified issues including delay, communication, and

consistency of practice and appeal outcomes.

The workshop was well attended and a report was published with 13 recommendations for improvement.

The Appeals Systems Review Project was initiated in response to the workshop recommendations. The aims of the project were to:

- implement an improved infrastructure for management of appeals and communication to appeals stakeholders
- increase the efficiency and effectiveness of the appeal system established under the Act
- reduce the overall length of the appeals process from receipt of appeal to delivery of the decision, and
- ensure the appeal system is responsive to stakeholder concerns.
- inclusion of a *triage* process at the time of lodgement to enable early determination of entitlement and the identification of matters which may not need to proceed to hearing
- development of new template correspondence for the application of all relevant provisions to the appeals process, ensuring consistency of terminology and compliance with legislation
- consistency in decision reasoning and presentation – development of new Reasons for Decision template
- introduction of a Decisions Register to monitor agency compliance with decisions, and
- improvement in timeliness from lodgement to finalisation – a reduction in the timeline from 90 to 42 days.

“ One of the significant stakeholders I communicate with is the Public Service Commission... ”

The following improvements were delivered by the project between January and June 2011:

- introduction of a web-based system for agencies to nominate and maintain contact officer details with Appeal Services to ensure timely notification to agencies of appeals received
- issue of a single Appeals Guide replacing three different Appeals Guideline publications to reflect the changes to the legislation and to ensure the document is more accessible for parties involved in an appeal, or considering lodging an appeal
- transfer of the Registry’s information function to the Public Service Commission Policy Advisory Service for inquiries before an appeal is lodged. This change is supported by a protocol between the two services to ensure requests for information receive a seamless response
- issue of practice directions to provide clarity about procedures and the operation of certain provisions of the Act

Stakeholder Engagement

The Act requires the Appeals Officer to communicate matters arising out of appeals which may affect decision making for particular decisions across the public service or government entity. The Act nominates that the Appeals Officer should communicate with decision makers and persons likely to be affected by decisions, and any other person the Appeals Officer considers the matter may be relevant to (section 88C of the Act).

Communication

My communication with stakeholders commenced in November 2011 with the Stakeholder Workshop. In addition to the workshop, table 2 outlines the organisations I have met with to discuss the operation of the appeals function during the reporting period.

One of the significant stakeholders I communicate with is the Public Service Commission given their key role in enhancing the public service’s human

resource management and capability; promoting the management and employment principles under the Act; enhancing and promoting an ethical culture and ethical decision making; and enhancing the public service's leadership and management capabilities in relation to disciplinary matters.

Communicating matters arising out of appeals to the PSC is proving to be extremely helpful in rapidly disseminating important findings from appeals of general application across the service. An example of this is the service's management of discipline matters.

responsible for public sector appeals from all States, Territories and the Australian Government.

This forum has been a useful tool in maintaining and sharing knowledge about the different approaches used in reviewing decisions made about public sector employees. A significant difference with the Queensland approach is the Appeals Officer's statutory duty to communicate appeal outcomes to stakeholders addressing systemic issues, and the statutory duty to report to the Minister on the appeals function. I consider the legislated communication tools provide stakeholders with an opportunity to promptly modify practice and improve decision making, or confirm that existing practices are appropriate.

... as the Appeals Officer I provide the Commission Chief Executive with advice on any perceived anomalies in the operation of the Act.

Publications

Stakeholders have reported that the publication of "notable cases" on the PSC website has been of great benefit to agencies, appellants, employee organisations and potential appellants. The notable cases are de-identified case summaries and are aimed at highlighting the key points in an appeal decision, particularly if they have service-wide implications. The number of published notable cases will continue to build throughout 2011-2012.

Another significant communication tool I have initiated is regular Appeals Officer Communiqués. Stakeholders can subscribe to the communiqué so they automatically receive each issue on release and can keep up-to-date with practice developments and the publication of notable cases.

Forums

In October 2010 I attended the National Conference for Public Sector Appeals in Hobart, an annual event for the heads and senior officers of each relevant entity

Policy Development

As outlined above, the protocol developed between the Appeals Officer and the Commission Chief Executive clarifies the independence of the Appeals Officer from the PSC when undertaking appeals duties. It also contemplates appropriate points of engagement by the Appeals Officer to PSC policy development. My staff and I have provided input into PSC policy agendas in the areas of recruitment and selection; decentralisation; discipline; and the Voluntary Separation Program.

In performing my role as the Appeals Officer I provide the Commission Chief Executive with advice on any perceived anomalies in the operation of the Act. I have conveyed my views about the deficits of the legislative framework, its complexity, operational anomalies and the opportunities for improvement to the Commission Chief Executive.

An observation I have made to the Commission Chief Executive is that the legislative framework is not uniformly reflective of contemporary workforce

management practices. I note that the Act has not had a “wholesale” review since 1996. One of the areas which would benefit from review is discipline and I am encouraged to learn that the Public Service Commission is exploring opportunities to improve the discipline process within the existing legislative framework, which will go some way to addressing deficits while awaiting any potential legislative reform which your Government may wish to pursue in the future.

In June 2011 the Commission Chief Executive and I agreed on a new business model for the adjudication of appeals. Instead of full time permanently appointed public service officers being dedicated to the role of Adjudicator, a new model of using Adjudicators on a sessional basis was agreed on with a transition period from 1 July – 31 October 2011.

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Looking Forward 2011-2012

New Business Model

Stakeholder feedback from the 2010 workshop and through other engagement opportunities revealed continued reservations from stakeholders about the use of public service officers, with a delegation from the Appeals Officer, to adjudicate appeals. In particular, stakeholders raised concerns about:

- Adjudicator expertise
- the potential for Adjudicators to be compromised in their role if there is an inequality of position and level between the Adjudicator and parties
- the potential “conflict of interest” with public service officers “judging” the conduct of other officers including officers at more senior levels, and
- the potential for Adjudicators to be compromised in their role if they wish to seek employment with other public sector agencies.

I also raised concerns with the Commission Chief Executive about the effectiveness and efficiency of having full time permanently appointed public service officers only assigned to this role, given the fluctuation in appeal numbers throughout the year. However, assigning these officers with other Public Service Commission duties presented challenges because of the need for independence in the performance of the appeals function.

Prior to the Commission Chief Executive’s approval of the model, the major employee organisations with the greatest service use history – Together Queensland, the Queensland Teachers’ Union and the Queensland Nurses’ Union were consulted about the changes. All three employee organisations supported the proposed business model. The two public service officers affected by the change were also consulted and transitioned to other duties at level within the Public Service Commission.

The new business model reflects similar approaches to public service appeals used in other Australian jurisdictions and will emphasise the independence of the appeals function, as well as deliver considerable cost savings to the Public Service Commission. The selected sessional Adjudicators are experienced decision makers and all currently hold part time appointments with the Queensland Civil and Administrative Tribunal.

Promotion Appeals

The promotion appeals trial will be evaluated in 2011-2012 and if the evaluation findings recommend permanent changes to the process, I will consult with stakeholders before adopting any permanent changes to the process. Early feedback on the trial indicates stakeholders, particularly agencies, support the trial of the modified process.

Business Processes

I will continue to focus on early resolution of disputes between the employing agency and the employee through triage, intervention where appropriate and active case management before hearings. Post hearing, I will continue to monitor compliance with decisions by agencies, although the results from the introduction of this system in March 2011 demonstrate very timely responses by agencies. This also indicates that agencies are respectful of my statutory role and the appeals function.

Fair Treatment Appeals

An area which I would like to explore further is the category of appeals traditionally referred to as *Fair Treatment Appeals*. I have concerns about the use of the term to describe a wide variety of decisions made by agencies in the course of their dealings with employees. The category encompasses any decision made under a directive; transfer decisions; temporary employment decisions; and employee complaints.

The term 'fair treatment' implies that employees have an entitlement to appeal if they consider that they have not received 'fair treatment' from their employer. While there are many elements of the employment contract or relationship which either explicitly or implicitly state each party to the contract or relationship will treat the other fairly, the engagement is framed by the terms and conditions of the contract; other industrial instruments such as Awards, Certified Agreements etc; and statutes such as the *Public Service Act 2008* or other statutes of employment, and the *Industrial Relations Act 1999*.

My preliminary view is this misnomer can contribute to tension between the employee and the employer. It can result in confusion and dissatisfaction for employees following an appeal, because the Act only allows me to review the agency's decision to determine if the decision appealed against was a decision which was *fair and reasonable* in all of the circumstances, not whether the employee was treated fairly. This may appear to be an esoteric point, however, I believe it contributes to employee dissatisfaction based on unrealistic expectations about their initial dispute and then what a third party, such as the Appeals Officer can do to intervene.

It may be more appropriate for Appeal Services to refer to the type of decisions which can be appealed under the Act, rather than refer to 'appeal categories' to try to minimise employee frustrations, and ensure that appellants are aware from the outset of what is achievable through an appeal.

Early Dispute Resolution

I am also keen to encourage agencies to conduct their own early and skilled intervention in workplace disputes, to avoid protracted situations which invariably take an emotional toll on the parties involved and can cause the agency to suffer financial and workplace productivity costs.

I have noted the high number of appeals received each year which result in appellants being advised they have no right of appeal under the Act (see table 3). This data indicates we need to reassess our information products to improve their quality so that employees can more easily self-identify whether they have a right of appeal or not. This is a challenge for Appeal Services due to the complexity of the legislative framework governing public sector employment which I have outlined above.

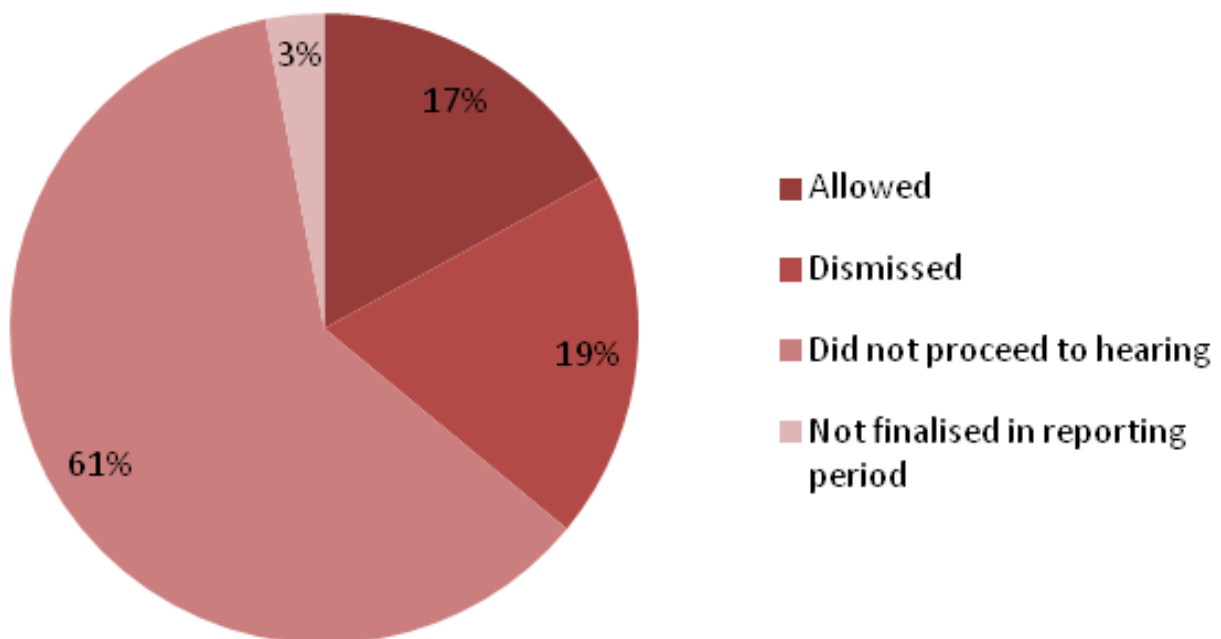
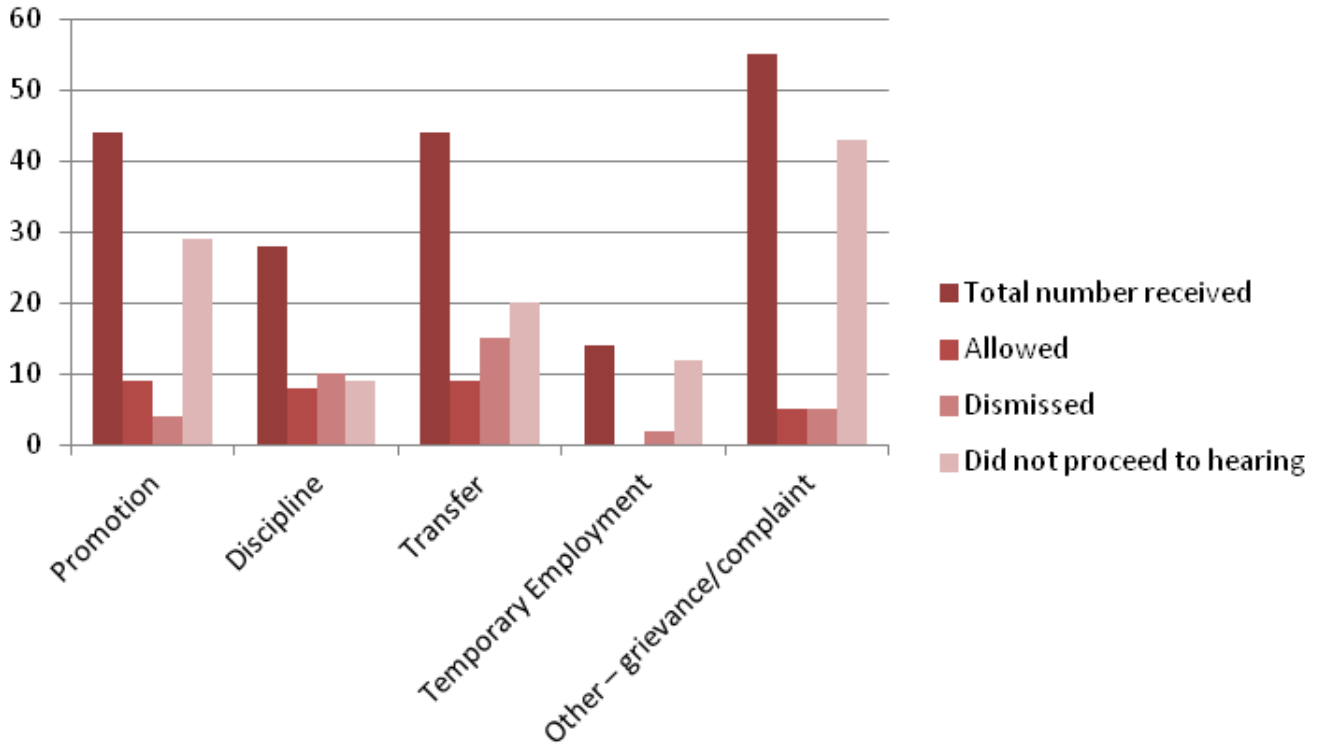
Stakeholder Engagement

I will continue to communicate with stakeholders on appeal outcomes and the appeals function. I will host or participate in workshops and seminars aimed at improving workforce management practices, and continue to distribute a regular Communiqué to all stakeholders.

Pursuant to section 88D(2) of the Act you are able to seek further information from me in respect of any detail provided in this report. Should you require any further information your department can contact me at any time on your behalf.

It has been a privilege to establish the new statutory role of Appeals Officer under the *Public Service Act 2008* and I look forward to continuing to build on the achievements of 2010-2011 in the year ahead.

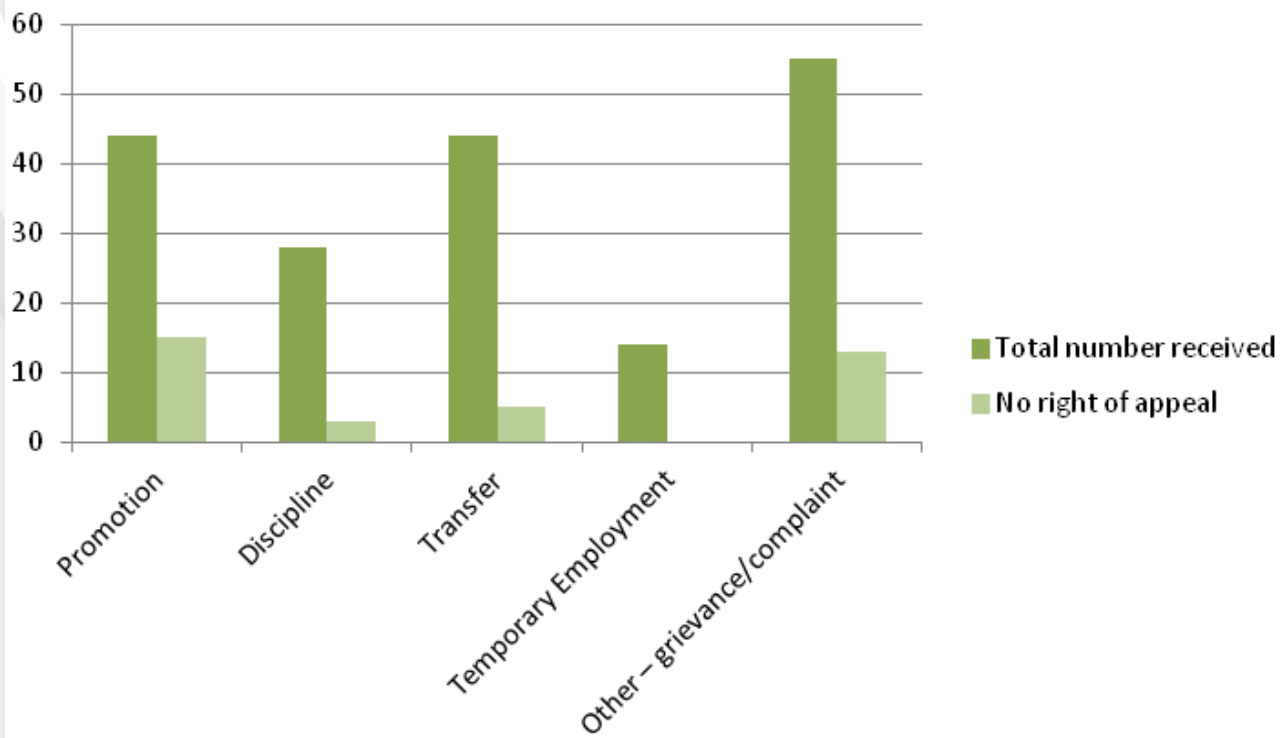
Appeals received and finalised



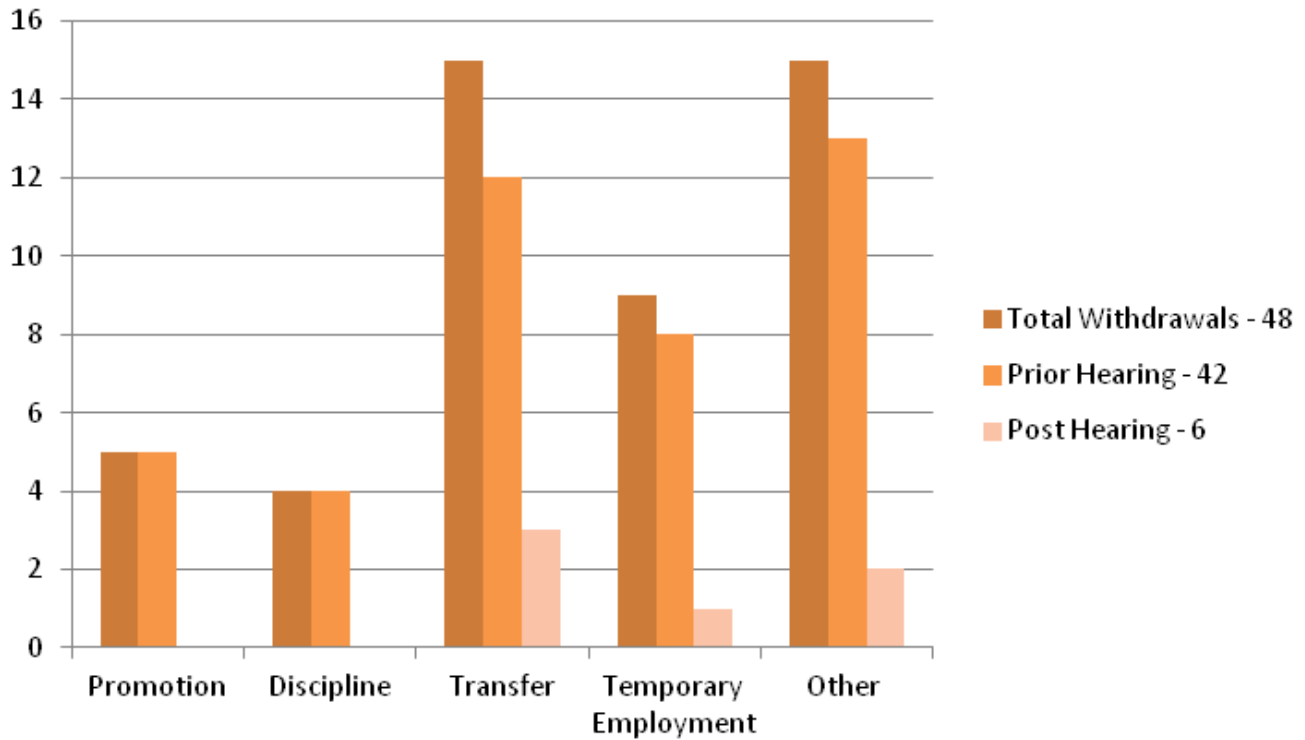
Appeals Officer Stakeholder engagement 2010 - 2011

Date	Event
11/11/2010	Stakeholder workshop
18/02/2011	Teacher Transfers 2010 debrief with Department of Education and Training (DET)
23/02/2011	Teacher Transfers 2010 debrief with Queensland Teachers' Union
11/03/2011	Appeals Officer Communiqué No.1
11/03/2011	Presentation to DET Regional Human Resource managers
14/03/2011	Meeting with Senior Registrar, Queensland Industrial Relations Commission
7/04/2011	Meeting with Senior Member Booth and Senior Registrar Logan, Queensland Civil and Administrative Tribunal
April	Appeals Officer Communiqué No.2
6/06/2011	Meeting with Queensland Public Sector Union and PSC Commission Chief Executive on the appeals function
8/06/2011	Meeting with Queensland Teachers' Union on the appeals function
8/06/2011	Meeting with Department of Community Safety
17/06/2011	Telephone conference with Queensland Nurses' Union on appeals function
03/06/2011	Appeal Services presentation to Public Service Commission

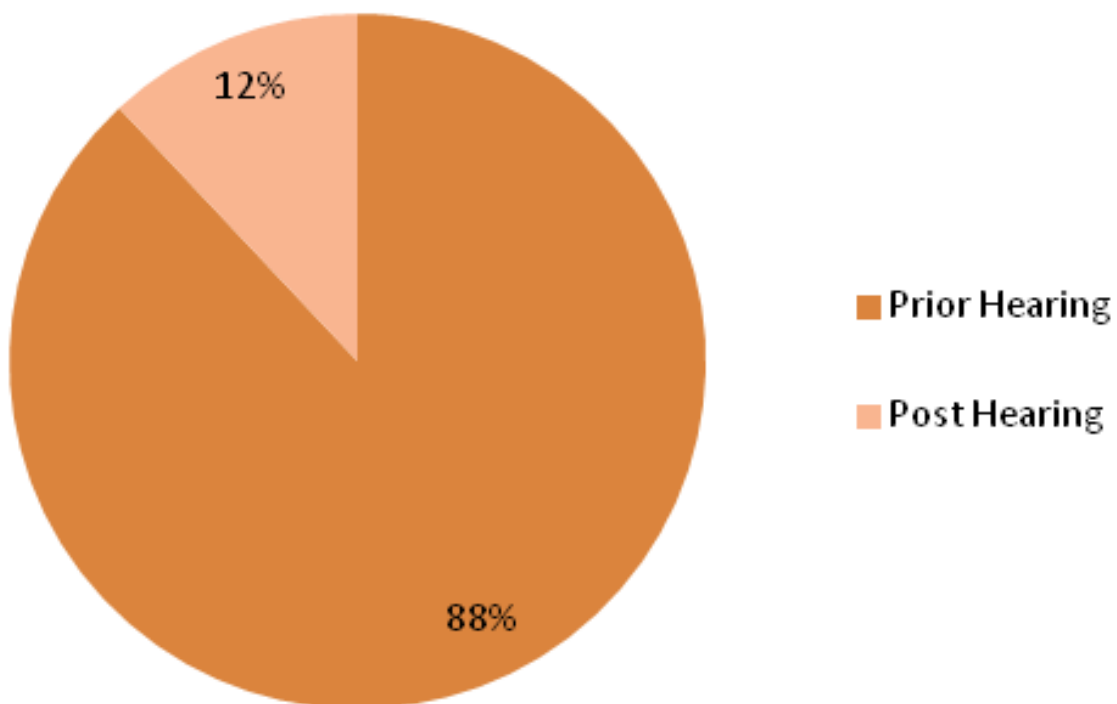
Appeals received - No right of appeal



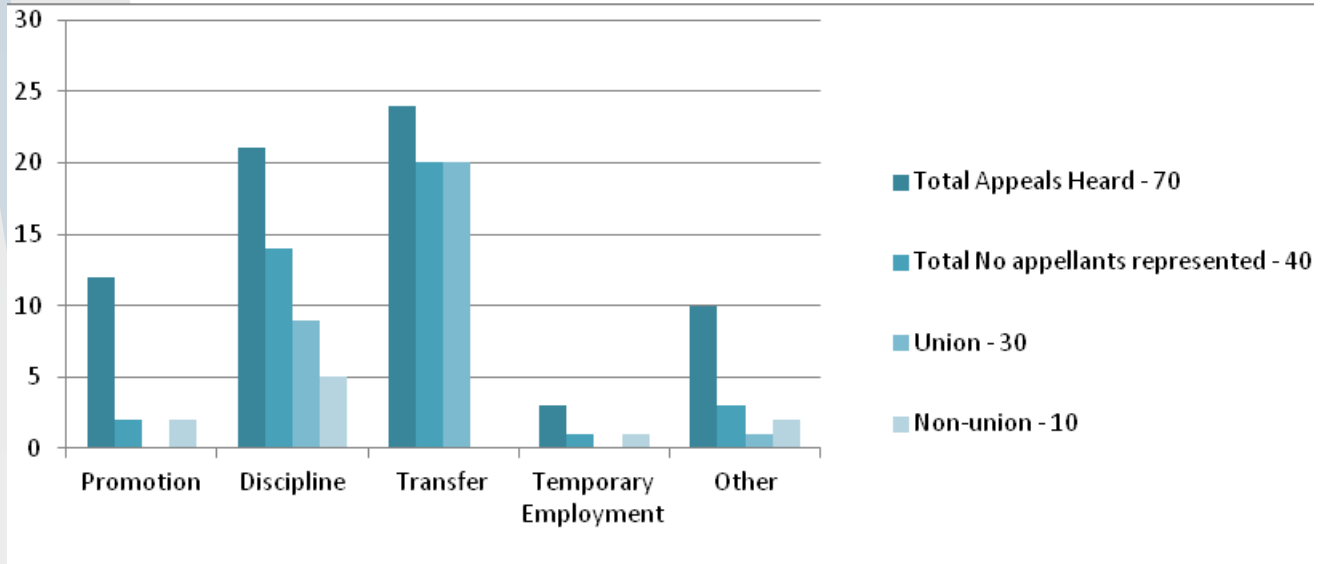
Withdrawals of appeals by key appeal category



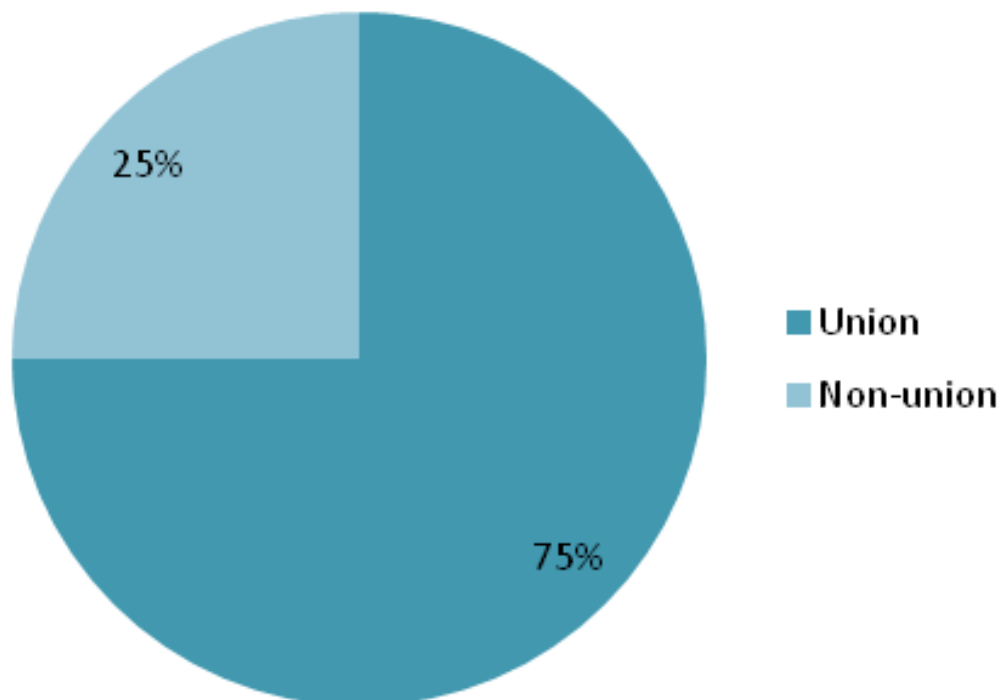
Withdrawals of Appeals Pre and Post Hearing as a Percentage of Total



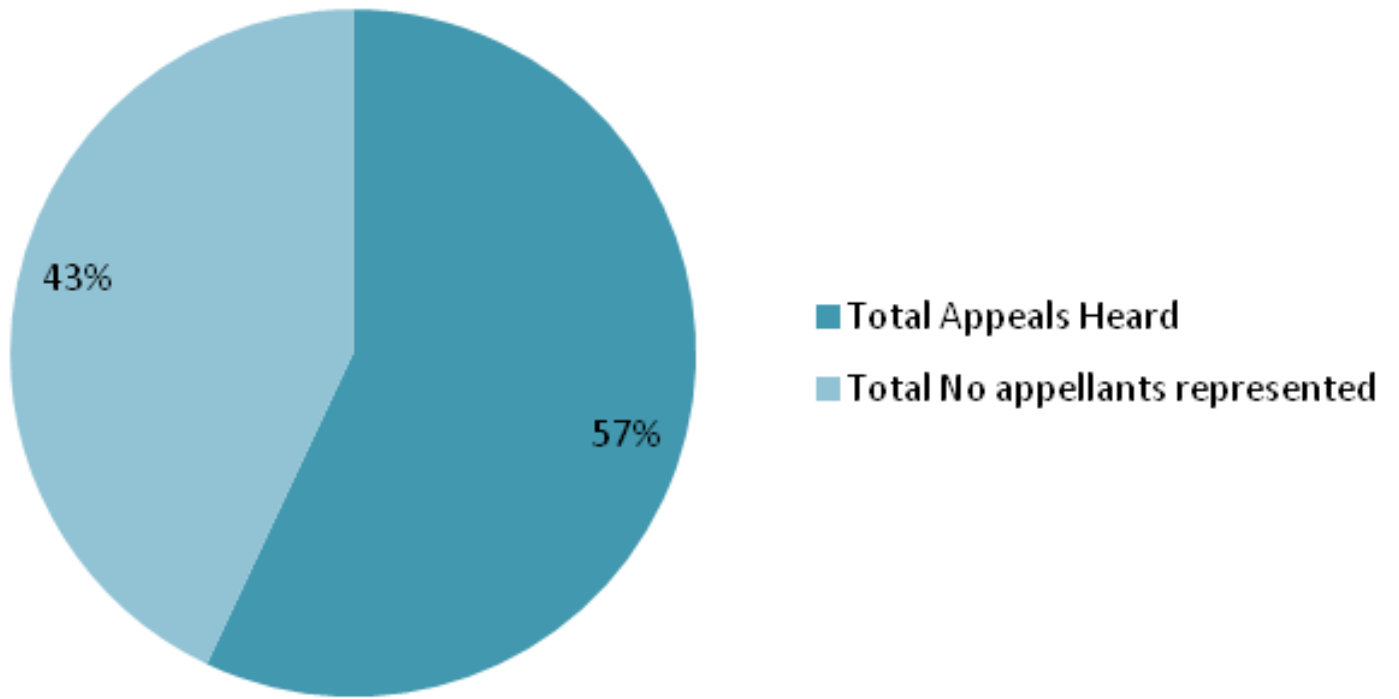
Representation of appellants by key appeal category for hearings conducted in 2010 – 2011



Representation Breakdown by Representative Type



Percentage of Appeals with Representation



Appeals Officer – Appendix E - Appeals Received by agency and finalised in 2010 - 2011

Agency	Total appeals received by agency 2010/11	Promotion appeals				Discipline appeals				Grievance/Complaint made under directive or industrial				Transfer				Temporary employment				
		Received	Allowed	Dismissed	Did not proceed to hearing	Received	Allowed	Dismissed	Did not proceed to hearing	Received	Allowed	Dismissed	Did not proceed to hearing	Received	Allowed	Dismissed	Did not proceed to hearing	Received	Allowed	Dismissed	Did not proceed to hearing	
Australian Agricultural College Corporation	1	1			1																	
Building Services Authority	1	1			1																	
Families Responsibilities Commission	1					1			1													
Department of Communities	19	3	1	1	1	2	0	1	1	13	1	3	8					1	0	0	1	
Department of Community Safety	14	9	3	1	3	3	1	1	1	2		1	1									
Department of Education and Training	66	1			1	4	1	3	0	6	1	0	5	43	9	14	20	12	0	1	11	
Department of Employment Economic Development	9	3	1		2	2	1	1	0	1	0	0	1	1	0	1	0	1	0	1	0	
Department of Justice and Attorney-General	4	2			2	2			1													
Department of Local Government and Planning	1					1			1													
Department of Public Works	12	4		1	3	2			2	6	1		5									
Department of Environment and Resource Management	5					1	1			4	1		3									
Department of Transport and Main Roads	10	4	1		3	4	1	2	1	2	1	0	1									
Queensland Audit Office	1									1			1									
Queensland Health	38	14	3		11	5	3	1	1	20	0	1	18									
Queensland Police Service	2	2		1	1																	
Queensland Treasury	1					1		1														
TOTAL	185	44	9	4	29	28	8	10	9	55	5	5	43	44	9	15	20	14	0	2	12	