

DIRECTIVE 02/17

Managing employee complaints

1. Purpose:

To provide principles and procedures for managing and resolving employee complaints.

2. Effective date

1 March 2017.

3. Legislative provisions

Sections 7, 9, 21, 26, 46, 53, 147, 148 194, 195, 196 and 218A of the *Public Service Act 2008* (PSA); Chapter 7, Chapter 8, Part 1 and sections 425 and 449 of the *Industrial Relations Act 2016*.

4. Application

- 4.1 This directive applies to all public service employees, including public service officers, general employees, and employees engaged on a temporary or casual basis.
- 4.2 This directive does not replace, modify or revoke any legislative requirements that apply to the management of particular types of complaints (e.g. corrupt conduct, or public interest disclosures under the *Public Interest Disclosure Act 2010*).

5. Previous references

08/10.

6. Related information

[Appeals directive](#) provides information about making a public service appeal against certain decisions under the PSA, including fair treatment appeals and decisions made under a directive, where an employee has utilised the complaints management system prior to lodging an appeal.

[Appeals Guide](#) provides information to public service employees on their public service appeal rights and the procedures to follow when lodging a public service appeal.

7. Principles

The Queensland Government is committed to creating positive and healthy workplace cultures, where employees, supervisors and managers:

- make decisions and take actions that are fair and transparent, and take responsibility for the consequences of their decisions and actions
- question actions that are inconsistent with the [public service values](#) and [Code of Conduct](#)
- treat each other with respect independent of their status or disagreement; and
- listen well to understand and show empathy for others.

The framework created by this directive recognises that effective complaints management systems form a useful mechanism through which employees and agencies can work together to create better workplaces that benefit all public service employees.



Managers and supervisors are required to proactively identify workplace issues in accordance with the management principles set out in section 26(3) of the PSA. Regardless of whether a complaint has been made by an employee under this directive, managers and supervisors should manage workplace issues effectively by creating a safe environment to conduct courageous and supportive conversations.

7.1 Matters that can be employee complaints

7.1.1 An employee complaint under this directive is a complaint made by a current public service employee who has an honest belief, based on reasonable grounds, that:

- an administrative decision, which they are aggrieved by, is unfair and unreasonable; or
- the conduct or behaviour of an employee, agent or contractor is unfair and unreasonable; or
- the conduct or behaviour of an employee, agent or contractor constitutes bullying in the workplace, sexual harassment, racial vilification, religious vilification or vilification on the grounds of gender identity or sexuality; or
- the conduct or behaviour of an employee is a breach of the Code of Conduct.

7.2 Matters that cannot be employee complaints

7.2.1 The following decisions, conduct or behaviour cannot be subject to an employee complaint under this directive:

- a decision by an agency under Chapter 5, Part 7 of the PSA (relating to mental and physical incapacity)
- a decision made under Chapter 6, Part 2 of the PSA (relating to discipline decisions)
- a decision relating to the recruitment or selection of a public service employee
- a decision relating to a person's work performance, other than a decision about the person's work performance that is recorded in a formal way as part of a periodic performance review
- a decision relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of a grievance
- a decision relating to the development or performance management of a chief executive or senior executive
- conduct or behaviour of an employee, agent or contractor or a decision by an agency that is already the subject of an application, or which becomes the subject of an application, by the same employee to the Queensland Industrial Relations Commission (QIRC) in relation to an alleged contravention of a workplace right under Chapter 8, Part 1 of the *Industrial Relations Act 2016*
- conduct or behaviour of an employee, agent or contractor that is already the subject of a complaint, or which becomes the subject of a complaint, by the same employee to the QIRC in relation to alleged sexual harassment, racial vilification, religious vilification or vilification on the grounds of gender identity or sexuality under the *Anti-Discrimination Act 1991*; or
- a decision by an agency that is the subject of an existing complaint by the same employee to the Queensland Ombudsman under the *Ombudsman Act 2001* where the Ombudsman investigates the complaint.

7.2.2 Under the PSA, an employee seeking to lodge a fair treatment appeal is generally required to have used their agency complaints mechanism prior to lodging an appeal. However, an employee seeking to appeal the following decisions may choose not to use their agency's complaints mechanism:

- a finding by an agency under section 187 of the PSA that a disciplinary ground exists for an employee. Section 195(3A)(b)(i) of the PSA allows the employee aggrieved by this decision to lodge a public service appeal in relation to the decision; and
- a decision by an agency under section 189 of the PSA to suspend an employee from duty without pay. Section 195(3A)(b)(ii) of the PSA allows an employee aggrieved by this decision to lodge a public service appeal in relation to the decision.

7.3 Requirement for employee complaints management system

7.3.1 An agency must implement and maintain an employee complaints management system.

7.3.2 An agency's employee complaints management system must:

- a) comply with the principles of employee complaints management and resolution in clause 7 (Principles) and clause 7.4; and
- b) be supported by written policies and procedures that are readily available to employees.

7.3.3 Where an employee complaint is made to an agency, responsibility for managing the complaint rests with the agency, subject to any relevant legislative provisions or provisions of a directive.

7.4 Employee complaints management and resolution principles

7.4.1 Employees are required to ensure that complaints are made as soon as reasonably possible after the administrative decision, alleged conduct or alleged behaviour has occurred.

7.4.2 Employee complaints are to be managed and resolved using a three-step process:

- a) local action (the first stage of the employee complaints process)
- b) internal review of a decision made following local action (the second stage of the employee complaints process); and
- c) where applicable, external review of a decision made at internal review (the third stage of the employee complaints process).

7.4.3 Agencies, including managers and supervisors, must manage employee complaints:

- a) in accordance with principles of natural justice, including timely decisions and the provision of adequate reasons;
- b) in a manner that protects the privacy of the employee who has made the complaint (subject to any legal disclosure obligations, such as the requirement to provide natural justice to the subject of the complaint); and
- c) in accordance with the procedures in clause 7.5.

7.4.4 All parties to an employee complaint:

- a) must engage in the employee complaints management process in good faith; and
- b) be provided with regular and timely information by the decision-maker in relation to the progress of the employee complaint.

7.4.5 To assist in the resolution of employee complaints, an employee who makes a complaint may be:

- a) supported by a person of their choosing; and
- b) represented by a union representative or member of a professional association.

7.5 Procedures for managing and resolving employee complaints

Stage 1 – Local action

- 7.5.1 An employee must make their complaint in writing to the appropriate delegate in their agency. The complaint must:
- comply with the agency's employee complaints management policy and procedures, unless the employee's complaint is made to the commission chief executive about the chief executive of an agency under clause 7.6; and
 - include sufficient information to enable the agency to take appropriate action, including outlining the action that the employee considers would resolve the complaint. If the complaint does not include this information, the agency can request that additional information be provided by the employee.
- 7.5.2 A complaint made by an employee must be resolved 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:
- conducting preliminary enquiries to determine appropriate options for resolution of the employee complaint
 - facilitated discussion, mediation, conciliation or negotiation
 - gathering information, including from witnesses; and/or
 - other reasonable action in the circumstances.
- 7.5.3 If the agency is reasonably satisfied that:
- an employee complaint is frivolous or vexatious; or
 - does not meet the definition of an employee complaint under clause 7.1; or
 - an employee has unreasonably refused to participate in local action to resolve the employee complaint;
- the agency may decide to take no further action in relation to the employee complaint. The agency must give written reasons for its decision in accordance with clause 7.5.6.
- 7.5.4 A decision about an employee complaint should be made as soon as possible, but must be made within 28 calendar days of receipt of the employee complaint unless:
- 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
 - a complaint has been made to the commission chief executive about a chief executive of an agency under clause 7.6.
- 7.5.5 Where a complaint is made about an administrative decision and the agency fails to make a decision within 28 calendar days or such longer time as has been agreed, the agency is taken to have confirmed the decision and this allows the employee to then immediately make a request for internal review.
- 7.5.6 After a decision has been made about a complaint, including a decision to take no action under clause 7.5.3, the agency must provide a written decision to the employee who made the complaint. The decision must:
- outline the action taken to manage the employee complaint and the outcome of this action
 - provide the reasons for the decision, or the decision to take no action

- c) outline any action that the agency proposes to take, or will take, as a result of the decision; and
- d) inform the employee of their internal review rights outlined in Stage 2 – Internal Review, including any relevant timeframes.

Stage 2 – Internal review

7.5.7 If an employee is dissatisfied with a decision made through local action, the employee may make a written request to the agency chief executive for an internal review.

7.5.8 A 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 or a decision is taken to be made under clause 7.5.5
- 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 and unreasonable; and
- c) state the action the employee believes would resolve the complaint.

7.5.9 Once an agency receives a request for an internal review, the agency must notify the employee in writing:

- a) that the request for an internal review has been received by the agency
- b) of the name and contact information for a contact person for the internal review; and
- c) of the 14 day timeframe for making a decision in clause 7.5.12.

7.5.10 An internal review is to be completed by the chief executive or their delegate. The chief executive or delegate is to determine whether the decision made through local action was fair and reasonable in the circumstances.

7.5.11 If the chief executive or delegate is satisfied that:

- a) the reasons for seeking an internal review are insufficient
- b) the request for internal review is frivolous or vexatious; or
- c) the employee has unreasonably refused to participate in local action to resolve the employee complaint

The agency may decide to take no further action in relation to the request for internal review. The agency must give written reasons for its decision in accordance with clause 7.5.14.

7.5.12 A decision about internal review of a decision made through local action must be made as soon as possible and within 14 days of receipt of a written request from an employee for internal review. The 14 day period commences from the date the agency receives the request for internal review, in accordance with clause 7.5.8. This applies 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 or delegate can demonstrate that reasonable attempts have been made to progress the employee complaint.

7.5.13 If the chief executive or delegate fails to make a decision in relation to the request for internal review, the agency is taken to have confirmed the decision made through local action. Depending on the issues raised in the complaint, this may result in an avenue of external review being available to an employee once the 14 day period in clause 7.5.12 has expired.

7.5.14 At the completion of internal review, including a decision to take no further action under clause 7.5.11, the chief executive or delegate must provide a written decision to the employee. This decision must:

- a) outline the action taken to review the decision made through local action
- b) outline the reasons for the decision, or the decision to take no further action
- c) outline any action that the chief executive or delegate proposes to take, or will take, as a result of the internal review; and
- d) outline any avenues of external review that may be available to the employee, including any relevant timeframes.

Stage 3 – External review

7.5.15 If the employee who made the original complaint is dissatisfied with a decision made following internal review, the employee may seek an external review. Depending on the issues raised in the complaint, the avenues for external review may include:¹

- A public service appeal against a decision under a directive or a fair treatment decision, under sections 194(1)(a) or 194(1)(eb) of the *Public Service Act 2008*; or
- Notification to the QIRC of an industrial dispute under an industrial instrument; or
- An application to the QIRC in relation to an alleged contravention of a workplace right under Chapter 8, Part 1 of the *Industrial Relations Act 2016*; or
- An application to the QIRC for a stop bullying order under Chapter 7, Part 4 of the *Industrial Relations Act 2016*; or
- A complaint to the QIRC in relation to alleged sexual harassment, racial vilification or religious vilification under Chapter 7, Part 1 of the *Anti-Discrimination Act 1991*; or
- A complaint to the Queensland Ombudsman under the *Ombudsman Act 2001*.
 - Note that under section 23 of the *Ombudsman Act 2001*, the Ombudsman has a wide discretion to refuse to investigate a complaint, for example, if the complainant has a right of appeal or review they have not used or where the complainant has used and exhausted another type of review or appeal.

However, the issues raised in a particular complaint may mean that the complaint is not eligible for external review under the above legislation.

Employees seeking more information about their public service appeal rights and the procedures to be followed when lodging a public service appeal should refer to the QIRC [Appeals Guide](#).

7.6 Complaints made to the commission chief executive about the chief executive of an agency

7.6.1 An employee may make a complaint to the commission chief executive about the chief executive of an agency. A complaint must be made in writing and must state the action the employee believes would resolve the complaint.

¹ Sections 425 and 449 of the *Industrial Relations Act 2016* precludes an employee from lodging more than one type of application to the Queensland Industrial Relations Commission in relation to the same decision, conduct or behaviour, except where the matter relates to bullying in the workplace.

- 7.6.2 In making a decision about a complaint about a chief executive of an agency, the commission chief executive is to take action in accordance with clause 7.5.2.
- 7.6.3 A decision about a complaint about a chief executive of an agency should be made as soon as possible, but must be made within 28 calendar days of receipt of the complaint unless:
- (a) the timeframe has been extended by mutual agreement between the parties (a party to the complaint is not to unreasonably withhold their agreement); or
 - (b) where the commission chief executive can demonstrate that reasonable attempts have been made to progress the complaint.
- 7.6.4 The commission chief executive may decide to take no further action in relation to a complaint if the commission chief executive is reasonably satisfied that the complaint is frivolous or vexatious, lacks substance, does not meet the definition of an employee complaint or an employee unreasonably refuses to participate in action to resolve the complaint.
- 7.6.5 After making a decision about the complaint, including a decision to take no further action, the commission chief executive must provide a written decision to the employee who made the complaint. This decision must outline:
- a) the action taken to manage the employee complaint and the outcome of this action
 - b) the reasons for the decision, or the decision to take no action
 - c) any action that the commission chief executive will take, or proposes to take, as a result of the decision; and
 - d) any avenues of external review that may be available to the employee.

8. 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 an agency is required to do so.
- **agency** means a department or public service office as defined in sections 7 and 21 of the PS Act.
- **bullying in the workplace** has the same meaning as defined in section 272 of the *Industrial Relations Act 2016*.
- **employee** has the same meaning as defined in section 9 of the PS Act.
- **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.
- **fair treatment decision** is a decision that an employee considers to be unfair and unreasonable, as defined in section 194(1)(eb) of the PS Act.
- **gender identity** has the same meaning as defined in the *Anti-Discrimination Act 1991*.
- **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*.

- **racial vilification** has the same meaning as defined in the *Anti-Discrimination Act 1991*.
- **religious vilification** has the same meaning as defined in the *Anti-Discrimination Act 1991*.
- **sexual harassment** has the same meaning as defined in the *Anti-Discrimination Act 1991*.

Superseded by
Directive 11/20