

Public service appeals annual report

2015–16



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The Hon. Anastacia Palaszczuk MP
Premier of Queensland
Minister for the Arts
Level 40
1 William Street
BRISBANE QLD 4000

Dear Premier

I am pleased to submit the Annual report on public service appeals for the 2015–16 financial year.

The *Public Service Act 2008* (PSA) enables employees to seek external review of certain employment decisions through the lodgement of a public service appeal with the Queensland Industrial Relations Commission. Appeals are heard and determined by independent IRC members under s88A of the PSA.

This report has been prepared in compliance with s218C of the PSA, and provides information on appeals started, lapsed, withdrawn and decided during 2015–16. The report also includes information about activities that have been undertaken during 2015–16 that impact on public service appeals.

Should you require any further information about a matter mentioned in this report, I am happy to assist.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Setter', with a stylized flourish at the end.

Robert Setter
Commission Chief Executive (Acting)
Public Service Commission

Public service appeals system

Brief history

The public service appeal system, established under the *Public Service Act 2008* (PSA), provides an avenue for Queensland public service employees to seek an external review of certain employment decisions that affect them. Appeal rights operate in addition to other external review processes, including those provided for in the *Industrial Relations Act 1999*. Review rights—such as appeals—support integrity, accountability, and ethical and equitable work practices and decisions in the public service.

Appeal rights in their current form can be traced back to the now repealed *Public Sector Management Commission Act 1990* and have been heard and decided by various bodies and officers since that time, as set out in Table 1.

Table 1: Jurisdiction to hear and decide public service appeals

Date	Officer/body with jurisdiction to hear and decide public service appeals
1990–1996	Commissioner for Public Sector Equity or the Classification Review Tribunal.
1996–2010	Appeals made to the Public Service Commissioner (who delegated power under the legislation to appropriately qualified public service employees to hear and decide appeals of public service employees).
1 November 2010–30 June 2012	Statutory role of appeals officer who was appointed as a Senior Executive of the public service. Sessional adjudicators were also used as required by a delegation from the appeals officer.
1 July 2012–present	IRC members (previously appeals officers) who are also members of the Queensland Industrial Relations Commission.

Appeal framework and categories

Chapter 7 of the PSA provides the framework for appeals, setting out finite categories of appeal, establishing criteria for eligibility to appeal, and specifying the functions of appeals officers and their decision-making authority.

Appeals may only be lodged about:

- a decision to take, or not to take, action under a directive
- a discipline decision
- a promotion decision
- a decision to transfer an employee
- a decision that an employee’s employment will continue in a temporary capacity; and
- decision about a matter for which another Act allows a person to appeal.¹

Only employees directly affected by the decision in question can lodge appeals.

¹ For example, certain actions/decisions made under the *Public Interest Disclosure Act 2010* can be appealed.

An appeals officer must perform their duties independently, impartially, fairly and in the public interest, and cannot be directed by the Public Service Commission (PSC), the Commission Chief Executive (CCE) of the PSC, or any minister.

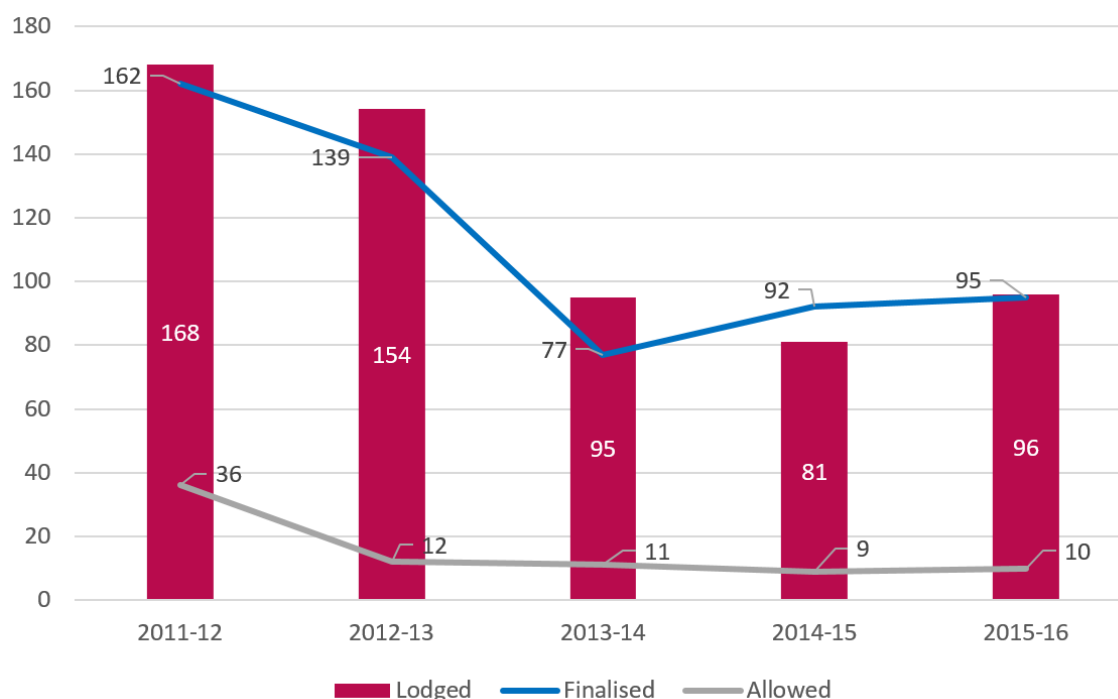
2015–16 appeals

Overview

During 2015–16, 96 appeals² were lodged and 95 appeals were finalised.³ Seven of the appeals lodged during 2015–16 were not finalised during the financial year, and the outcomes will be included in next year's report.

The number of appeals lodged on a yearly basis has remained relatively stable over the past three years, following a notable decrease after 2012–13 (**Chart 1**). The decline in appeals lodged following 2012–13 coincided with the removal of the Managing Employee Complaints Directive which allowed employees to appeal the handling of complaints under that directive. Recent changes to the legislative basis for appeals, including the reinstatement of Fair Treatment appeals (discussed below) is likely to lead to an increase in appeals in coming years.

Chart 1: Appeals lodged, finalised and allowed (2011–12 to 2015–16)



The average timeframe from lodgement to finalisation of appeals finalised during 2015–16 was 53.4 days—a reduction from 54.6 days in 2014–15.

Achievement and priorities

During 2015–16, the PSC continued its focus on providing development opportunities to managers and executives. Managerial capability is a key factor in effective decision making, whether about project and program outcomes or the management of staff. Poor decisions, or poor communication about decisions, is often an underlying factor in public service appeals.

² This includes seven appeals that were lodged during 2015–16 but were not decided during the financial year.

³ This includes six appeals that were lodged during 2014–15 but finalised in 2015–16, and two appeals that were dismissed as they did not relate to matters about which appeals can be lodged.

Key initiatives included the continuation of the:

- Executive Capability and Development (ECAD) program (targeting executives)
- Leadership Capability and Development (LCAD) program (targeting senior leaders)
- Human resource (HR) capability and development programs, and
- the PSC's Conduct and Performance Excellence (CaPE) service.

The capability and development programs are initiatives through which targeted cohorts participate in a capability assessment, identifying areas of strength and focus for development. These programs provide an individual, agency and sector wide picture of our leaders, supporting effective workforce planning and enabling targeting of training and development offerings.

The CaPE service, which commenced on 1 July 2014, supports managers and HR professionals in agencies to promote excellent conduct and high performance, as well as manage poor conduct and performance. CaPE's role is to provide the support, systems and access to skills that agencies need to better manage conduct and performance.

The PSC's work represents a considerable investment in our people leaders, ensuring they understand and can articulate the expectations of public service employees, and equipping them to fulfil their obligations under s26 of the PSA, which requires public service managers to proactively manage the work performance and person conduct of their reports.

While there is a high percentage of agency decisions upheld on appeal there is always opportunity for improvement. The PSC will continue to monitor appeals decisions and the impact of CaPE, particularly in relation to discipline and promotion (being the two highest appeal areas).

A review of the industrial relations framework in Queensland: A Report of the Industrial Relations Legislative Reform Reference Group, December 2015, recommended that appeal rights for employees covered by the PSA be reviewed. On 1 December 2016, the Industrial Relations Bill 2016 was passed which will result in amendments to the PSA including:

- providing a process for the conversion of casual employees and an associated appeal right, and
- restoring fair treatment appeals and giving these appeals a legislative basis in the PSA.

These amendments will have an impact on the future number of appeals.

Appeal category data

This section of the report provides information on the appeals started, lapsed, withdrawn and decided for each appeal category under the PSA. Appendix 1 provides a breakdown of each appeal category for each agency.

Appeals against decisions under a directive

Section 194(1)(a) of the PSA allows an aggrieved employee to lodge an appeal against a decision to take, or not take, action under a directive. Directives under the PSA are binding instruments issued by the minister responsible for public sector industrial relations or the CCE.

In 2015–16, 12 appeals were finalised under this appeal category, up from five in 2014–15. The outcomes of the appeals are set out in Table 1.

Table 1: Outcome of finalised appeals against decisions under a directive

Year	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
2015–16	2	6	0	4	0	12
2014–15	0	1	1	1	2	5

Appeals against discipline decisions

Section 194(1)(b) of the PSA provides that an employee may lodge an appeal against a decision under disciplinary law to discipline. In decisions throughout 2015–16, appeals officers narrowed the interpretation of this appeal ground by finding that a disciplinary finding decision and decision on disciplinary action are two components of the overall disciplinary decision. Under this current approach, an appeal can only be lodged after a decision on disciplinary action has been made. Previously, an appeal could be made at the point when a decision is made that disciplinary grounds exist *and* when a decision is made to impose disciplinary action (excluding termination of employment).⁴ This change in approach contributed to the increased number of appeals where there was no right of appeal. A right of appeal will be restored through the new *Industrial Relations Act 2017* that, on commencement, will allow for a discipline appeal at the point of disciplinary action and a fair treatment appeal upon a disciplinary finding being made.

Appeals against discipline decisions was the highest category of appeals. While the overall number of appeals lodged was 57, up from 53 in 2014–15, the number of cases heard (not withdrawn or declined to hear) reduced from 37 to 36. Table 2 sets out the outcomes of such appeals. A further six appeals under this category were lodged, but not finalised during 2015–16.

Table 2: Outcome of finalised discipline decision appeals

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Withdrawn	Total
2015–16	8	15	2	0	11	21	57
2014–15	6	24	2	2	5	14	53

Appeals against promotions decision

Section 194(1)(c) of the PSA allows an employee to lodge an appeal against a promotion decision. A ‘promotion decision’ is the appointment of an existing permanent public service employee to a higher classification level. To appeal, the employee must be an existing public servant who applied for the role in question.

Appeals against promotion decisions was the second highest category of appeals, with 21 finalised in 2015–16.

Table 3 provides the outcomes of promotion appeals finalised in 2015–16. During 2015–16, one further appeal under this category was lodged, but not finalised.

⁴ Employees can seek review of a termination decision through the Queensland Industrial Relations Commission.

Table 3: Outcome of finalised promotion appeals

Year	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
2015–16	0	9	1	2	9	21
2014–15	0	9	1	8	1	19

Appeals against transfer decisions

Section 194(1)(d) of the PSA allows an employee to lodge an appeal against a decision to transfer the employee. A transfer occurs where an employee is engaged at the same classification level and is directed to undertake different duties and/or at a different location.

Three appeals against transfer decisions were finalised in 2015–16, representing a 67 per cent decrease from 2014–15 (down from 9). Table 4 sets out the outcomes of the transfer appeals.

Table 4: Outcome of finalised transfer appeals

Year	Allowed	Dismissed	No right of appeal	Withdrawn	Total
2015–16	0	3	0	0	3
2014–15	2	2	1	4	9

Appeals against temporary employment decisions

Under s149 of the PSA, the employment of a temporary employee must be reviewed to determine whether the employee should continue as a temporary employee or be converted to tenured (permanent) status. An initial review is required after two years of service in the same role, then every year thereafter. Section 194(1)(e) of the PSA allows a temporary employee to appeal against a decision that they will continue as a temporary employee.

No appeals against temporary employment decisions were finalised in 2015–16 (down from three in 2014–15).

Appeals against decisions under another Act

No appeals were lodged or finalised against decisions under another Act.

Appendix 1

Agency	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
Appeals against decisions under a directive						
Department of Agriculture and Fisheries		1				1
Department of Education and Training				3		3
Department of Environment and Heritage Protection		1				1
Department of Housing and Public Works	1	2				3
Department of Justice and Attorney-General		2		1		3
Public Safety Business Agency	1					1
Total appeals against decisions under a directive	2	6	0	4	0	12

Agency	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
Appeals against discipline decisions						
Department of Communities, Child Safety and Disability Services		2		2		4
Department of Education and Training	3	2	1	3	2	11
Department of Housing and Public Works	2				2	4
Department of Justice and Attorney-General		2			1	3
Department of the Premier and Cabinet		1				1
Department of Transport and Main Roads				1	2	3
Public Safety Business Agency				2	1	3
Queensland Treasury					1	1
State Library of Queensland					1	1
Queensland Health	1				1	2
Cairns and Hinterland Hospital and Health Service (HHS)		1			2	3
Central Queensland HHS		2	1		1	4
Darling Downs HHS				1		1
Gold Coast HHS				1		1
Metro North HHS		3				3

Metro South HHS	2	1			1	4
North West HHS					1	1
Sunshine Coast HHS					2	2
Townsville HHS					1	1
West Moreton HHS		1			1	2
Wide Bay HHS					1	1
Townsville City Council				1		1
Total appeals against discipline decisions	8	15	2	11	21	57

Agency	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
Appeals against promotion decisions						
Department of Aboriginal and Torres Strait Islander Partnerships		1		1		2
Department of Agriculture and Fisheries		1				1
Department of Education and Training		1				1
Department of Housing and Public Works				1		1
Department of Justice and Attorney General		2			4	6
Department of Transport and Main Roads			1			1
Legal Aid Queensland		1				1
Cairns and Hinterland HHS					1	1
Gold Coast HHS					1	1
Metro North HHS		1				1
Torres and Cape HHS					1	1
Townsville HHS					1	1
Wide Bay HHS		2			1	3
Total appeals against promotion decisions	0	9	1	2	9	21

Agency	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
Appeals against transfer decisions						
Department of Education and Training		3				3
Total appeals against transfer decisions	0	3	0	0	0	3