



QUEENSLAND GOVERNMENT

Office of the Public Service

DIRECTIVE

(refer Section 34 of the *Public Service Act 1996*)

No: **11/96**

Supersedes: Public Sector Management Commission Regulation 1991; Public Sector Management Standard for Fair Treatment of Employees; appeals clauses in Public Sector Management Standards

- 1. TITLE:** **Appeals Directive**
- 2. PURPOSE:** To establish directions for the application of the appeals provisions of the Public Service Act 1996
- 3. LEGISLATIVE PROVISION:** Parts 7, 9 and 11 - *Public Service Act 1996*
- 4. EFFECTIVE DATE:** **1 December 1996**
- 5. DIRECTIVE:**

PART 1: APPEALS AGAINST PROMOTION DECISIONS

Officer entitled to appeal

1.(1) An officer entitled to appeal a promotion decision means¹-

- (a) an officer of a Department;
- (b) a general employee of a Department with tenure;
- (c) an officer of a Public Service Office;
- (d) a general employee of a Public Service Office with tenure; or
- (e) a tenured public sector employee of a public sector unit listed in Schedule 3 of this directive.

1.(2) An officer entitled to appeal must satisfy the following requirements²-

- (a) the officer must have applied for a vacancy to which one of the following persons was promoted:
 - (i) an officer of a Department;
 - (ii) a general employee of a Department with tenure;
 - (iii) an officer of a Public Service Office;
 - (iv) a general employee of a Public Service Office with tenure; or
 - (v) a tenured public sector employee of a public sector unit listed in Schedule 3 of this directive.
- (b) the officer's application for the vacancy must have been received before the deadline for the receipt of applications;

¹ Public Service Act, ss. 96(c) and 114.

² Act, ss. 96(c) and 114.

(c) the officer's notice of appeal must be actually received by the commissioner before the deadline for its receipt;

(d) the officer must continue to be entitled to appeal³.

1.(3) An officer lodging a protective appeal must satisfy all of the eligibility requirements in sections 1.(1) and 1.(2) in relation to the promotion against which they are appealing.⁴

Appeals may not be made against certain appointments⁵

2.(1) Despite section 1, the Public Service Commissioner declares that appeals may not be made against:

- (a) the appointment (including promotion) of any person:
 - (i) to a job which is in a Ministerial office;
 - (ii) to a base-grade level job as defined in the Directive on "Notification of proposed appointments (advertising vacancies)";
- (b) an officer whose job has had its salary, duties and designation modified by an industrial determination and who then continues to hold that job;
- (c) the promotion of an officer pursuant to a progressional scheme contained in an industrial determination or other industrial agreement approved by the commissioner.

Interpretation - 'Gazette' may mean another publication

3. When -

- (a) a public sector unit does not give notice of an appointment in the Gazette but gives notice in a publication other than the Gazette; and
- (b) 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 by the public sector unit.

³ For example, an officer who has left employment is no longer entitled to appeal.

⁴ Act, s. 107.

⁵ Act, s. 95(5)(b). See other exemptions made by s. 95 of the Act.

Deadline for receipt of promotion appeals⁶

- 4.(1) Subject to section 4.(2), the deadline for the actual receipt of the notice of appeal by the commissioner is 5 p.m. on the 21st day after the day on which the promotion of the officer was notified in the Gazette.
- 4.(2) The deadline for the actual receipt of a notice of appeal by the commissioner for a protective appeal is seven (7) days after the receipt by the officer of notice from the commissioner that an appeal or a protective appeal has been lodged against their promotion to a vacancy.⁷

Directions when setting aside a promotion decision⁸

5. Where the commissioner determines to set aside a promotion decision, any one or more of the following directions may be given to the public sector unit -

- (a) A direction that the chief executive⁹ is to revoke the appointment arising from the promotion decision.
- (b) A direction that the chief executive commence the process again (including advertising the vacancy) or continue with the process from a particular time or event .
- (c) Where the chief executive is to commence the process again or continue it from a particular time or event, a direction that a new selection committee is to be formed to undertake the recommenced or continued process and the new selection committee shall not contain some or all of the selection committee members who undertook the selection exercise to which the appeal relates.
- (d) A direction that the chief executive revoke the appointment arising from the promotion decision and appoint the appellant into the vacancy only where the appeal is allowed on the basis of merit and -
- (i) the appellant was in the order of merit ranked:
- (a) above,
 - (b) equal to,
 - (c) second or equal second to, or
 - (d) if there was nobody equal second, third or equal third to
 - (e) if there was nobody equal second or equal third, fourth to

the officer appealed against; or

- (ii) at the time of the promotion decision, no order of merit was established for the appointment appealed against.

- (e) A direction that the chief executive place a Gazette notice to notify -

⁶ Act, s. 101.

⁷ Act, s. 107.

⁸ Act, s. 104.

⁹ Act: Schedule 2 and s. 19(1)(b). Public Service Regulation s. 13(2)(c).

- (i) the appointment of the appointee is revoked; or
- (ii) the appointment of the appointee is revoked and the appellant is appointed to the vacancy.

Effect if promotion decision set aside with direction to appoint an appellant¹⁰

6.(1) This section applies when the commissioner determines to set aside a promotion decision and makes directions as provided in sections 5(d) and (e).

6.(2) The appellant must be paid -

- (a) the salary for the vacancy on and after the date of the publication of the written reasons for the commissioner's determination of the appeal, even if the appellant does not commence duties in the vacancy until a later day; and
- (b) the annual salary increment on the anniversary of the day of the appointment of the officer whose appointment is revoked.

6.(3) The officer whose appointment is revoked-

- (a) if his or her previous job is vacant - resumes the job and classification which he or she held immediately before his or her appointment; and
- (b) in any other case - continues to be employed in the public sector unit in which he or she was appointed immediately before his or her appointment and his or her rate of salary must be not less than he or she was paid immediately before the appointment.

¹⁰ Act, s. 104.

PART 2: APPEALS AGAINST A DECISION TO DISCIPLINE

Officers entitled to appeal

7. An officer entitled to appeal a disciplinary decision means¹¹-
- (a) an employee who may be disciplined under section 88 of the Act;
 - (b) an employee who may be disciplined under the Corrective Services (Administration) Act 1988;
 - (c) an employee who may be disciplined under the Fire Service Act 1990 or a person appointed to, or employed or engaged in, the Queensland Fire Service as an auxiliary fire officer;
 - (d) an employee who may be disciplined under a direction by the chief executive of the Department of Health, Queensland issued under section 58(2)(a) of the Health Service Act 1991;
 - (e) a public sector employee to whom the discipline standard applies (other than a temporary employee); and
 - (f) a tenured public sector employee of a public sector unit listed in Schedule 2 of this directive.

Deadline for receipt of appeal against discipline decision¹²

8. A notice of appeal against a decision to discipline an officer must be actually received by the commissioner before 5 p.m. on the 21st day after the day on which the officer received written notice of the disciplinary action.

Deferral of disciplinary action until after appeal¹³

9.(1) This section applies to a decision to take disciplinary action against an officer, other than dismissal or suspension.

9.(2) The action does not take effect until -

- (a) if the officer's notice of appeal is received before the deadline - the commissioner allows or dismisses the appeal; or
- (b) in any other case - the end of the period of 21 days after the officer received the written notice of the decision.

¹¹ Act, s 96(b) and 114.

¹² Act, s. 101.

¹³ Act, s. 97.

PART 3: FAIR TREATMENT

Fair Treatment

10.(1) Employees shall be treated fairly and reasonably.¹⁴

10.(2) Failure to comply with section 10.(1) shall not be a reason for an appeal¹⁵ in respect of the following:

- (a) recruitment and selection;
- (b) discipline;
- (c) performance review - other than a final review;
- (d) the process of grievance resolution;
- (e) executive performance management and development - other than the overall performance rating;
- (f) management of diminished performance - other than a final review;
- (g) job evaluation (including the JEMS Manual and methodology, the job evaluation points factor result or subsequent classification outcome of an evaluation) - other than a decision to defer or refuse a request for an evaluation of her/his job role and/or alleged deficiencies in completed job analysis and job evaluation processes of the Job Evaluation Management System; and
- (h) suspension - other than suspension without pay.

Officers entitled to appeal

11.(1) An officer entitled to appeal a decision to take, or not take, action under this Directive means¹⁶-

- (a) an officer of a Department;
- (b) a general employee of a Department;
- (c) a temporary employee of a Department;
- (d) an officer of a Public Service Office;
- (e) a general employee of a Public Service Office;
- (f) a temporary employee of a Public Service Office; or
- (g) a public sector employee of a public sector unit listed in Schedule 1 of this directive.

11.(2) An officer entitled to appeal under this directive must be an officer aggrieved in relation to their individual interests by the action or failure to act.¹⁷

¹⁴ Act, s. 24.

¹⁵ See also s. 95 of the Act.

¹⁶ Act, ss. 96(a) and 114.

¹⁷ Act, s 96(a).

Appeals about classification levels

12.(1) An officer cannot appeal to the commissioner against a decision about the classification level of employment, except where the appeal concerns¹⁸:

- (i) movement from Level 2 to Level 3 within the Professional and Technical Streams in accordance with the prescribed criteria for movement; or
- (ii) classification as a Principal Teacher under the TAFE Teachers' Award - State or the Senior College Teachers' Award - State.

Grievance resolution process¹⁹

13.(1) An appellant shall satisfy the commissioner that the appellant has sufficiently used the grievance procedure in an attempt to resolve the issues under appeal.

13.(2) An appellant has sufficiently used the procedures if:

- (a) the commissioner 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
- (b) the chief executive has not complied with the specified time frames for the full procedure.

Deadline for receipt of appeal²⁰

14. A notice of appeal against this directive must be actually received by the commissioner before 5 p.m. on the 21st day after the day on which the officer received written notice of the decision on their grievance about the matter.

Repeal of the Fair Treatment Standard²¹

15. The Public Sector Management Standard for Fair Treatment of Employees is hereby repealed.

¹⁸ Act, s. 95(1)(f).

¹⁹ Act, section 98(1).

²⁰ Act, s. 101.

²¹ Act, s. 132.

Amendment of Public Sector Management Standards²²

16. The following Public Sector Management Standards are amended by deleting from the clause number specified any reference to an appeal or appeals.

No.	Title	Clause no.
1	Recruitment and Selection	8
2	Performance Planning and Review	6
3	Grievance Procedures	E
4	Executive Performance Management and Development	5
6	Managing Diminished Performance	5
7	Position Descriptions	6
8	Training and Development	7
9	Staffing Options to Manage Organisational Change in the Queensland Public Sector	5
10	Discipline	5
11	Criminal Charges and Convictions	7
12	Job Evaluation	8

²² Act, s. 132.

SCHEDULE 1

**PUBLIC SECTOR UNITS WHOSE EMPLOYEES
ARE ENTITLED TO APPEAL AGAINST DECISIONS TO
TAKE OR NOT TAKE ACTION UNDER A DIRECTIVE
IN ACCORDANCE WITH SECTIONS 96(a) and 114 OF THE ACT**

Board of Senior Secondary School Studies

Burdekin Agricultural College Board

Dalby Agricultural College Board

Emerald Agricultural College Board

Legal Aid Commission of Queensland

Library Board of Queensland

Longreach Pastoral College Board

Queensland Ambulance Service

Queensland Art Gallery Board of Trustees

Queensland Building Services Authority

Queensland Building Tribunal with respect to the staff of the Tribunal

Queensland Coal Board

Queensland Corrective Services Commission

Queensland Cultural Centre Trust

Queensland Livestock and Meat Authority with respect to that class of employees known as Veterinary
Public Health Inspectors (formerly employees of the Queensland Department of Primary Industries)

Queensland Museum Board of Trustees

Queensland Nursing Council

Queensland Small Business Corporation

Regional health authority under the *Health Services Act 1991*²³

Residential Tenancies Authority

²³ At the date of issue of this Directive, Regional Health Authorities still exist.

SCHEDULE 2

PUBLIC SECTOR UNITS WHOSE EMPLOYEES ARE ENTITLED TO APPEAL AGAINST DISCIPLINE DECISIONS IN ACCORDANCE WITH SECTIONS 96(b) and 114 OF THE ACT

Board of Senior Secondary School Studies

Burdekin Agricultural College Board

Dalby Agricultural College Board

Emerald Agricultural College Board

Legal Aid Commission of Queensland

Library Board of Queensland

Longreach Pastoral College Board

Queensland Ambulance Service

Queensland Art Gallery Board of Trustees

Queensland Building Services Authority

Queensland Building Tribunal with respect to the staff of the Tribunal

Queensland Coal Board

Queensland Cultural Centre Trust

Queensland Livestock and Meat Authority with respect to that class of employees known as Veterinary
Public Health Inspectors (formerly employees of the Queensland Department of Primary Industries)

Queensland Museum Board of Trustees

Queensland Nursing Council

Queensland Small Business Corporation

Residential Tenancies Authority

Royal Queensland Theatre Company

SCHEDULE 3

**PUBLIC SECTOR UNITS WHOSE EMPLOYEES
ARE ENTITLED TO APPEAL IN RELATION TO
PROMOTION DECISIONS IN ACCORDANCE WITH
SECTIONS 96(c) and 114 OF THE ACT**

Board of Senior Secondary School Studies

Burdekin Agricultural College Board

Dalby Agricultural College Board

Emerald Agricultural College Board

Legal Aid Commission of Queensland

Library Board of Queensland

Longreach Pastoral College Board

Queensland Ambulance Service

Queensland Art Gallery Board of Trustees

Queensland Building Services Authority

Queensland Building Tribunal with respect to the staff of the Tribunal

Queensland Coal Board

Queensland Corrective Services Commission

Queensland Cultural Centre Trust

Queensland Fire Service

Queensland Livestock and Meat Authority with respect to that class of employees known as Veterinary Public Health Inspectors (formerly employees of the Queensland Department of Primary Industries)

Queensland Museum Board of Trustees

Queensland Nursing Council

Queensland Small Business Corporation

Regional health authority under the *Health Services Act 1991*.²⁴

Residential Tenancies Authority

Royal Queensland Theatre Company

²⁴ At the date of issue of this Directive, Regional Health Authorities still exist.