

### 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

2 June 2003.

### 5. Directive

#### PART 1: APPEALS AGAINST PROMOTION DECISIONS

##### Officer entitled to appeal

- 5.1 An officer entitled to appeal a promotion decision means<sup>1</sup>-
- 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.
- 5.2 An officer entitled to appeal must satisfy the following requirements<sup>2</sup>-
- 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

<sup>1</sup> Public Service Act, ss. 96(c) and 114.

<sup>2</sup> Public Service Act, ss. 96(c) and 114.

- 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;
  - 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 appeal.<sup>3</sup>
- 5.3 An officer lodging a protective appeal must satisfy all of the eligibility requirements in sections 5.1 and 5.2 in relation to the promotion against which they are appealing.<sup>4</sup>
- 5.4 The provisions of 5.2 (a) and (b) do not apply to appeals lodged against promotions where the promotion results from the application of the provisions of sections 6.13 or 6.14 of Directive 01/03 *Recruitment and Selection*.
- 5.5 Officers entitled to appeal under 5.4 above, may only appeal on the grounds of process.

#### **Appeals may not be made against certain appointments<sup>5</sup>**

- 5.6 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 commercial office;
    - ii. to a base-grade level job as defined in the Directive No. 01/03 – *Recruitment and Selection*;
  - 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.
  - d. the promotion, transfer, redeployment or secondment of any person to a job in a public sector unit as set out in Schedule 3 of this directive and remunerated in excess of the maximum salary applicable to a public service level A08.

#### **Interpretation - 'Gazette' may mean another publication**

- 5.7 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.

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

<sup>4</sup> Act, s. 107.

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

### **Deadline for receipt of promotion appeals<sup>6</sup>**

- 5.8 Subject to section 5.9, the deadline for the actual receipt of the notice of appeal by the commissioner is 5 p.m. on the 21st calendar day after the day on which the promotion of the officer was notified in the Gazette.
- 5.9 The deadline for the actual receipt of a notice of appeal by the commissioner for a protective appeal is seven (7) calendar 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.<sup>7</sup>
- 5.10 The notice of appeal on the prescribed form may be lodged by the appellant or by an authorised agent (eg a union official) and may be sent by post, facsimile or delivered in person to the Office of the Public Service Commissioner.

### **Directions when setting aside a promotion decision<sup>8</sup>**

- 5.11 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, within one month, the chief executive<sup>9</sup> is to revoke the appointment arising from the promotion decision and place a Gazette notice to notify that the appointment of the appointee is revoked
  - b. a direction that the chief executive commences the process again (including advertising the vacancy) or continues 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 recommended 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.

### **Effect if promotion decision is set aside**

- 5.12 This section applies when the commissioner determines to set aside a promotion decision as provided in section 5.11(a).
- 5.13 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.

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<sup>6</sup> Act, s. 101.

<sup>7</sup> Act, s. 107.

<sup>8</sup> Act, s. 104.

<sup>9</sup> Act: Schedule 2 and s. 19(1)(b).

## PART 2: APPEALS AGAINST A DECISION TO DISCIPLINE

### Officers entitled to appeal

- 5.14 An officer entitled to appeal a disciplinary decision means<sup>10</sup> -
- 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 and Rescue 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 Services Act 1991*;
  - e. a public sector employee to whom the discipline provisions of the *Public Service Act 1996* 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 disciplinary decision<sup>11</sup>

- 5.15 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 calendar day after the day on which the officer received written notice of the disciplinary action.
- 5.16 The notice of appeal, on the prescribed form, may be lodged by the appellant or by an authorised agent (eg a Union Official) and may be sent by post, facsimile or delivered in person to the Office of the Public Service Commissioner.

### Deferral of disciplinary action until after appeal<sup>12</sup>

- 5.17 This section applies to a decision to take disciplinary action against an officer, other than dismissal or suspension.
- 5.18 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 calendar days after the officer received the written notice of the decision.

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<sup>10</sup> Act, s 96(b) and 114.

<sup>11</sup> Act, s. 101.

<sup>12</sup> Act, s. 97.

## PART 3: FAIR TREATMENT

### Fair Treatment

- 5.19 Employees shall be treated fairly and reasonably.<sup>13</sup>
- 5.20 Failure to comply with section 5.19 shall not be a reason for an appeal<sup>14</sup> in respect of the following:
- a. Recruitment and selection, other than in relation to a decision regarding equivalence of qualifications;
  - b. a decision to apply or not to apply the provisions of sections 6.13; 6.14 or 6.15 of Directive 01/03;
  - c. discipline;
  - d. performance review - other than a final review;
  - e. the process of grievance resolution – other than a final decision;
  - f. executive performance management and development - other than the overall performance rating;
  - g. management of diminished performance - other than a final review;
  - h. job evaluation (including the JEM's Manual and methodology, the job evaluation points factor result and 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
  - i. suspension - other than suspension without pay.

### Officers entitled to appeal

- 5.21 An officer entitled to appeal a decision to take, or not take, action under this Directive means:<sup>15</sup>
- a. an officer of a Department;
  - b. a general employee of a Department;  
a temporary employee of a Department;
  - d. an officer of a Public Service Office;
  - e. a general employee of a Public Service Office;  
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.
- 5.22 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.<sup>16</sup>

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<sup>13</sup> Act, s. 24.

<sup>14</sup> See also s. 95 of the Act.

<sup>15</sup> Act, ss. 96(a) and 114.

<sup>16</sup> Act, s 96(a).

### **Appeals about classification levels**

- 5.23 An officer cannot appeal to the commissioner against a decision about the classification level of employment, except where the appeal concerns:<sup>17</sup>
- a. 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; or
  - b. classification as a Principal Teacher under the TAFE Teachers' Award - State or the Senior College Teachers' Award - State.

### **Grievance resolution process<sup>18</sup>**

- 5.24 An appellant shall satisfy the commissioner that the appellant has sufficiently used the grievance procedure in an attempt to resolve the issues under appeal.
- 5.25 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 and the failure to comply with those timeframes can reasonably constitute a decision not to take action to resolve the grievance.

### **Deadline for receipt of appeal<sup>19</sup>**

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

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<sup>17</sup> Act, s. 95(1)(f).

<sup>18</sup> Act, section 98(1).

<sup>19</sup> Act, s. 101.

**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**

Burdekin Agricultural College Board  
Dalby Agricultural College Board  
Emerald Agricultural College Board  
Legal Aid Queensland  
State Library 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 Performing Arts Trust  
Safe Food Production Queensland with respect to that class of employees known as  
Veterinary Public Health Inspectors  
Queensland Museum  
Queensland Nursing Council  
Queensland Studies Authority  
Department of Health with respect to health service employees  
Residential Tenancies Authority

**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**

Burdekin Agricultural College Board  
Dalby Agricultural College Board  
Emerald Agricultural College Board  
Legal Aid 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 Cultural Centre Trust  
Safe Food Production Queensland 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 Studies Authority  
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**

Burdekin Agricultural College Board  
Dalby Agricultural College Board  
Emerald Agricultural College Board  
Legal Aid 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 Performing Arts Trust  
Queensland Fire and Rescue Service  
Safe Food Production Queensland 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 Studies Authority  
Regional health authority under the Health Services Act 1991.  
Residential Tenancies Authority  
Royal Queensland Theatre Company