

DIRECTIVE 03/17

Supersedes: 02/14

Appeals

1. Purpose

To provide information on the appeal rights of public service employees under the *Public Service Act 2008* (PSA).

If you are a public service employee looking for information about whether you can appeal a decision, you should refer to the [Appeals Guide](#). The Appeals Guide is designed to help parties appealing under the PSA understand the appeal process and includes information about the types of decisions that can be appealed. If you are still unclear about whether you can appeal, you can contact the Queensland Industrial Relations Commission (QIRC) on 3227 8060 for advice.

2. Effective date

1 March 2017.

3. Legislative provisions

Sections 53, 55 and section 214B, and Chapter 3, Part 5 and Chapter 7 of the PSA.

4. Application

This directive applies to all public service employees unless a specific clause states otherwise.

5. Previous references

11/96, 04/97, 16/97, 06/03, 06/08, 15/09, 19/10.

6. Related information

- Managing employee complaints directive provides information on the procedures that must be followed by public service employees and agencies where an employee makes a complaint to their agency. Some of the appeal grounds in the PSA require that an employee has used their agency's complaints processes before they can lodge an appeal.
- [Casual employment directive](#) provides information on the conversion of casual employees to employment on tenure.
- [Temporary employment directive](#) provides information on the conversion of temporary employees to employment on tenure.
- [Recruitment and selection directive](#) outlines requirements for filling roles in the Queensland public service.
- [Supporting employees affected by workplace change directive](#) establishes a framework to give effect to the government's commitment to employment security where employees are displaced following workplace change.



7. Principles

- 7.1 Chapter 7 of the PSA provides the legislative basis for public service appeals. It sets out who may lodge a public service appeal, the decisions that can be the subject of a public service appeal and the decisions that cannot be the subject of a public service appeal.
- 7.2 Section 214B of the PSA requires that the commission chief executive make a directive about public service appeals. As well as supporting the provisions of the PSA, Section 214B allows for the directive to:
- provide that certain appointment decisions cannot be appealed; and
 - provide the directions an IRC member can make about certain decisions.
- 7.3 This directive extends the appeal grounds set out in the PSA to general employees. The PSA mainly applies to public service officers, but section 55 of the PSA allows the commission chief executive to make a directive, which extends the operation of the PSA to general and temporary employees.
- 7.4 Public service appeals are heard and decided by IRC members. A public service appeal against a decision to which this directive applies is generally not available where the matter has already been heard by the QIRC exercising jurisdiction under the *Industrial Relations Act 2016*. The exception to this is where the matter relates to bullying. An appeal in relation to bullying can be heard by the QIRC in both its industrial relations jurisdiction and its public service appeal jurisdiction.
- 7.5 In addition to a number of specific appeal rights such as promotion and discipline appeals, the PSA also provides an appeal right for employees where they believe a decision is unfair and unreasonable (a fair treatment decision). This is a general appeal right that exists subject to some specific exceptions set out in section 195(3A) of the PSA. For example, discipline decisions are generally excluded from a fair treatment appeal (as an employee can already appeal a decision to take disciplinary action against them under section 194(1)(b)). However, the PSA does provide a fair treatment appeal for a disciplinary finding decision or for a decision to suspend an employee without remuneration.
- 7.6 The time for making an appeal starts from the date on which notice of the decision is received. An IRC member may grant an extension of time to make an appeal. Once an appeal is lodged, the IRC member may stay the decision against which the appeal is being made.
- This allows for situations where the time taken to comply with procedures may have an unreasonable impact on an appellant, for example, where the decision being appealed against was a discipline finding decision, a decision to suspend without remuneration or where the person has already followed a grievance process under an industrial instrument.

8. Who may lodge a public service appeal

- 8.1 A public service employee who is listed in section 196 of the PSA (**Appendix A**), or is eligible to appeal by reason of section 55 of the PSA, may lodge a public service appeal.
- 8.2 An appeal may only be lodged by the following persons:
- a) for a decision under section 194(1)(a) of the PSA – a public service employee aggrieved by the decision if the employee is entitled to appeal under a directive of the commission chief executive;

- b) for a decision under section 194(1)(b) of the PSA (decision under a disciplinary law to discipline) – an employee or former employee directly aggrieved by the decision to discipline;
- c) for a decision under section 194(1)(c) of the PSA (promotion decision) – a tenured general employee or public service officer aggrieved by the decision (an aggrieved officer), provided the following conditions are met:
 - i) the decision relates to the gazetted promotion of a public service officer or tenured general employee;
 - ii) the aggrieved officer's application to the role being appealed was received on or before the deadline for the receipt of applications (or in the case of continuous applicant pools, the application was received prior to the date of distribution to the selection panel for the relevant promotion);
 - iii) the aggrieved officer has sought post-selection feedback in accordance with the provisions of the directive relating to recruitment and selection; and
 - iv) for an appeal against a promotion from a limited advertising process conducted in accordance with the directive relating to recruitment and selection, the aggrieved officer was covered by the invitation to apply.
- d) for a transfer decision – the public service officer the subject of the transfer;
- e) for a decision under section 194(1)(e) (temporary employment decision) – a temporary employee or temporary general employee who is the subject of the decision;
- f) for a decision under section 194(1)(ea) (casual employment decision) – a casual employee or a casual general employee who is the subject of the decision;
- g) for a decision under section 194(1)(eb) of the PSA (fair treatment decision) – a public service employee who is aggrieved by the decision. Generally, the employee is to comply with the agency's complaints management process prior to lodging the appeal. However, an IRC Member has discretion to hear an appeal where it would be unreasonable to comply with this requirement.¹

9. Decisions that can be appealed

9.1. Only the decisions listed in section 194 of the PSA (**Appendix B**) can be appealed.

10. Decisions that cannot be appealed

10.1 Decisions listed in section 195 of the PSA (**Appendix C**) cannot be appealed.

10.2 Section 195(1)(h) of the PSA states that non-appealable appointments cannot be appealed. A non-appealable appointment is an appointment:

- a) that is not a promotion; or

¹ The employee complaints management directive requires agencies to have an employee complaints management system which provides for local resolution wherever possible and for escalation of unresolved complaints. The decision maker is to provide an employee with written reasons for any decision. Where a show cause process has been used prior to making a decision, an employee has already had opportunity to provide relevant material for the decision maker's consideration. This may be a factor an IRC member could consider in exercising a discretion to hear an appeal without requiring compliance with the complaints management process.

- b) to a role remunerated in excess of the maximum salary applicable to the AO8 classification within the relevant department; or
 - c) to a role which is exempt from advertising in accordance with the directive relating to recruitment and selection; or
 - d) to a role which is entry level as defined by the directive relating to recruitment and selection.
- 10.3 An appeal may also not be made under section 194(1)(a) of the PSA where it is in relation to a decision:
- a) to fill a vacancy as an 'identified role', the process for assessment and the decision about whether the mandatory attribute is held or not held; or
 - b) About recruitment and selection, unless it is a decision not to:
 - i) appoint an employee requiring placement because they are assessed as unsuitable; or
 - ii) appoint (or second) a public service employee because of their disciplinary history.
 - c) to not apply the directive relating to transfer within and between classification systems.

11. Directions made by an IRC member about a promotion decision

- 11.1 This clause applies where a public service appeal is lodged by an eligible public service employee about a promotion decision under section 194(1)(c) of the PSA.
- 11.2 In deciding an appeal about a promotion decision under section 208(1)(b) of the PSA, the IRC member may make any direction they consider necessary, including the following:
- (a) a direction that, within one month, the chief executive is to revoke the appointment and publish a gazette notice that the appointment is revoked;
 - (b) a direction that the chief executive either recommences the recruitment and selection process from the point of advertising the vacancy or continues with the process from a particular time or event as identified by the IRC member; or
 - (c) a direction that a new selection committee is to be formed and a direction regarding the composition of the new selection committee, where a decision is made that a chief executive is to recommence the recruitment and selection process.
- 11.3 If the IRC member decides to set aside a promotion decision, the tenured general employee or public service officer who was promoted and has that promotion revoked:
- (a) resumes the role which they held immediately before the appointment, at the same classification, if their previous job is vacant; or
 - (b) in any other case, continues to be employed in the department in which they were appointed with salary not less than that which they were paid immediately before the appointment.

12. Stay of decision pending an appeal

- 12.1. Subject to clause 12.2, the existence of a right of appeal does not stay a decision unless otherwise determined by the IRC member under section 199 of the PSA.
- 12.2. A decision, other than a decision to terminate employment, under section 188 of the PSA does not take effect until:

- (a) if the employee lodges an appeal within the timeframe in section 197 of the PSA – the IRC member makes a determination on the appeal; or
- (b) in any other case – the timeframe for lodging an appeal in section 197 of the PSA has passed.

13. Transitional provision

13.1. Appeals commenced under directive 02/14 are to be finalised under that directive.

14. Dictionary

- *Fair treatment decision* is a decision to which section 194(1)(eb) of the PSA applies.
- *IRC member* is a member of the Queensland Industrial Relations Commission that can hear public service appeals under Chapter 7, Part 1 of the PSA.
- *Promotion decision* is a decision to which section 194(1)(c) of the PSA applies.
- *Temporary employee* does not include a casual employee employed under section 147 or 148 of the PSA.

Superseded by
Directive 07/20

Appendix A: Who may appeal (section 196 of the PSA)

The following persons may appeal against the following decisions—

- (a) for a decision mentioned in section 194(1)(a)—a public service employee aggrieved by the decision if the employee is entitled to appeal under a directive of the commission chief executive;
- (b) for a decision mentioned in section 194(1)(b)—a public service employee or former public service employee aggrieved by the decision to discipline the employee if the employee is entitled to appeal under a directive of the commission chief executive;
- (c) for a promotion decision—a public service officer aggrieved by the decision who is entitled to appeal under a directive of the commission chief executive;
- (d) for a transfer decision—the public service officer the subject of the transfer;
- (e) for a temporary employment decision—the temporary employee the subject of the decision;
- (ea) for a casual employment decision—the casual employee the subject of the decision;
- (eb) for a fair treatment decision—a public service employee who is aggrieved by the decision;
- (f) for a decision mentioned in section 194(1)(f)—the person the other Act allows to appeal.

Appendix B: Decisions against which appeals may be made (section 194 of the PSA)

(1) An appeal may be made against the following decisions—

- (a) a decision to take, or not take, action under a directive;
- (b) a decision under a disciplinary law to discipline—
 - (i) a person (other than by termination of employment), including the action taken in disciplining the person; or
 - (ii) a former public service employee by way of a disciplinary declaration made under section 188A, including if the disciplinary action that would have been taken was termination of employment;
- (c) a decision to promote a public service officer (a **promotion decision**);
- (d) a decision to transfer a public service officer (a **transfer decision**);
- (e) a decision under section 149 that a temporary employee's employment in a department is to continue as a temporary employee (a **temporary employment decision**);

Note—

A failure by the chief executive to make a decision under section 149 is taken to be a decision that the person's employment in the department is to continue as a temporary employee according to the terms of the existing employment. See section 149(4).

- (ea) a decision under section 149A that the employment of a casual employee in a department is to continue as a casual employee (a **casual employment decision**);
- (eb) a decision a public service employee believes is unfair and unreasonable (a **fair treatment decision**);
- (f) a decision about anything else against which another Act allows a person to appeal.

(2) However—

- (a) if an appeal may be made under this section against a decision, other than under subsection (1)(eb), the appeal can not be made under subsection (1)(eb); and
- (b) an appeal can not be made against a decision if section 195 applies to the decision.

(3) In this section—

temporary employee—

- (a) includes a general employee employed on a temporary basis; but
- (b) does not include a person employed under section 147 or 148 on a casual basis.

Appendix C: Decisions against which appeals cannot be made (section 195 of the PSA)

- (1) A person cannot appeal against any of the following decisions—
 - (a) a decision of the Governor in Council;
 - (b) a decision of a Minister;
 - (c) a decision about superannuation benefits or workers' compensation;
 - (d) a decision about probation;
 - (e) a decision to terminate the employment of a public service officer employed on probation;
 - (f) a decision about the classification level of employment, unless the decision is declared under a directive of the commission chief executive to be a decision against which an appeal may be made;
 - (g) a decision to promote, transfer, redeploy or second a person as a chief executive, senior executive or senior officer;
 - (h) a non-appealable appointment.
- (2) A person can not appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department.
- (3) A person can not appeal against a promotion decision if—
 - (a) the relevant public service officer had been redeployed within 1 year before the promotion; and
 - (b) the promotion is to a classification level that is not higher than the officer's classification level immediately before the redeployment.
- (3A) A person can not appeal against a fair treatment decision—
 - (a) made under chapter 5, part 7; or
 - (b) made under chapter 6, part 2, other than—
 - (i) a finding under section 187 that a disciplinary ground exists for the person; or
 - (ii) a decision under section 189 to suspend a person from duty without pay; or
 - (c) relating to the recruitment or selection of a public service employee; or
 - (d) 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; or
Example for paragraph (d)—
 - a decision about performance recorded in a person's performance development agreement as part of the person's 6-monthly or annual performance review
 - (e) relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of the grievance; or
 - (f) relating to the development or performance management of a chief executive or senior executive.

- (4) In addition, a person can not appeal against a decision if—
- (a) the parties to the appeal would include the commission, a commissioner or a staff member of the commission; or
 - (b) it is a matter that has been heard by the IRC.

Note—

Under section 215, the IRC has jurisdiction to hear and decide a matter mentioned in this subsection.

- (4A) Subsection (4) does not apply in relation to a matter mentioned in subsection (4)(b) to the extent the matter relates to bullying in the workplace.

- (5) In this section—

non-appealable appointment means an appointment—

- (a) for which the commission chief executive is satisfied merit in selection processes is sufficiently protected by ways other than an appeal under this part; and
- (b) that the commission chief executive has declared by gazette notice, or a directive for this part, to be an appointment against which an appeal may not be made.