



Queensland Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

ISSN 0155-9370

VOL. 374]

WEDNESDAY 1 MARCH 2017

[No. 40

Public Service Commission

DIRECTIVE 01/17

Conversion of casual employees to permanent employment

1. Purpose

- a) To encourage and maximise permanent employment where possible; and
- b) To ensure efficient and effective service delivery through the appropriate use of casual employees.

2. Effective date

1 March 2017.

3. Legislative provisions

Sections 53, 147(2)(b), 148(2)(b) and 149A of the *Public Service Act 2008* (PSA).

4. Application

- 4.1 This directive applies to public service employees employed on a casual basis under sections 147(2)(b) or 148(2)(b) of the PSA.
- 4.2 If an industrial instrument (for example, an Award or Certified Agreement) provides for the way a casual employee can be converted to permanent that is different to this directive, a chief executive must comply with the industrial instrument rather than this directive.

5. Related information

- [Temporary employment directive](#) details arrangements for the employment of temporary employees and sets the criteria for review decisions about the status of temporary employees.
- The Queensland Industrial Relations Commission (QIRC) [Appeals Guide](#) and the Appeals Directive provide information about appealing decisions by agencies not to convert a casual employee to permanent employment.
- [Employment security policy](#) sets out the Queensland Government's commitment to permanent employment within agencies.

6. Principles

- 6.1 The Employment Security Policy outlines the Queensland Government's commitment to permanent employment where possible and limiting the use of casual employment.
- 6.2 Casual employment should only be used when permanent employment is not viable or appropriate. Examples of viable and appropriate casual employment include where the casual employee:
 - backfills permanent or temporary staff on short-term emergent leave
 - covers short gaps in work rosters of permanent and temporary employees
 - is engaged in an ad hoc or "on demand" nature, each engagement standing alone; or
 - works irregular, informal, flexible, occasional or unrostered hours.
- 6.3 An agency should periodically review the use of casual employees to limit casual employment and to proactively manage its workforce planning.



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7. Application for conversion of casual employee to permanent employment

- 7.1 A casual employee may apply to have their employment converted to permanent employment if the person has been employed as a casual employee on a regular and systematic basis for at least two years, as provided by section 149A of the PSA.
- 7.2 Casual employees may apply in writing to the chief executive.
- 7.3 Conversion of a casual employee to permanent employment must only occur with the consent of the employee.
- 7.4 Upon receipt of an application for conversion of a casual employee, the agency must notify the casual employee in writing:
- the date the application for conversion was received by the agency
 - the name and contact details of the agency contact for the application
 - the date the decision must be made by (28 calendar days from the date the agency received the application)
 - that if the chief executive does not make a decision within 28 calendar days after the date of the application for conversion, the chief executive is taken to have decided not to convert the casual employee, as provided by section 149A(4) of the PSA; and
 - that a casual employee may appeal a decision not to convert them to permanent employment, as provided by section 197 of the PSA, and the timeframe for an appeal.

8. Criteria for a decision

- 8.1 When making a decision about an application of a casual employee for conversion to permanent employment, the chief executive must consider the following criteria:
- a) Is the person employed as a casual employee?
 - b) Is the basis of the casual employment both regular **and** systematic?

The chief executive must look at the engagement as a whole and consider each application on a case by case basis.

Circumstances that may indicate the casual employment is regular and systematic include (but are not limited to):

Regular	Systematic
<ul style="list-style-type: none"> • Usual, normal or customary • Recurs at a fixed time or periodically • Observes fixed times or habits <p>Evidence might include:</p> <ul style="list-style-type: none"> • Repetitive pattern • Frequent though unpredictable engagements • Regular days or hours of work or provided with shifts regularly 	<p>Having, showing or involving a <u>system, method or plan</u></p> <p>Evidence might include:</p> <ul style="list-style-type: none"> • Pattern of engagement • A fixed roster (or predictable hours) • Unpredictable hours may also be evidence of a pattern of engagement • Degree of certainty about work hours • Ongoing reliance upon the worker's services

Note: The evidence listed above are examples only. Other evidence may support a finding that the basis of the casual employment is regular and systematic.

- c) Has the person been employed on a regular and systematic basis as a casual employee for at least two years?

Employment on a regular and systematic basis as a casual employee for at least two years includes:

- non-continuous service, where a casual employee has performed a cumulative total of two years' service in the same role in an agency, including periods of temporary and casual service, provided that the breaks in employment do not exceed a total of three months in the cumulative two year period.
- d) Has the casual employee satisfactorily met the performance objectives of the role during their employment?
- e) If all of the above criteria are satisfied, the chief executive must then consider:
Are there genuine operational reasons not to convert the casual employee? These may include (but are not limited to):
- whether there is a continuing need for the person to be employed in the role, or in a role which is substantially the same, and the role is likely to be ongoing
 - where the minimum hours set out in an industrial instrument if the casual is converted will not suit operational requirements; or
 - where a closed merit selection process is more appropriate to determine an order of merit for casual conversions.
- 8.2 In line with the Employment Security Policy, the chief executive should convert the casual employee to a permanent employee at level, unless there are genuine operational reasons not to do so.

9. Outcome of the application

- 9.1 The outcome of the application for conversion of a casual employee to permanent employment must be decided, and the employee must be notified in writing, within 28 calendar days of the date the casual employee's application for conversion was received by the agency.
- 9.2 If the outcome is a decision not to convert the casual employee to a permanent employee, the written notification must include the reasons for the decision.
- 9.3 If the outcome is a decision to convert the casual employee to a permanent employee:
- (a) the written notification must include the terms and conditions of the offer to convert to permanent employment (e.g. full-time or part-time, days and hours of work, pay, location of the employment and any other changes to entitlements)
- (b) the days and hours of work in the offer to convert to permanent employment should reflect the regular and systematic casual employment, unless otherwise agreed; and
- (c) the chief executive cannot convert the casual employee unless they accept the terms and conditions of the offer to convert, within the timeframe specified in the written notification.
- 9.4 If a chief executive does not decide the application for conversion of a casual employee within a period of 28 calendar days after the date the application was received by the agency, the chief executive is taken to have decided not to convert the casual employee, as provided by section 149A(4) of the PSA. An employee may lodge an appeal at this point.
- 9.5 A casual employee who is converted could be subject to a probationary period following conversion in accordance with section 126 of the PSA. However, given that the casual employee has performed the required service with the agency, it would not be expected that agencies would use probation other than in exceptional circumstances.

10. Appeals

A casual employee has a right to appeal a decision not to convert their casual employment to permanent employment, as provided under section 194(1)(ea) of the PSA.

11. Transitional arrangements

- 11.1 An initial transition period of one year will apply from the date of effect of this directive.
- 11.2 All applications for conversion of a casual employee to permanent employment received during the transition period must be finalised and casual employees notified of the decisions made within 28 calendar days of the expiry of the transition period.

12. Dictionary

- *Agency* means a department or a public service office as defined in sections 7 and 21 of the PSA.
- *Industrial instrument* has the same meaning as schedule 5 of the *Industrial Relations Act 2016*.
- *In the same role* includes a role which has the same or substantially the same capability requirements, either at level or at a higher classification (e.g. a payroll officer may provide a service to different client groups), or a role with a generic role description involving a range of duties (e.g. rotation through financial and payroll processing duties under a generic entry-level role description).
- *Permanent employment* means employment as a general employee on tenure or a public service officer on a part-time or full-time basis.

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:
- a) 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
 - b) 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:
- a) conducting preliminary enquiries to determine appropriate options for resolution of the employee complaint
 - b) facilitated discussion, mediation, conciliation or negotiation
 - c) gathering information, including from witnesses; and/or
 - d) other reasonable action in the circumstances.
- 7.5.3 If the agency is reasonably satisfied that:
- a) an employee complaint is frivolous or vexatious; or
 - b) does not meet the definition of an employee complaint under clause 7.1; or
 - c) 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:
- 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) 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:
- a) outline the action taken to manage the employee complaint and the outcome of this action
 - b) 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:
- the timeframe has been extended by mutual agreement between the parties (a party to the complaint is not to unreasonably withhold their agreement); or
 - 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:
- the action taken to manage the employee complaint and the outcome of this action
 - the reasons for the decision, or the decision to take no action
 - any action that the commission chief executive will take, or proposes to take, as a result of the decision; and
 - 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*.

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.

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.

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