

# Appeals

Directive: 07/20

Effective date: 25/09/20

Supersedes: 03/17

## 1. Purpose

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

## 2. Authorising provisions

This directive is made pursuant to sections 52, 53, 55 and section 214B, and Chapter 7 of the PS Act.

## 3. Application

- 3.1 This directive applies to all public service employees as defined in the PS Act unless a specific clause states otherwise.
- 3.2 This directive applies to the following entities (each entity being an “agency” for this directive) and their employees:
  - (a) departments
  - (b) public service offices listed in Schedule 1 of the PS Act
  - (c) an entity declared to be a public service office under a regulation and where the regulation applies this directive to the entity (sections 22-23 PS Act).
- 3.3 Section 52 of the PS Act outlines the relationship between a directive and industrial instrument including how to deal with inconsistencies.
- 3.4 If you are a public service employee looking for information about the process for appealing a decision, you should refer to the [public service appeal guide](#) or contact the Queensland Industrial Relations Commission (QIRC) for advice.

## Directive

## 4. Principles

- 4.1 Chapter 7 of the PS Act 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.
- 4.2 Section 214B of the PS Act requires the Commission Chief Executive (CCE) to make a directive about public service appeals. As well as supporting the provisions of the PS Act, Section 214B allows for the directive to provide that certain appointment decisions cannot be appealed.
- 4.3 This directive extends the appeal grounds set out in the PS Act to general employees. The PS Act mainly applies to public service officers, but section 55 of the PS Act allows the CCE to make a directive, which extends the operation of the PS Act to general and fixed term temporary employees as defined in the PS Act.

- 4.4 Public service appeals are heard and decided by the QIRC under Chapter 11 of the *Industrial Relations Act 2016* (IR Act).
- 4.5 In addition to a number of specific appeal rights such as promotion and discipline appeals, the PS Act 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 PS Act. 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 PS Act does provide a fair treatment appeal for a disciplinary finding decision.
- 4.6 The time for making an appeal starts from the date on which notice of the decision is received. The QIRC may grant an extension of time to make an appeal.
- 4.7 Under the *Human Rights Act 2019* (HR Act) a decision maker has an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights.

## 5. Who may lodge a public service appeal

- 5.1 A public service employee who is listed in section 196 of the PS Act (Appendix A) or is eligible to appeal by reason of section 55 of the PS Act, may lodge a public service appeal.
- 5.2 An appeal may only be lodged by the following persons:
- (a) for a decision under section 194(1)(a) of the PS Act—a public service employee aggrieved by the decision if the employee is entitled to appeal under a directive of the CCE
  - (b) for a decision under section 194(1)(b) of the PS Act (decision under a disciplinary law to discipline)—a public service employee or former public service employee directly aggrieved by the decision to discipline
  - (c) for a decision under section 194(1)(ba) of the PS Act—the employee the subject of the work performance matter
  - (d) for a suspension without pay decision—the public service employee the subject of the decision
  - (e) for a decision under section 194(1)(c) of the PS Act (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.
  - (f) for a transfer decision—the public service officer the subject of the transfer



- (g) for a conversion decision<sup>1</sup>—the employee the subject of the decision
- (h) for a decision under section 194(1)(eb) (fair treatment decision)—a public service employee who is aggrieved by the decision. The public service employee should comply with the agency’s complaints management process prior to lodging the appeal.

## 6. Decisions that can be appealed

6.1 Only the decisions listed in section 194 of the PS Act (Appendix B) can be appealed.

## 7. Decisions that cannot be appealed

7.1 Decisions listed in section 195 of the PS Act (Appendix C) cannot be appealed.

7.2 Section 195(1)(k) of the PS Act states that non-appealable appointments cannot be appealed. A non-appealable appointment is an appointment:

- (a) that is not a promotion
- (b) to a role remunerated in excess of the maximum salary applicable to the AO8 classification within the relevant department
- (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.

7.3 An appeal may also not be made under section 194(1)(a) of the PS Act 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
  - (ii) appoint (or second) a public service employee because of their disciplinary history, or
  - (iii) apply the directive relating to transfer within and between classification systems.

## 8. Transitional arrangements

Appeals commenced before commencement of the *Public Service and Other Legislation Amendment Act 2020* are to be finalised consistent with the transitional arrangements in section 298 of the PS Act.

## 9. Related resources and reference materials

This material does not form part of the directive but may assist in the interpretation and application of the directive and should be considered by decision makers.

- [Superseded versions of the directive: 03/17, 02/14, 19/10, 15/09, 06/08, 06/03, 16/97, 04/97, 11/96](#)

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<sup>1</sup> A decision under section 149B not to convert the basis of employment of an employee; or a decision under section 149B in relation to the hours of work offered in converting the person’s employment; or a decision under section 149C not to appoint an employee to a position at a higher classification level where the employee has been assuming the roles and duties of the higher classification level for a continuous period of at least two years.



- [Find resources about managing employees](#) in the Queensland Government
- QIRC information about [public service appeals](#)

Superseded by  
Directive 04/23



## Appendix A – section 196

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### 196 Who may appeal

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;
- (ba) for a decision mentioned in [section 194\(1\)\(ba\)](#)—the employee the subject of the work performance matter;
- (bb) for a suspension without pay decision—the public service employee the subject of the decision;
- (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 conversion decision—the 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.

Superseded  
Directive 07/20



## Appendix B – section 194

### 194 Decisions against which appeals may be made

- (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;
  - (ba) a decision of the commission chief executive under [section 88IA](#) to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter, to the extent the direction affects the employee the subject of the work performance matter;
  - (bb) a decision to suspend a public service employee without entitlement to normal remuneration under [section 137](#) (a *suspension without pay decision*);
  - (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 (each a *conversion decision*)—
    - (i) under [section 149B](#) not to convert the basis of employment of an employee; or
    - (ii) under [section 149B](#) to convert the basis of employment of an employee in a circumstance provided for under a directive made under [section 149B\(8A\)](#); or
    - (iii) under [section 149C](#) not to appoint an employee to a position at a higher classification level, if the employee has been seconded to or acting at the higher classification level for a continuous period of at least 2 years;
  - (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 – section 195

### 195 Decisions against which appeals can not be made

- (1) A person can not 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 decision of the commission chief executive relating to reviewing a procedural aspect of the handling by a department of a work performance matter at the request of an employee under [section 88IA](#), other than to the extent allowed under [section 194\(1\)\(ba\)](#);
  - (i) a decision under [section 149](#) not to convert the employment basis of a fixed term temporary employee or casual employee;
  - (j) a decision under [section 149C](#) not to appoint an employee to a position at a higher classification level, if the employee has been seconded to or acting at the higher classification level for less than 2 years;
  - (k) 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 a finding under [section 187](#) that a disciplinary ground exists for the person; 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.

