

DIRECTIVE 02/14*Supersedes: 19/10***Commission Chief Executive Directive: Appeals****1. Purpose:**

To outline appeal rights provided for under the *Public Service Act 2008* (PSA) and other Acts.

2. Effective date:

27 June 2014

3. Legislative provisions:

Section 53, Chapter 3, Part 5 and Chapter 7 of the PSA.

4. Application:

Unless otherwise stated, this directive applies to public service employees defined in section 9 of the PSA.

5. Previous references:

Directives 11/96, 04/97, 16/97, 06/03, 06/08, 15/09

6. Related information:

Public service appeals are administered by the Industrial Registry of the Queensland Industrial Relations Commission (QIRC). Appeals under the PSA are heard and decided by Appeals Officers who are Members of the QIRC (section 88A).

DIRECTIVE**7. Decisions that can be appealed**

- 7.1 Only decisions listed in section 194 of the PSA can be appealed.
- 7.2 For section 194(1)(b) an appeal may be made against a disciplinary finding decision and a decision on disciplinary action.

Note: The current interpretation of the *Public Service Act 2008* by Appeals Officers of the Queensland Industrial Relations Commission is that an appeal can only be commenced after a decision on disciplinary action has been made.

This directive is under review.

This note was inserted on 5 October 2016.

- 7.3 For section 194(1)(e), a decision that a temporary employee's employment in the department is to continue as a temporary employee includes a failure to undertake a review in accordance with section 149 of the PSA.

8. Decisions that cannot be appealed

- 8.1 Decisions listed in section 195 of the PSA cannot be appealed.
- 8.2 For section 195(1)(h), 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
 - (d) to a role which is entry-level as defined by the directive relating to recruitment and selection.
- 8.3 An appeal may 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 assessing and the decision about whether the mandatory attribute is or is not held.
 - (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.
- 8.4 An appeal may not be made under section 194(1)(b) of the PSA where it is in relation to a decision to suspend the employee with normal remuneration.

9. Who may appeal

- 9.1 An appeal may be made by the persons specified in section 196 of the PSA; and
- (a) for a decision under section 194(c) (a promotion decision) – a tenured general employee.
 - (b) for a decision under section 194(e) (a temporary employment decision) – a temporary general employee.
- 9.2 An appeal of a temporary employment decision cannot be made by a person engaged on a casual basis under section 147(2)(b) or 148(2)(b) of the PSA.
- 9.3 Further, an appeal may only be made by the following persons:
- (a) for section 194(1)(a) of the PSA (a decision to take action or not take action under a directive) – the employee directly aggrieved by the decision, provided the employee has reasonably used the department's complaints process prior to lodging the appeal. An employee has reasonably used the department's complaint process if:
 - (i) they have complied with their department's complaint management process; or
 - (ii) the Appeals Officer is of the view that it would be unreasonable in the circumstances for the appellant to fully comply with their department's complaints process; or
 - (iii) the department has failed to make a decision on the complaint within the timeframes specified in the department's complaints process;
 - (b) for a decision under section 194(1)(b) of the PSA (a decision under a disciplinary law to discipline) – the employee or former employee directly aggrieved by the decision to discipline.
 - (c) for a decision under section 194(1)(c) of the PSA (a promotion decision) – the public service officer or tenured general employee aggrieved by the decision provided:

- (i) the decision relates to the gazetted promotion of a public service officer or tenured general employee;
- (ii) the officer's or tenured general employee'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 officer or tenured general employee 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 officer or tenured general employee was covered by the invitation to apply.

10. Directions of an Appeals Officer

10.1 Where an Appeals Officer's decision about a promotion decision or temporary employment decision includes a direction to a department in accordance with section 208(1)(b) of the PSA, the Appeals Officer may make any direction they consider necessary, including, but not limited to:

- (a) for promotion decisions:
 - (i) a direction that, within one (1) month, the chief executive is to revoke the appointment and publish a gazette notice that the appointment is revoked
 - (ii) 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 Appeals Officer
 - (iii) where the chief executive is to recommence the recruitment and selection process or continue it from a particular time or event, a direction that a new selection committee is to be formed and a direction regarding the composition of the new selection committee
- (b) for temporary employment decisions:
 - (i) a direction that the chief executive reviews the status of the temporary employee
 - (ii) a direction that the chief executive recommences the temporary employment review process from the start or continues the process from a particular time or event, to rectify any identified deficiency in the temporary employment review process.
- (c) An Appeals Officer cannot direct the appointment of the appellant.

11. Effect if promotion decision is set aside and appointment is revoked

11.1 If the Appeals Officer decides to set aside a promotion decision, the public service officer or tenured general employee whose promotion is revoked:

- (a) resumes the role and classification which they held immediately before the appointment, 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 Appeals Officer under section 199 of the PSA.

12.2 A decision under section 188 of the PSA (other than termination) does not take effect until:

- (a) if the employee lodges an appeal within the timeframe in section 197 of the PSA – the Appeals Officer 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 the superseded directive are to be finalised under that directive.

Superseded by
Directive 03/17