



Public service appeals annual report

2017–18



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<https://www.qld.gov.au/gov/appeal-decision-affecting-your-employment>

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The Hon. Anastacia Palaszczuk MP
Premier of Queensland
Minister for the Arts
Level 40
1 William Street
BRISBANE QLD 4000

Dear Premier

I am pleased to submit the annual report on public service appeals for the 2017–18 financial year.

The *Public Service Act 2008* (PS Act) enables employees to seek external review of certain employment decisions through the lodgement of a public service appeal with the Queensland Industrial Relations Commission. Appeals are heard and determined by independent Industrial Relations Commission (IRC) members, appointed by the Governor in Council under section 88A of the PS Act.

This report has been prepared in compliance with section 218C of the PS Act, and provides information on appeals started, lapsed, withdrawn and decided during the 2017–18 financial year. The report also includes information about legislative and policy changes undertaken during 2017–18 that may have impacted public service appeals.

Should you require any further information about a matter mentioned in this report, I am happy to assist.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Setter', with a stylized flourish at the end.

Robert Setter
Commission Chief Executive
Public Service Commission

Public service appeals system

Brief history

The public service appeal system, established under the [Public Service Act 2008](#) (the PS Act), provides an avenue for Queensland public service employees to seek an external review of certain employment decisions that affect them.

Appeal rights operate in addition to other external review processes, including those provided for in the [Industrial Relations Act 2016](#). This supports integrity, accountability, and ethical and equitable work practices and decisions in the public service.

Appeal rights in their current form can be traced back to the now repealed [Public Sector Management Commission Act 1990](#) and have been heard and decided by various bodies and officers since that time, as set out in Table 1.

Table 1: Jurisdiction to hear and decide public service appeals

Date	Officer/body with jurisdiction to hear and decide public service appeals
1990–1996	Commissioner for Public Sector Equity or the Classification Review Tribunal
1996–2010	Appeals made to the Public Service Commissioner (who delegated power under the legislation to appropriately qualified public service employees to hear and decide appeals of public service employees)
1 November 2010– 30 June 2012	Statutory role of appeals officer who was appointed as a Senior Executive of the public service. Sessional adjudicators were also used as required by a delegation from the appeals officer
1 July 2012– present	Industrial Relations Commission members (previously appeals officers) who are members of the Queensland Industrial Relations Commission (QIRC)

Appeal framework and categories

Chapter 7 of the PS Act provides the framework for appeals, setting out finite categories of appeal, establishing criteria for eligibility to appeal, and specifying the functions of the QIRC members and their decision-making authority.

Appeals may only be lodged about eight types of decisions:

- a decision to take, or not to take, action under a directive
- a decision under a disciplinary law to discipline
- a decision to promote a public service officer (a promotion decision)
- a decision to transfer a public service officer (a transfer decision)
- 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)
- 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)

- a decision a public service employee believes is unfair and unreasonable (a fair treatment decision)
- a decision about anything else against which another Act allows a person to appeal.¹

Contextual factors

A number of changes occurred in March 2017 following '[A review of the industrial relations framework in Queensland: A Report of the Industrial Relations Legislative Reform Reference Group December 2015](#)' (IR Reform Report).

This included the creation of casual employment appeals, the reinstatement of fair treatment appeals and [Directive 02/17: Managing employee complaints](#), and a new [Directive 8/17 Temporary Employment](#) replacing the one made in 2010. These changes have coincided with a significant increase in appeal numbers for this reporting period compared to 2016-17 as set out below.

2017–18 appeals

Overview

During the 2017–18 financial year, 285 appeals were lodged² of which 241 appeals were finalised³ (see Chart 1). This is a significant increase of 280 percent from 2016–17 where 75 appeals were lodged.

Of the 285 lodged appeals, 146 (51 per cent) related to temporary employment decisions being appeals against a decision not to convert a temporary employee to permanent. There was one appeal against a temporary employment decision in the previous financial year.

This increase was anticipated due to the introduction of Directive 8/17: *Temporary Employment* (which commenced on 1 July 2017) that included changes to the criteria a chief executive must consider when deciding whether to convert a temporary employee and the requirement for an agency to notify a temporary employee when it starts a review of their temporary employment. These changes resulted in heightened employee awareness of temporary employment conversions and associated appeal rights.

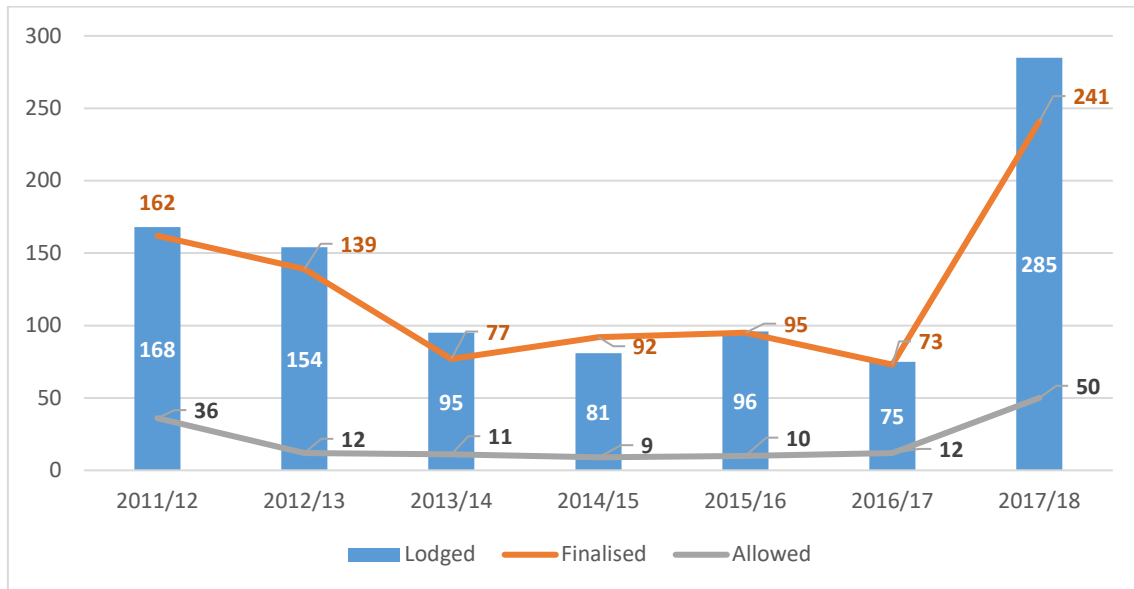
In March 2017, the reinstatement of the managing employee complaints directive (and fair treatment appeals) and the creation of casual employment appeals, have contributed to the overall increase in the number of appeals.

¹ For example, certain actions/decisions made under the *Public Interest Disclosure Act 2010* can be appealed.

² This includes 58 appeals lodged during 2017-18 but were not decided during the same financial year.

³ This includes 14 appeals lodged during 2016-17 but finalised in 2017-18.

Chart 1: Appeals lodged, finalised and allowed (2011–12 to 2017–18)



The average timeframe from lodgement to finalisation of appeals during 2017–18 was 39 days, a decrease from 71 days in 2016–17.

During 2017–18, eight matters took over 100 days to finalise.

Achievement and priorities

Managerial capability is a key factor in sound decision making, whether about project and program outcomes or the effective management of staff. Poor decisions, or poor communication about decisions may be underlying factors in public service appeals. Other factors may be a failure to afford natural justice or to follow the procedures outlined in legislation or directives. Appeals also highlight the opportunity to improve managerial and human resource (HR) capability to minimise disputes escalating to an appeal.

During 2017–18, the PSC continued its focus on providing development opportunities to HR practitioners, managers and executives to improve managerial capability and promptly resolve issues as they arise.

The PSC's key initiatives included the continuation and/or replacement of the:

- LEAD4QLD – leadership excellence assessment and development program, replacing the Executive Capability and Development (ECAD) program (targeting executives) and the Leadership Capability and Development (LCAD) program (targeting senior leaders)
- Leader Connect placement and exchange program (targeting executives)
- the CaPE (conduct and performance excellence) and HR Assist advisory service, which supports managers and HR practitioners to manage and resolve conduct and performance issues and provides advice on public sector policy and legislation.

Improving managerial capability

Capability and development programs provide targeted cohorts opportunities to participate in capability assessment, linked to the sector's [Leadership competencies for Queensland](#) and specifically identifying areas of strength and focus for development. These programs provide an individual, agency and sector-wide picture of our leaders, supporting effective workforce planning and enable targeting of training and development offerings, including internal and external placements.

The conduct and performance excellence (CaPE) service within PSC, started in July 2014, supports managers and HR practitioners across the sector – allowing them to get the best from their teams, support employees and promote conduct and performance excellence. Through the [CaPE and HR Assist advisory service](#) managers and HR practitioners can also receive advice on Queensland Government workforce legislation and policy.

PSC's role is to provide the support, systems and access to skills that agencies need to more effectively manage employee conduct and performance. Examples include [web based self-guided resources](#), supporting material and templates, and scenario-based training.

As an organisation we are committed to ensuring employees with supervisory roles are equipped to understand and fulfil their obligations under section 26 of the PS Act – including ensuring they have the skills and capability to proactively manage the work performance and personal conduct of their reports.

Appeal category data

This section of the report provides information on the appeals started, lapsed, withdrawn and decided for each appeal category under the PS Act. A breakdown of appeal decisions per appeal category and agency are provided in the Appendices.

In addition to those listed, there were six appeals which did not fall into an appeal category.

Appeals against temporary employment decisions

Under section 149 of the PS Act, the employment of a temporary employee must be reviewed to determine whether the employee should continue as a temporary employee or be converted to tenured (permanent) status. An initial review is required after two years of service in the same or substantially the same role, then every year thereafter.

Section 194(1)(e) of the PS Act allows a temporary employee to appeal against a decision to continue their employment on a temporary basis.

Temporary employment decisions constitute the highest number of public service appeals with 146 appeals finalised⁴ in 2017–18. This represents 51 per cent of all appeals. Table 2 highlights the significant increase in the number of appeals lodged in comparison to previous years.

⁴ This includes two appeals against a temporary employment decision lodged in 2016–17 but finalised in 2017–18.

This increase was anticipated due to the introduction of Directive 8/17: *Temporary Employment* (which commenced on 1 July 2017). Directive 8/17 included changes to the criteria a chief executive must consider when deciding whether to convert a temporary employee and introduced a new requirement for an agency to notify the temporary employee when it starts a review of their temporary employment. These changes are likely to have contributed to heightened employee awareness of temporary employment conversions and associated appeal rights.

There were 32 temporary employment decision appeals lodged but not finalised in 2017–18.

Table 2: Finalised appeals against temporary employment decisions

Year	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	Jurisdiction – no appeal category	Total
2017–18	35	41	1	2	33	31	3	146
2016–17	0	0	0	0	0	0	0	0
2015–16	0	0	0	0	0	0	0	0
2014–15	1	0	0	1	0	1	0	3

Appeals against discipline decisions

Section 194(1)(b) of the PS Act provides that an employee may lodge an appeal against a decision under disciplinary law to discipline.

Discipline decisions are the second highest category of appeals following temporary employment decisions. Table 3 sets out the outcomes of discipline appeals. Seven appeals under this category were lodged but not finalised during 2017–18.

Table 3: Finalised appeals against discipline decisions

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
2017–18	8	14	0	0	1	4	5	32
2016–17	10	13	0	1	3	4	9	40
2015–16	8	15	2	0	11	0	21	57
2014–15	6	24	2	2	5	0	14	53

Appeals against fair treatment decisions

Section 194(1)(eb) of the PS Act is a new appeal category, allowing an employee to appeal a decision they believe is unfair and unreasonable. This appeal category was re-introduced in March 2017 in response to the recommendations of the IR Reform Report. Fair treatment appeals had previously been in place being repealed in the 2012–13 period.

As outlined in Table 4, 24 fair treatment decision appeals were finalised⁵ during 2017–18. This number of appeals represents a full financial period of the appeal category and directive being in place.

Five appeals under this category were lodged but not finalised during 2017–18.

Table 4: Finalised appeals against fair treatment decisions

Year	Allowed	Dismissed	No right of appeal	Withdrawn	No Jurisdiction	Total
2017–18	2	14	0	6	2	24
2016–17	0	0	1	1	0	2

Appeals against casual employment decisions

Section 194(1)(ea) of the PS Act is a new appeal category, which allows a casual employee to appeal against a decision to continue their employment on a casual basis. This appeal category was introduced in March 2017 in response to the recommendations of the IR Reform Report. A one-year transition period applied to this appeal category which meant that casual conversion appeals could only be made from 1 March 2018.

As outlined in Table 5, there were 19 appeals against a casual employment decision finalised⁶ in 2017–18. The number of appeals represents four months of the 2017–18 period being 1 March to 30 June 2018. The full impact of this new appeal category should be evidenced in the 2018-19 annual report, following a full financial period.

One appeal under this category was lodged but not finalised during 2017–18.

Table 5: Finalised appeals against casual employment decisions

Year	Allowed	Dismissed	No right of appeal	Withdrawn	No Jurisdiction	Total
2017–18	3	4	0	11	1	19
2016–17	0	0	1	1	0	2

⁵ This includes six appeals against a fair treatment decision lodged in 2016–17 but finalised in 2017–18.

⁶ This includes one appeal against a casual employment decision lodged in 2016–17 but finalised in 2017–18.

Appeals against promotion decisions

Section 194(1)(c) of the PS Act allows an employee to lodge an appeal against a promotion decision. A promotion decision is the appointment of an existing permanent public service employee to a higher classification level. To appeal, the employee must be a public service officer (a tenured employee) who applied for the position in question.

There were 10 appeals against a promotion decision finalised⁷ in 2017–18, as depicted in Table 6. Eight appeals under this category were lodged but not finalised during 2017–18.

Table 6: Finalised appeals against promotion decisions

Year	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	Total
2017–18	2	3	0	0	2	3	10
2016–17	2	7	0	2	0	6	17
2015–16	0	9	1	2	0	9	21
2014–15	0	9	1	8	0	1	19

Appeals against transfer decisions

Section 194(1)(d) of the PS Act allows an employee to lodge an appeal against a decision to transfer the employee. A transfer occurs where an employee remains engaged at the same classification level but is directed to undertake different duties and/or at a different location.

Six appeals against transfer decisions were finalised in 2017–18. Table 7 sets out the outcomes of the transfer appeals. Two appeals under this category were lodged but not finalised during 2017–18.

Table 7: Finalised appeals against transfer decisions

Year	Allowed	Dismissed	No right of appeal	Negotiated settlement	Withdrawn	Total
2017–18	0	3	0	1	2	6
2016–17	0	2	0	0	1	3
2015–16	0	3	0	0	0	3
2014–15	2	2	1	0	4	9

⁷ This includes one appeal against a promotion decision lodged in 2016–17 but finalised in 2017–18.

Appeals against decisions under a directive

Section 194(1)(a) of the PS Act allows an aggrieved employee to lodge an appeal against a decision to take, or not take, action under a directive. Directives under the PS Act are binding instruments issued by the Commission Chief Executive or the Industrial Relations Minister under sections 53 and 54 respectively.

In 2017–18, two appeals were finalised under this appeal category, down from 10 appeals in 2016–17. The outcomes of the appeals are set out in Table 8. Two appeals under this category were lodged but not finalised during 2017–18.

Table 8: Finalised appeals against decision under a directive

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
2017-18	0	1	0	0	0	1	0	2
2016-17	0	1	0	1	5	1	2	10
2015-16	2	6	0	0	4	0	0	12
2014-15	0	1	1	0	1	0	2	5

Appeals against decisions under another Act

Section 194(1)(f) of the PS Act allows an appeal to be made about anything else against which another Act allows a person to appeal.

One appeal against a decision under another Act was finalised during 2017-18. This appeal was against a decision of an agency made under the *Public Interest Disclosure Act 2010*. One appeal under this category was lodged but not finalised in 2017-18. As outlined in Table 9, appeals against decisions under another Act are infrequent, consistent with previous years.

Table 9: Finalised appeals against decisions under another Act

Year	Dismissed	Total
2017-18	1	1
2016-17	1	1
2015-16	0	0
2014-15	0	0

Appendices⁸

Appeals against temporary employment decisions								
Agency	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	No Jurisdiction	Total
Cairns and Hinterland Hospital and Health Service	1	2			1	3		7
Central Queensland Hospital and Health Service	1							1
Children's Health Queensland Hospital and Health Service	1	1						2
Department of Agriculture and Fisheries	4					1		5
Department of Environment and Science	1			1				2
Department of Education	9	17			7	15	2	50
Department of Health	4	4						8
Department of Health, Queensland Ambulance Service					2			2
Department of Housing and Public Works	3	1			3	1		8
Department of Infrastructure, Local Government and Planning					1			1
Department of Science, Information Technology and Innovation	3	2			1	1		7
Gold Coast Hospital and Health Service				1	2			3
Health Support Queensland	2	2			2			6
Mackay Hospital and Health Service						1		1
Metro North Hospital and Health Service	1	1	1		3	1		7
Metro South Hospital and Health Service	5	4			7	2		18
Office of the Health Ombudsman							1	1
Public Safety Business Agency		1						1
Queensland Fire and Emergency Services		1						1
Queensland Museum						2		2
Queensland Police Service					1			1
Sunshine Coast Hospital and Health Service		3			2	3		8
Townsville Hospital and Health Service		2			1	1		4
<i>Total appeals against temporary employment decisions</i>	35	41	1	2	33	31	3	146

⁸ Agency movements due to the Machinery of Government changes in December 2017 are reflected in the breakdown of appeal categories and numbers.

Appeals against discipline decisions								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
Cairns and Hinterland Hospital and Health Service	1					1		2
Darling Downs Hospital and Health Service	1						2	3
Department of Child Safety, Youth and Women		1						1
Department of Communities, Child Safety and Disability Services	1	1				1		3
Department of Education	2					1		3
Department of Health							1	1
Department of Justice and Attorney-General	1							1
Department of Housing and Public Works		1						1
Department of Transport and Main Roads	1							1
Metro North Hospital and Health Service		3						3
Metro South Hospital and Health Service		2			1		1	4
Queensland Fire and Emergency Services	1	1						2
West Moreton Hospital and Health Service		1						1
Wide Bay Hospital and Health Service		4				1	1	6
<i>Total appeals against discipline decisions</i>	8	14	0	0	1	4	5	32

Appeals against fair treatment decisions								
Agency	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	No Jurisdiction	Total
Central Queensland Hospital and Health Service		1						1
Department of Environment and Science							1	1
Department of Education		2						2
Department of Health		1						1
Department of Justice and Attorney-General		2					1	3
Department of Transport and Main Roads	1							1
Metro South Hospital and Health Service		3						3
Office of the Health Ombudsman		1						1
Office of Industrial Relations						2		2
Public Safety Business Agency		2						2
Queensland Fire and Emergency Services						1		1
Sunshine Coast Hospital and Health Service		2						2
Townsville Hospital and Health Service						1		1
Wide Bay Hospital and Health Service	1					2		3
<i>Total appeals against fair treatment decisions</i>	2	14				6	2	24

Appeals against casual employment decisions								
Agency	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	No Jurisdiction	Total
Cairns and Hinterland Hospital and Health Service						1		11
Central Queensland Hospital and Health Service	1	1						2
Department of Communities, Child Safety and Disability Services						1		1
Department of Communities, Disability Services and Seniors		2				7		9
Metro North Hospital and Health Service	1	1				2		3
Sunshine Coast Hospital and Health Service							1	1
Wide Bay Hospital and Health Service	1							1
<i>Total appeals against casual employment decisions</i>	3	4	0	0	0	11	1	19

Appeals against promotion decisions								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
Central Queensland Hospital and Health Service		1					1	2
Department of Child Safety, Youth and Women	1							1
Department of Health, Queensland Ambulance Service		1				1		2
Department of Housing and Public Works							1	1
Department of Transport and Main Roads		1						1
Gold Coast Hospital and Health Service						1		1
Metro South Hospital and Health Service	1						1	2
<i>Total appeals against promotion decisions</i>	2	3	0	0	0	2	3	10

Appeals against transfer decisions								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
Department of Education		2				1	2	5
Torres and Cape Hospital and Health Service		1						1
<i>Total appeals against transfer decisions</i>	0	3	0	0	0	1	2	6

Appeals against decision under a directive								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
Metro South Hospital and Health Service		1				1		
<i>Total appeals against decisions under a directive</i>	0	1	0	0	0	1	0	2

Appeals against decisions under another Act								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
Department of Health		1						1
<i>Total appeals against decisions under another Act</i>	0	1	0	0	0	0	0	1