

# Annual report on public service appeals

2014–15 financial year

The Hon. Anastacia Palaszczuk MP  
Premier of Queensland  
Minister for the Arts  
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BRISBANE QLD 4000

Dear Premier

I am pleased to present the Annual report on public service appeals for the 2014–15 financial year.

The *Public Service Act 2008* (PSA) enables employees to seek external review of certain employment decisions through the lodgement of a public service appeal. Appeals are heard and determined by independent appeals officers, appointed by the Governor in Council under s88A of the PSA.

This report has been prepared in compliance with s218C of the PSA, and provides information on appeals started, lapsed, withdrawn and decided during the 2014–15 financial year. The report also includes information about activities that have been undertaken in the 2014–15 financial year and/or that are planned for the 2015–16 financial year that impact on public service appeals.

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

Yours sincerely



Robert Setter  
**Commission Chief Executive (Acting)**

## Contents

<b>Public service appeals system .....</b>	<b>3</b>
Brief history .....	3
Appeal framework and categories .....	3
<b>2014–15 appeals.....</b>	<b>4</b>
Overview .....	4
Achievements and priorities.....	5
<b>Appeal category data.....</b>	<b>6</b>
Appeals against decisions under a directive .....	6
Appeals against discipline decisions.....	6
Appeals against promotion decisions .....	7
Appeals against transfer decisions .....	7
Appeals against temporary employment decisions .....	7
Appeals against decisions under another Act.....	8
<b>Appendix 1: Appeals categories by agency by outcome (finalised appeals) .....</b>	<b>9</b>

## Public service appeals system

### Brief history

The public service appeal systems is established under the *Public Service Act 2008* (PSA) and 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 1999*. Review rights—such as appeals—support 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Appeal rights in their current form can be traced back to the now repealed *Public Sector Management Commission Act 1990* and have been heard and decided by various bodies and officers since that time as set out in Table 1.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 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 utilised as required by a delegation from the appeals officer.
1 July 2012–present	Appeals officers who are also members of the Queensland Industrial Relations Commission.

### Appeal framework and categories

Chapter 7 of the PSA provides the framework for appeals, setting out finite categories of appeal, establishing criteria for eligibility to appeal along with specifying the functions of appeals officers and their decision making authority.

Appeals may only be lodged about:

- a decision to take, or not to take, action under a directive
- a disciplinary decision
- a promotion decision
- a decision to transfer an employee
- a decision that an employee’s employment will continue in a temporary capacity
- a decision about a matter for which another Act allows a person to appeal.<sup>1</sup>

<sup>1</sup> For example, certain actions / decisions made under the *Public Interest Disclosure Act 2010* can be appealed.  
Annual report on public service appeals 2014–15 financial year

Appeals can only be lodged by employees directly affected by the decision in question.

An appeals officer must perform their duties independently, impartially, fairly and in the public interest, and cannot be directed by the Public Service Commission (PSC), the Commission Chief Executive (CCE) of the PSC or any minister.

The PSA also requires that a directive be issued by the CCE, providing further requirements regarding the appeals categories, eligibility to appeal and the directions that may be made when appeals officers make decisions. Directive 02/14: Appeals is the current instrument, effective 27 June 2015.

## 2014–15 appeals

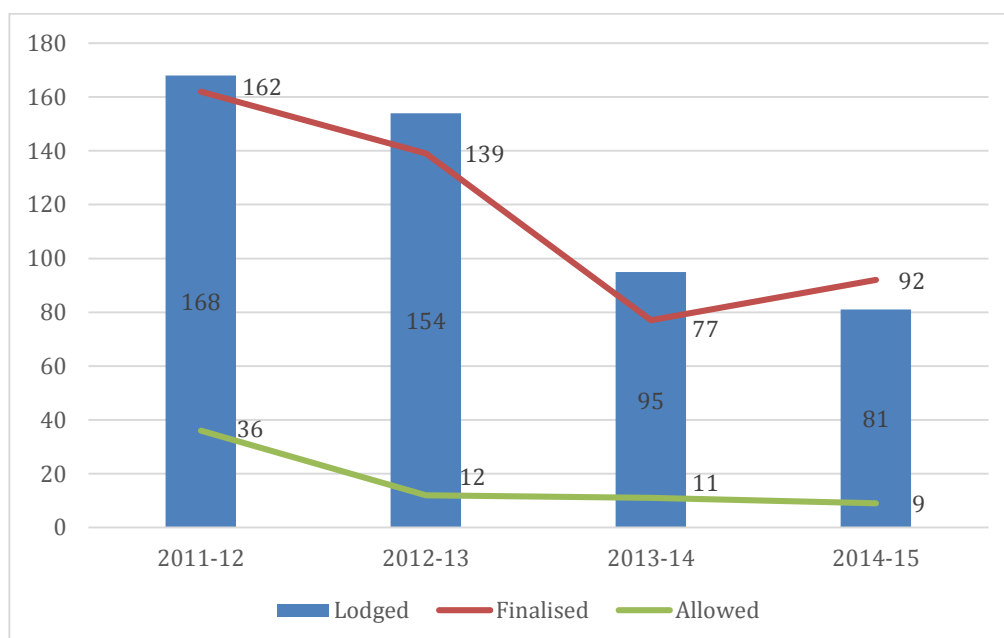
### Overview

In the 2014–15 financial year, 81 appeals were lodged<sup>2</sup> and 92 appeals were finalised<sup>3</sup>. Eight appeals were not finalised during the financial year, and have carried forward.

The number of appeals lodged each year continues to decline, and there has been a decrease in the proportion of appeals allowed in 2014–15 compared to 2013–14 (**Chart 1**).

Of the appeals finalised during the 2014–15 financial year 49 per cent (n=45) proceeded to hearing. The remaining appeals were finalised when the appeal lapsed, was withdrawn, because there was no right of appeal or when the appeals officer declined to hear the appeal.

**Chart 1: Appeals lodged, finalised and allowed (2011–12 to 2014–15)**



Of the appeals finalised in the 2014–15 financial year, the average timeframe from lodgement to finalisation was 54.6 days.

<sup>2</sup> This included three instances in which notices of appeal were lodged, however the issues of contention in the notices did not relate to matters about which appeals can be lodged.

<sup>3</sup> This includes 19 appeals lodged in the 2013–14 financial year which were finalised in the 2014–15 financial year.

## Achievements and priorities

The PSC's strategic and operational priorities for 2014–15 focused on partnering with the sector to build a high performing, customer focussed workforce capable of delivering better social and economic outcomes for Queensland. Key components of the strategy centred on the development of managers and leaders across the public sector. Managerial capability is a key factor in effective decision making, whether about project and program outcomes or the management of staff. Poor decision, or poor communication about decisions, is often an underlying factor in public service appeals.

Key initiatives included the continuation of the Executive Capability and Development (ECAD) program (targeting executives), the commencement of the Leadership Capability and Development (LCAD) program (targeting senior leaders) and the HR Capability and Development programs, and the establishment of the PSC's Conduct and Performance Excellence (CaPE) service.

The capability and development programs are initiatives through which targeted cohorts participate in a capability assessment, identifying areas of strength and developmental focuses. These programs provide an individual, agency and sector wide picture of our leaders, supporting effective workforce planning and enabling targeting of training and development offerings.

The CaPE service commenced on 1 July 2014. CaPE supports managers and HR professionals in agencies to promote excellent conduct and high performance, as well as manage poor conduct and performance. CaPE's role is to provide the support, systems and access to skills that agencies need to better manage conduct and performance.

In the 2014–15 financial year CaPE conducted a range of workshops with managers and human resource professionals around the state, providing guidance and busting myths on topics such as recruitment and selection, performance management and discipline. CaPE has also been actively working with agencies to improve decision making, with a focus on achieving timely and proportionate outcomes.

The PSC's work represents a considerable investment in our people leaders, ensuring they understand and can articulate the expectations of public service employees, and equipping them to fulfil their obligations under s26 of the PSA. Section 26 requires public service managers to proactively manage the work performance and person conduct of their reports, including taking prompt and appropriate action to address unacceptable performance or conduct.

As the data below indicates, increasing numbers of agency decisions are upheld on appeal, suggesting improvements in the decisions being made and process conduct by agency managers and human resource practitioners. There is still, however opportunity for improvement; the PSC will continue to monitor appeals decisions and the impact of CaPE, particularly in relation to discipline and recruitment (being the two highest appeal areas).

The appeal data also provides relevant information for any review of the PSA, helping to inform decisions about the appeals system, its form and effectiveness.

## Appeal category data

This section of the report provides information on the appeals started, lapsed, withdrawn and decided for each appeal category under the PSA. Appendix 1 provides a breakdown of each appeal category by agency.

### Appeals against decisions under a directive

Section 194(1)(a) of the PSA allows an aggrieved employee to lodge an appeal against a decision to take, or not take, action under a directive. Directives under the PSA are binding instruments issued by the minister responsible for public sector industrial relations or the CCE.

In 2014–15, five appeals were finalised under this appeal category, representing a 17 per cent decrease from the 2013–14 financial year. A further appeal under this category was lodged but not finalised during the 2014–15 financial year. The outcomes of the appeals are set out in Table 2. No appeals against decisions under a directive were allowed.

**Table 2: Outcome of finalised appeals against decisions under a directive (2014–15)**

Dismissed	Lapsed	No right of appeal	Withdrawn	Total
1	1	1	2	5

### Appeals against discipline decisions

Section 194(1)(b) of the PSA allows an employee to lodge an appeal against a decision under disciplinary law to discipline; this incorporates a decision that disciplinary grounds exist *and* a decision to impose disciplinary action (excluding termination of employment<sup>4</sup>). Former public service employees against whom a disciplinary declaration has been made can also appeal.

In 2014–15, 53 appeals were finalised under this appeal category (with an additional five carried over), representing a 77 per cent increase from the 2013–14 financial year. Table 3 sets out the outcomes of such appeals.

While there was an increase in the number of discipline appeals finalised in 2014–15, only 11 per cent were allowed. This is a nine per cent reduction from the 2013–14 financial year. Forty-five per cent (n=24) of the discipline appeals finalised in the 2014–15 financial year were dismissed. This is a decrease of five per cent from the previous financial year, however an increase in real numbers of n=9.

While no direct conclusions can be drawn as to the reasons for the changes from the previous financial year, it should be noted that these changes coincide with an increased emphasis across the sector on timely and proportionate management of performance and conduct. This, coupled with the continuing work of the CaPE service in working with agency human resource practitioners to improve confidence and capacity in the management of discipline processes, may have positively contributed to the changes.

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<sup>4</sup> Employees can seek review of a termination decision through the Queensland Industrial Relations Commission.



**Table 3: Outcome of finalised discipline appeals (2014–15)**

Allowed	Declined to hear	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
6	2	24	2	5	14	53

### Appeals against promotion decisions

Section 194(1)(c) of the PSA 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 an existing public servant who applied for the role in question.

Appeals against promotion decisions were the second highest category of appeals, with 19 finalised in 2014–15. Table 4 provides the outcomes of promotion appeals finalised in 2014–15.

The number of promotion appeals increased from 13 in 2013–14, however no promotion appeals in the 2014–15 financial year were allowed. The number of instances where there was no right of appeal increase by five from the 2013–14 financial year.

**Table 4: Outcome of finalised promotion appeals (2014–15)**

Dismissed	Lapsed	No right of appeal	Withdrawn	Total
9	1	8	1	19

### Appeals against transfer decisions

Section 194(1)(d) of the PSA allows an employee to lodge an appeal against a decision to transfer them. A transfer occurs where an employees is engaged at the same classification level undertaking different duties and/or at a different location.

Nine appeals against transfer decisions were finalised in 2014–15, representing a 36 per cent decrease from 2013–14 (down from 14). One additional transfer appeal was lodged but not yet determined in the 2014–15 financial year. Table 5 sets out the outcomes of the transfer appeals.

**Table 5: Outcome of finalised transfer appeals**

Allowed	Dismissed	No right of appeal	Withdrawn	Total
2	2	1	4	9

### Appeals against temporary employment decisions

Under s149 of the PSA, 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 role, then every year thereafter. Section 194(1)(e) of the PSA allows a temporary employee to appeal against a decision that they will continue as a temporary employee.

Only three appeals against temporary employment decisions were finalised in 2014–15 (the same as 2013–14). Table 6 provides the outcomes of appeals against temporary employment decisions.



**Table 6: Outcome of finalised temporary employment appeals**

Allowed	No right of appeal	Withdrawn	Total
1	1	1	3

**Appeals against decisions under another Act**

No appeals were lodged or finalised against decisions under another Act.

## Appendix 1: Appeals categories by agency by outcome (finalised appeals)

Agency	Allowed	Declined to hear	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
<b>Appeals against decisions under a directive</b>							
Department of Communities Child Safety and Disability Services						1	1
Department of Environment and Heritage Protection			1				1
Department of Education and Training					1		1
Department of Science, Information Technology and Innovation				1			1
Queensland Police Service						1	1
<i>Total appeals against decisions under a directive</i>			1	1	1	2	5
<b>Appeals against discipline decisions</b>							
Cairns and Hinterland Hospital and Health Service	2		3				5
Department of Agriculture and Fisheries			1			1	2
Department of Communities Child Safety and Disability Services	1	1	2				4
Department of Education and Training			3		1	1	5
Department of Housing and Public Works				1			1
Department of Justice and Attorney-General	1	1	3		1	1	7
Department of National Parks, Sport and Racing			1				1
Department of Premier and Cabinet						1	1
Department of Transport and Main Roads	1				1	2	4
Gold Coast Hospital and Health Service						1	1
Metro North Hospital and Health Service			2		1		3
Metro South Hospital and Health Service			2		1		3
Public Safety Business Agency			2				2
Queensland Ambulance Service						1	1
Queensland Fire and Emergency Services			3				3
Department of Health	1			1		4	6

Agency	Allowed	Declined to hear	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
Queensland Police Service						1	1
Sunshine Coast Hospital and Health Service						1	1
Wide Bay Hospital and Health Service			2				2
<i>Total appeals against discipline decisions</i>	6	2	24	2	5	14	53
<b>Appeals against promotion decisions</b>							
Darling Downs Hospital and Health Service					1		1
Department of Education and Training			1		1		2
Department of Environment and Heritage Protection					1		1
Department of Justice and Attorney-General			2	1			3
Department of National Parks, Sport and Racing					1		1
Department of Natural Resources and Mines			1				1
Department of Transport and Main Roads			3		1		4
Public Safety Business Agency			1		1		2
Queensland Ambulance Service			1				1
Queensland Fire and Emergency Services					2	1	3
<i>Total appeals against promotion decisions</i>			9	1	8	1	19
<b>Appeals against transfer decisions</b>							
Department of Education and Training	1		2		1	4	8
West Moreton Hospital and Health Service	1						1
<i>Total appeals against transfer decisions</i>	2		2		1	4	9
<b>Appeals against temporary employment decisions</b>							
Department of Housing and Public Works					1		1
Metro North Hospital and Health Service	1						1
Sunshine Coast Hospital and Health Service						1	1
<i>Total appeals against temporary employment decision</i>	1				1	1	3
<b>Grand totals</b>	<b>9</b>	<b>2</b>	<b>36</b>	<b>4</b>	<b>16</b>	<b>22</b>	<b>89*</b>

\* excludes the three matters where appeal notifications were submitted but did not relate to a recognised appeal category.