

1. Title: Appeals

2. Purpose:

To establish directions for the application of the appeals provisions of the *Public Service Act 2008*.

3. Legislative Provision: *Public Service Act 2008* – Chapter 7

4. Effective date: 2 November 2009

5. Provisions:

PART 1: APPEALS AGAINST PROMOTION DECISIONS

Officer entitled to appeal

- 5.1 An officer entitled to appeal a promotion decision means-
- an officer of a Department;
 - a general employee of a Department with tenure;
 - an officer of a Public Service Office;
 - a general employee of a Public Service Office with tenure; or
 - a tenured public sector employee of a public sector unit which applies promotional appeal rights under Schedule 1 of the *Public Service Regulation 2008*.
- 5.2 An officer entitled to appeal must satisfy the following requirements -
- the officer must have applied for a vacancy to which one of the following persons was promoted:
 - an officer of a Department;
 - a general employee of a Department with tenure;
 - an officer of a Public Service Office;
 - a general employee of a Public Service Office with tenure; or
 - a tenured public sector employee of a public sector unit which applies promotional appeal rights under Schedule 1 of the *Public Service Regulation 2008*.
 - the officer's application for the vacancy must have been received before the deadline for the receipt of applications;
 - the officer's notice of appeal must be actually received by the Commission Chief Executive before the deadline for its receipt;
 - the officer must continue to be entitled to appeal.
- 5.3 The provisions of 5.2 (a) and (b) do not apply to appeals lodged against promotions where the promotion results from the application of the direct appointment provisions of the directive relating to recruitment and selection.

Appeals may not be made against certain appointments

- 5.4 The Commission Chief Executive declares that appeals may not be made against:
- a. the appointment (including promotion) of any person:
 - i. to a job which is in a Ministerial office;
 - ii. to a base-grade level job as defined in the directive relating to recruitment and selection;
 - b. an officer whose job has had its salary, duties and designation modified by an industrial determination and who then continues to hold that job;
 - c. the promotion of an officer pursuant to a progressional scheme contained in an industrial determination or other industrial agreement approved by the chief executive;
 - d. the promotion, transfer, redeployment or secondment of any person to a job in a public sector unit remunerated in excess of the maximum salary applicable to a public service level AO8.

Interpretation - 'Gazette' may mean another publication

- 5.5 When -
- a. a public sector unit does not give notice of an appointment in the Gazette but gives notice in a publication other than the Gazette; and
 - b. a reference is made in a directive to the notification in the Gazette of a vacancy, an appointment or a revocation;
- the reference must be taken to be the publication used by the public sector unit.

Deadline for receipt of promotion appeals

- 5.6 The deadline for the actual receipt of the notice of appeal by the Commission Chief Executive is 5 p.m. on the 21st calendar day after the day on which the promotion of the officer was notified in the Gazette.
- 5.7 The notice of appeal on the prescribed form may be lodged by the appellant or by an authorised agent (eg a union official) and may be sent by post, facsimile or email or delivered in person to the Public Service Commission.

Directions when setting aside a promotion decision

- 5.8 Where the Commission Chief Executive determines to set aside a promotion decision, any one or more of the following directions may be given to the public sector unit -
- a. a direction that, within one month, the chief executive is to revoke the appointment arising from the promotion decision and publish a Gazette notice to notify that the appointment of the appointee is revoked.
 - b. a direction that the chief executive commences the process again (including advertising the vacancy) or continues with the process from a particular time or event.
 - c. where the chief executive is to commence the process again or continue it from a particular time or event, a direction that a new selection committee is to be formed to undertake the recommenced or continued process and the new selection committee shall not contain some or all of the selection committee members who undertook the selection exercise to which the appeal relates.

Effect if promotion decision is set aside

- 5.9 This section applies when the Commission Chief Executive determines to set aside a promotion decision as provided in section 5.8 (a).
- 5.10 The officer whose appointment is revoked -
- a. if his or her previous job is vacant - resumes the job and classification which he or she held immediately before his or her appointment; and
 - b. in any other case - continues to be employed in the public sector unit in which he or she was appointed immediately before his or her appointment and his or her rate of salary must be not less than he or she was paid immediately before the appointment.

PART 2: APPEALS AGAINST A DECISION TO DISCIPLINE

Officers entitled to appeal

- 5.11 An officer entitled to appeal a disciplinary decision means -
- a. an employee who may be disciplined under section 188 of the *Public Service Act 2008*;
 - b. a former employee who may be disciplined under section 188A of the *Public Service Act 2008*; or
 - c. an employee who may be disciplined under another Act and to whom appeal rights apply under Schedule 1 of the *Public Service Regulation 2008*.

Deadline for receipt of appeal against discipline decision

- 5.12 A notice of appeal against a decision to discipline an officer must be actually received by the Commission Chief Executive before 5 p.m. on the 21st calendar day after the day on which the officer received written notice of the decision to discipline.
- 5.13 The notice of appeal, on the prescribed form, may be lodged by the appellant or by an authorised agent (eg a union official) and may be sent by post, facsimile or email or delivered in person to the Public Service Commission.

Deferral of disciplinary action until after appeal

- 5.14 This section applies to a decision to take disciplinary action against an officer, other than dismissal or suspension. This does not include a disciplinary declaration of dismissal made against a former employee.
- 5.15 The action does not take effect until -
- a. if the officer's notice of appeal is received before the deadline - the Commission Chief Executive allows or dismisses the appeal; or
 - b. in any other case - the end of the period of 21 calendar days after the officer received the written notice of the decision.

PART 3: FAIR TREATMENT

Fair Treatment

- 5.16 Employees must be treated fairly and reasonably.
- 5.17 Failure to comply with section 5.16 shall not be a reason for an appeal in respect of the following:

- a. recruitment and selection, other than in relation to a decision regarding equivalence of qualifications;
- b. a decision to apply or not to apply the direct appointment provisions of the directive relating to recruitment and selection;
- c. discipline;
- d. performance review - other than a final review;
- e. the process of grievance resolution – other than a final decision;
- f. executive performance management and development - other than the overall performance rating;
- g. management of diminished performance - other than a final review;
- h. job evaluation (including the JEMS Manual and methodology, the job evaluation points factor result or subsequent classification outcome of an evaluation) - other than a decision to defer or refuse a request for an evaluation of her/his job role and/or alleged deficiencies in completed job analysis and job evaluation processes of the Job Evaluation Management System; and
- i. suspension - other than suspension without pay.

Officers entitled to appeal

- 5.18 An officer entitled to appeal a decision to take, or not take, action under this directive means -
- a. an officer of a Department;
 - b. a general employee of a Department;
 - c. a temporary employee of a Department;
 - d. an officer of a Public Service Office;
 - e. a general employee of a Public Service Office;
 - f. a temporary employee of a Public Service Office; or
 - g. a public sector employee of a public sector unit listed in Schedule 1 of the *Public Service Regulation 2008*.
- 5.19 An officer entitled to appeal under this directive must be an officer aggrieved in relation to their individual interests by the action or failure to act.

Appeals about classification levels

- 5.20 An officer cannot appeal to the Commission Chief Executive against a decision about the classification level of employment, except where the appeal concerns movement from Level 2 to Level 3 within the Professional and Technical Streams in accordance with the prescribed criteria for movement including where such movement is prevented by a decision regarding equivalence of qualifications.

Grievance resolution process

- 5.21 An appellant shall satisfy the Commission Chief Executive that the appellant has sufficiently used the grievance procedure in an attempt to resolve the issues under appeal.
- 5.22 An appellant has sufficiently used the procedures if:
- a. the Commission Chief Executive is of the view that it would be unreasonable in the circumstances of the case for the appellant to comply fully with those procedures; or

- b. the chief executive has not complied with the specified time frames for the full procedure and the failure to comply with those timeframes can reasonably constitute a decision not to take action to resolve the grievance.

Deadline for receipt of appeal

- 5.23 A notice of appeal made under the directive relating to employment screening must be actually received by the Commission Chief Executive before 5 p.m. on the 7th calendar day after the day the decision was notified. For all other appeals the notice of appeal must be actually received by the Commission Chief Executive before 5 p.m. on the 21st calendar day after the day on which the officer received written notice of the decision on their grievance about the matter.
- 5.24 The notice of appeal, on the prescribed form, may be lodged by the appellant or by an authorised agent (eg a union official) and may be sent by post, facsimile or email or delivered in person to the Public Service Commission.

Superseded