



Public service appeals annual report

2016-17



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Published by the State of Queensland (Public Service Commission), January 2018.



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For more information contact:

Workforce Policy and Legal, Public Service Commission, PO Box 15190, City East, Brisbane QLD 4002, email commission.psc@psc.qld.gov.au, phone (07) 3003 2800.

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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 2016-17 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 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has been prepared in compliance with section 218C of the PS Act, and provides information on appeals started, lapsed, withdrawn and decided during the 2016-17 financial year. The report also includes information about activities that have been undertaken during 2016-17 that may have impacted 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
Public Service Commission

Public service appeals system

Brief history

The public service appeal system, established under the *Public Service Act 2008* (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*. 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Appeal rights in their current form can be traced back to the now repealed *Public Sector Management Commission Act 1990* and have been heard and decided by various bodies and officers since that time, as set out in Table 1.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 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	IRC members (previously appeals officers) who are also members of the Queensland Industrial Relations Commission.

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 IRC members and their decision-making authority.

Appeals may only be lodged about:

- 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);
- **(new)** 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);
- **(new)** a decision a public service employee believes is unfair and unreasonable (a fair treatment decision); and

- a decision about anything else against which another Act allows a person to appeal.¹

The ability to appeal a casual employment decision and a fair treatment decision are new appeal rights, introduced in March 2017 in response to the recommendations within the 'A review of the industrial relations framework in Queensland: A Report of the Industrial Relations Legislative Reform Reference Group December 2015' (IR Reform Report). The resulting changes to the PS Act also gave IRC Members the power to substitute a decision not to convert a temporary employee to permanent following a review of their employment status under s.149 of the PS Act. Prior to those amendments an IRC Member could only confirm an agency's decision or set the decision aside and return the issue to the decision maker.

Only employees directly affected by the decision in question can lodge an appeal about the decision.

An IRC member 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.

2016-17 appeals

Overview

During the 2016-17 financial year, 75 appeals² were lodged and 73 appeals were finalised.³ Nine of the appeals lodged during 2016-17 were not finalised during the financial year, and the outcomes will be included in next year's annual report.

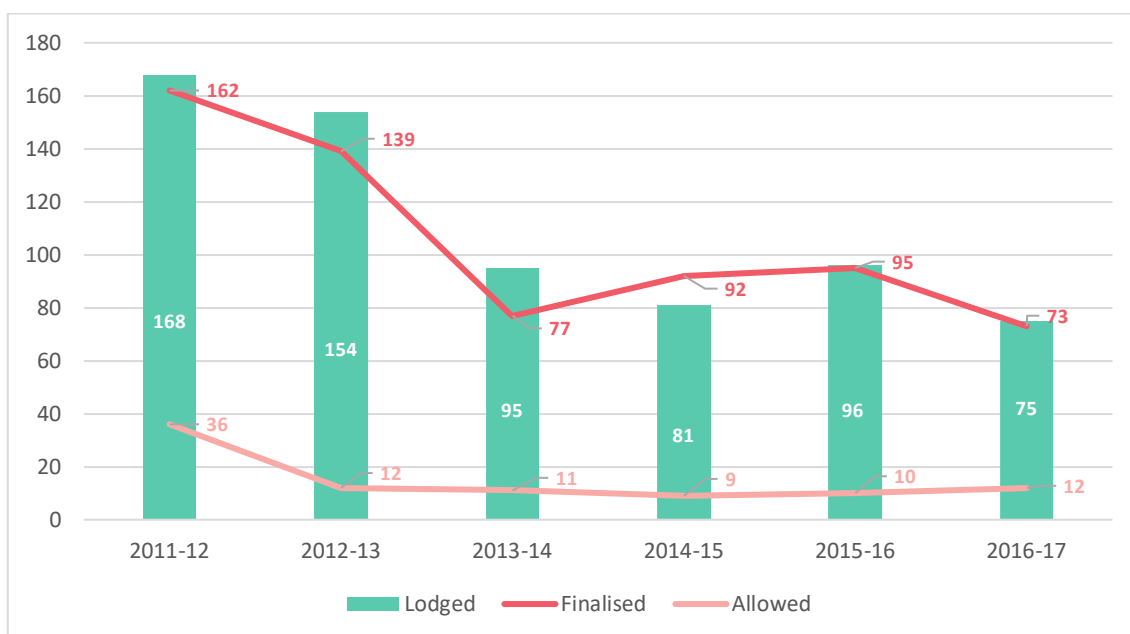
The number of appeals lodged on a yearly basis has remained relatively stable over the past four years, following a notable decrease after 2012-13 (**Chart 1**). The decline in appeals lodged following 2012-13 coincided with the removal of the managing employee complaints directive which allowed employees to appeal the handling of complaints under that directive. This directive was reinstated in March 2017. The reinstatement of the directive did not impact the number of appeals lodged in the 2016-17 period. However, the impact of reinstating that directive and the changes to appeal grounds for casual and temporary conversion decisions and fair treatment decisions will only become apparent from 2017-2018.

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

² This includes nine appeals that were lodged during 2016-17 but were not decided during the financial year.

³ This includes seven appeals that were lodged during 2015-16 but finalised in 2016-17.

Chart 1: Appeals lodged, finalised and allowed (2011–12 to 2016–17)



The average timeframe from lodgement to finalisation of appeals finalised during 2016–17 was 71.0 days – an increase from 53.4 days in 2015–16.

Principally, this increase was due to one matter that took over 500 days to finalise. That matter was a discipline appeal lodged in 2015 but was held in abeyance pending the outcome of a reinstatement application in the Industrial Registry. The appeal was ultimately dismissed in August 2016 after the application for reinstatement failed and the appellant lost standing to appeal.

Achievement and priorities

During 2016-17, the PSC continued its focus on providing development opportunities to human resource (HR) professionals, managers and executives. Managerial capability is a key factor in effective decision making, whether about project and program outcomes or the management of staff. Poor decisions, or poor communication about decisions, is often an underlying factor in public service appeals.

The PSC's key initiatives included the continuation of the:

- Executive Capability and Development (ECAD) program (targeting executives);
- Leadership Capability and Development (LCAD) program (targeting senior leaders);
- HR capability and development programs; and
- 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 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.

The CaPE service, which commenced on 1 July 2014, 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 response to the legislative changes following the IR Reform Report, the PSC provided information sessions and workshops which addressed these changes, as well as other important matters such as how to respond to common workplace conflicts.

The PSC also provides managers and HR professionals with advice on the Queensland Government's workforce legislation and policy via the 'CaPE and HR Assist' advisory service.

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 section 26 of the PS Act, which requires public service managers to proactively manage the work performance and personal conduct of their reports.

While there is a high percentage of agency decisions upheld on appeal there is always opportunity for improvement. The PSC will continue to monitor appeal decisions particularly following the changes to appeal grounds in 2017 and also in relation to discipline and promotion appeals.

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. The appendices provide a breakdown of appeal decisions per appeal category and agency.

In addition to the below, there were two appeals which did not fall into an appeal category.

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 2016-17, ten appeals were finalised under this appeal category, down from twelve in 2015-16. The outcomes of the appeals are set out in Table 1.

Table 1: outcome of finalised appeals against decision under a directive

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
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 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.

During 2015-16 QIRC members favoured a narrower interpretation of this appeal category by finding that a disciplinary finding decision and decision on disciplinary action are two components of a single disciplinary decision. Previously, the interpretation was that an appeal under this category could be after a decision was made that disciplinary grounds exist *and* when a decision was made to impose disciplinary action (excluding termination of employment).⁴ This change in approach may have contributed to the reduced number of discipline decisions lodged during 2016-17.

Discipline decisions remain the highest category of appeals, despite the number lodged reducing from 57 in 2015-16 to 40 in 2016-17. Table 2 sets out the outcomes of such appeals. Two appeals under this category were lodged but not finalised during 2016-17.

Table 2: outcome of finalised appeals against discipline decisions

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
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 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.

Appeals against promotion decisions was the second highest category of appeals, with 17 appeals finalised in 2016-17. Table 3 provides the outcomes of promotion decision appeals finalised in 2016-17. One appeal under this category was lodged but not finalised during 2016-17.

Table 3: outcome of finalised appeals against promotion decisions

Year	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
2016-17	2	7	0	2	6	17
2015-16	0	9	1	2	9	21
2014-15	0	9	1	8	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.

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

Three appeals against transfer decisions were finalised in 2016-17, in line with the number finalised during 2015-16. Table 4 sets out the outcomes of the transfer appeals.

Table 4: outcome of finalised appeals against transfer decisions

Year	Allowed	Dismissed	No right of appeal	Withdrawn	Total
2016-17	0	2	0	1	3
2015-16	0	3	0	0	3
2014-15	2	2	1	4	9

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.

One appeal under this category was lodged, but not finalised, during 2016–17. Table 5 highlights that the last temporary employment appeal decisions were finalised during 2014-15.

Table 5: outcome of finalised appeals against temporary employment decisions

Year	Allowed	Dismissed	Lapsed	No right of appeal	Withdrawn	Total
2016-17	0	0	0	0	0	0
2015-16	0	0	0	0	0	0
2014-15	1	0	0	1	1	3

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 introduced in March 2017 in response to the recommendations of the IR Reform Report.

As outlined in Table 6, two fair treatment decision appeals were finalised during 2016-17. Five further appeals were lodged, but not finalised, during 2016–17.

Table 6: outcome of finalised appeals against fair treatment decisions

Year	No right of appeal	Withdrawn	Total
2016-17	1	1	2

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 2016-17. As outlined in Table 7, this is the only appeal against decisions under another Act that has been lodged and finalised in recent years. The appeal was against a decision of an agency made under the *Public Interest Disclosure Act 2010*.

Table 7: outcome of finalised appeals against decisions under another Act

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

Appendices

<i>Appeals against decision under a directive</i>								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
Department of Education and Training				1			1	2
Department of Justice and Attorney-General		1			1			2
Department of Natural Resources and Mines							1	1
Department of Transport and Main Roads					1			1
Metro North Hospital and Health Service					1	1		2
South West Hospital and Health Service					1			1
TAFE Queensland					1			1
<i>Total appeals against decisions under a directive</i>	0	1	0	1	5	1	2	10

<i>Appeals against discipline decisions</i>								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
Cairns and Hinterland Hospital and Health Service	1				1			2
Central Queensland Hospital and Health Service		1						1
Darling Downs Hospital and Health Service	1							1
Department of Communities, Child Safety and Disability Services	1	1						2
Department of Education and Training	1			1	1	1		4
Department of Health	1							1
Department of Justice and Attorney-General					1		1	2
Department of National Parks, Sport and Racing	1							1
Department of Natural Resources and Mines						1		1
Department of Science, Information Technology and Innovation		1					1	2
Gold Coast Hospital and Health Service	1							1
Queensland Ambulance Service							1	1
Queensland Fire and Emergency Services	1						1	2
Queensland Treasury		1						1
Metro North Hospital and Health Service		1				1	2	4

Metro South Hospital and Health Service	2	4					1	7
North West Hospital and Health Service		1						1
State Library							1	1
Sunshine Coast Hospital and Health Service							1	1
Torres and Strait Hospital and Health Service		1						1
West Moreton Hospital and Health Service		1						1
Wide Bay Hospital and Health Service		1				1		2
<i>Total appeals against discipline decisions</i>	<i>10</i>	<i>13</i>	<i>0</i>	<i>1</i>	<i>3</i>	<i>4</i>	<i>9</i>	<i>40</i>

Appeals against promotion decisions

Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
Darling Downs Hospital and Health Service							1	1
Department Agriculture and Fisheries							1	1
Department of Education and Training							2	2
Department of Housing and Public Works		1						1
Department of Justice and Attorney-General	1	2					1	4
Department of Transport and Main Roads	1	2			1		1	5
Metro North Hospital and Health Service		1						1
Metro South Hospital and Health Service					1			1
Queensland Treasury		1						1
<i>Total appeals against promotion decisions</i>	<i>2</i>	<i>7</i>	<i>0</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>6</i>	<i>17</i>

Appeals against transfer decisions

Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
Department of Housing and Public Works		2						2
West Moreton Hospital and Health Service							1	1
<i>Total appeals against transfer decisions</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>3</i>

<i>Appeals against fair treatment decisions</i>								
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated	Withdrawn	Total
Department of Science, Information Technology and Innovation							1	1
Department of Transport and Main Roads					1			1
<i>Total appeals against fair treatment decisions</i>	0	0	0	0	1	0	1	2

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