



APPEALS GUIDE

**Submitting or responding
to a Public Service Appeal**

PUBLIC SERVICE APPEALS

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1. Purpose

This guide is designed to help parties appealing under the *Public Service Act 2008* (the Act) understand the Appeal process and to assist agency representatives in responding to an Appeal. The guide applies to all categories of Appeals under the Act. This document is for guidance only and parties should be aware individual Appeals may be managed differently if circumstances require.

2. Definitions

"Act" means the *Public Service Act 2008*.

"Appeal" means an Appeal started against a decision as specified in sections 193, 194, 196 and 197 of the Act.

"Appeal Notice" means a notice given to the Industrial Registrar to start an Appeal in accordance with section 197(1) of the Act.

"Appellant" means a person who starts an Appeal against a decision as specified in sections 193, 194, 196 and 197 of the Act.

"Senior IRC Member" means the President of the Queensland Industrial Relations Commission or his delegate appointed under section 88B of the Act.

"IRC Member" means a Member of the Queensland Industrial Relations Commission..

"Directive" means rulings about specific employment matters issued by the Public Service Commission Chief Executive or the Minister for Industrial Relations.

"Department" means the Department or other unit of government which has made the decision that is subject of an Appeal.

"Employee" means a Queensland Public Service Officer or other entitled employee.

"Parties" means the Appellant and the Department in each Appeal.

"Public Service Officer" means a person employed under the Act as defined in section 8 of the Act.

3. What is an Appeal?

An Appeal is a formal request made by an employee for an independent review of a decision made about them as an employee. The Appeal is made under Chapter 7 of the Act.

The purpose of an Appeal is to determine whether the decision appealed against was fair and reasonable and in accordance with all legislative requirements.

4. Who manages Appeals?

The IRC Member receives and manages Appeals for the purpose of making decisions on Appeals according to the Act. The Act states that an IRC Member and any staff performing functions to help the IRC Member to hear and decide an Appeal must perform their functions independently, impartially, fairly and in the public interest.

5. Where can I find out the requirements for Appeals?

Requirements for Appeals is set out in Chapter 7 of the Act. Additional information about appeal rights is contained in *Directive 03/17 - Appeals* (the Appeals Directive), and in this guide.

6. Who can appeal?

The Act sets out the categories of public service employees who can appeal specific decisions. The eligibility is different for each type of Appeal. Section 196 of the Act sets out the specific provisions for who may make an Appeal against the specific categories of decisions as set out in section 194 of the Act. Further requirements for eligibility to lodge Appeals are also contained in a number of Directives.

The following table includes a summary of the types of decisions and who may appeal them:

Type of Decision	Who may Appeal
<p>A decision to take or not take, action under a directive</p>	<ul style="list-style-type: none"> • an Appeal may be made by: <ul style="list-style-type: none"> (i) a public service officer (ii) a temporary employee (iii) a general employee (iv) a public sector employee of a public sector unit that is listed in schedule 1 of the <i>Public Service Regulation 2008</i> • the Appellant must be directly affected and aggrieved by the decision to take action, or a failure to act • the person must reasonably use the Department's complaints management procedure prior being able to lodge an Appeal. See Clause 9.3(a) of the Appeals Directive for further information
<p>A discipline decision</p>	<ul style="list-style-type: none"> • a current or former employee who is directly aggrieved by the decision to discipline • a current or former employee who may be disciplined under another Act and to whom appeal rights apply under schedule 1 of the <i>Public Service Regulation 2008</i> • a person is eligible to lodge an Appeal against a discipline decision without previously using the Department's employee complaints management process
<p>A promotion decision</p>	<ul style="list-style-type: none"> • a public service officer • a tenured general employee • a tenured public sector employee of a public sector unit listed in schedule 1 of the <i>Public Service Regulation 2008</i> • a person is eligible to lodge an Appeal against a promotion decision without previously using the Department's employee complaints management process • Clause 9.3(c) of the Appeals Directive sets out the provisions that an employee must comply with before making a Promotion Appeal

<p>A transfer decision</p>	<ul style="list-style-type: none"> • a public service officer who is the subject of the transfer decision • a public sector employee of a public sector unit listed in schedule 1 of the <i>Public Service Regulation</i> 2008 who is the subject of the transfer decision • the person must reasonably use the Department's complaints management procedure prior to being able to lodge an Appeal
<p>A temporary employment decision</p>	<p>An Appeal may be made against a decision under section 149 of the Act that a temporary employee's employment in a Department is to continue as a temporary employee. An Appeal may be made by:</p> <ul style="list-style-type: none"> (i) a temporary general employee who is the subject of the decision (excluding casual employees). (ii) a public sector employee of a public sector unit listed in schedule 1 of the <i>Public Service Regulation</i> 2008 who is the subject of the temporary employment decision
<p>A casual employment decision</p>	<p>An Appeal may be made against a decision under section 149A of the Act that the employment of a casual employee in a department is to continue as a casual employee. An Appeal may be made by:</p> <ul style="list-style-type: none"> • a casual employee who is the subject of the decision
<p>A fair treatment decision</p>	<p>An Appeal may be made against a decision a public service employee believes is unfair and unreasonable. An Appeal may be made by:</p> <ul style="list-style-type: none"> • a public service employee who is aggrieved by the decision
<p>A decision under another Act</p>	<p>An Appeal may be made about anything else against which another Act allows a person to appeal. The relevant Act will determine the conditions of the Appeal (who may appeal, decisions that may be appealed and whether the decision is subject to the relevant Department's employee complaints management process).</p>

7. What can be appealed?

7.1 Decisions which can be appealed are grouped into categories. For convenience, the broadest category, consisting of a group of disparate decisions, is referred to as the "other" category. The following table sets out, in general terms, what can be appealed in each Appeal category.

Appeal category	What is covered by the category
Promotion decisions	<p>A decision to promote a public service officer if the person satisfies the following requirements:</p> <ul style="list-style-type: none"> • must have applied for a vacancy to which one of the following persons was promoted: <ul style="list-style-type: none"> (i) a public service officer (ii) a tenured general employee; or (iii) a tenured public sector employee of a public sector unit listed in schedule 1 of the <i>Public Service Regulation</i> 2008. • the person's application for the vacancy must have been received before the deadline of the receipt of applications • the person's Appeal Notice must be filed with the Industrial Registry no later than 21 days after the day on which the promotion of the person was notified in the gazette; and • the person must continue to be entitled to appeal
"Other" decisions	<p>This is the broadest Appeal category and covers decisions made by Departments about:</p> <ul style="list-style-type: none"> • transfer employee complaints • reviews of temporary employment • reviews of casual employment • reviews regarding fair treatment • disciplinary decisions • disciplinary findings • a former employee may appeal a disciplinary declaration made under section 188A of the Act, including if the decision that would have been taken was termination of employment • suspension without pay • a decision under a directive issued in accordance with section 53 or 54 of the Act • a decision under another Act allowing an Appeal to an IRC Member

7.2 What about suspension without pay decisions?

An employee can lodge an Appeal against a decision to suspend them without pay if they believe it is unfair and unreasonable

7.3 Applications under the *Public Interest Disclosure Act 2010*

Section 47 of the *Public Interest Disclosure Act 2010* allows an employee to make an application to the IRC Member for relocation on the ground that it is likely a reprisal will be taken against the public service employee if the employee continues in the employee's existing work location and the only practical way to remove or substantially remove the danger of reprisal is to relocate the employee.

The IRC Member will only direct that the employee be relocated if satisfied there are grounds for doing so. With the employee's consent, the relocation can be to either the employee's Department or to another Department. The relocation of the employee to another Department can only occur if the Chief Executive of that Department consents.

8. What cannot be appealed?

The Act and relevant Directives set out a range of matters that cannot be appealed. These are summarised in the table below:

Appeal category	What cannot be Appealed
General Decisions	<ul style="list-style-type: none"> • a decision of the Governor in Council • a decision of a Minister • a decision about superannuation benefits or workers' compensation • a decision about probation • a decision to terminate the employment of a public service officer employed on probation • a decision about the classification level of employment, unless the decision is declared under a directive to be a decision that may be appealed • a decision to promote, transfer, redeploy or second a person as a chief executive, senior executive or senior officer to a role remunerated in excess of AO8 level within the relevant department • a decision if the parties to the Appeal include the Public Service Commission, a Commissioner or a staff member of the Public Service Commission • a decision if it is a matter that has been heard by the Queensland Industrial Relations Commission (QIRC) • a person cannot appeal against, or in an Appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a Department.
Discipline decisions	<ul style="list-style-type: none"> • a disciplinary action decision to terminate the employee's employment
Promotion decisions	<ul style="list-style-type: none"> • if the relevant public service officer has been redeployed within 1 year before the promotion; and

	<ul style="list-style-type: none"> • the promotion is to a classification level that is not higher than the officer's classification level immediately before the redeployment • any appointment to a role with a salary higher than the equivalent of an AO8(4) position within the Department • a non-appealable appointment. This is an appointment: <ul style="list-style-type: none"> (i) that is not a promotion (ii) to a role remunerated in excess of the maximum salary applicable to the AO8(4) classification with the relevant Department (iii) to a role which is exempt from advertising in accordance with the directive relating to recruitment and selection
"Other" decisions	<ul style="list-style-type: none"> • a recruitment and selection decision. Unless it is: <ul style="list-style-type: none"> (i) a decision regarding equivalence of qualifications (ii) a promotion decision (iii) a decision that an employee requiring placement has been assessed as unsuitable (iv) a decision not to appoint (or second) a current public service employee because of their disciplinary history • a decision to fill a vacancy as an "identified role", the process for assessing and the decision about whether the person meets or does not meet the mandatory attribute for an "identified position". • A fair treatment decision <ul style="list-style-type: none"> (i) made under chapter 5, part 7 (mental or physical incapacity); or (ii) made under chapter 6, part 2 (disciplinary action), other than <ul style="list-style-type: none"> (a) a finding under section 187 that a disciplinary ground exists for the person; or (b) a decision under section 189 to suspend a person from duty without pay; or (iii) relating to a person's work performance, other than a decision about the person's work performance that is recorded in a formal way as part of a periodic performance review; or (iv) relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of the grievance; or (v) relating to the development or performance management of a chief executive or senior executive. (vi) relating to the development or performance management of a chief executive or senior executive

9. When can an Appeal be lodged?

Section 197(2) of the Act states that an Appeal must be lodged within 21 days of the Appellant receiving notice of the decision.

If the time for giving an Appeal Notice is due during the Christmas/New Year closure or other public holidays - the last day for giving the Appeal Notice will be deemed to be the first business day after the closure.

The below table sets out the specific types of Appeal and the timeframes within which an Appeal Notice must be lodged:

Type of Appeal	Timeframe for lodgment
A discipline decision	By 5:00 pm, within 21 days after the Appellant received the discipline decision (disciplinary findings and/or disciplinary action decisions)
A promotion decision	By 5:00 pm, within 21 days after the appointment that is being appealed against is publicly notified.
Other decisions	By 5:00 pm, within 21 days after the Appellant received the decision that is being Appealed against.
Temporary employment	Within 21 days of the employee receiving notice that their status will remain as a temporary employee; or If the chief executive has failed to review the temporary employee's temporary status, within 28 days of the employee being eligible for their employment status to be reviewed.
Teacher transfers	Within 21 days of receipt of the Teacher Transfer Review Panel's review decision.

If an Appeal Notice has been lodged after the timeframe has passed, an appellant wishing to appeal should include an explanation for the delay with their Appeal Notice. If not, they will be asked to do so by the IRC Member who will consider all the relevant circumstances before deciding whether the Appeal should be accepted.

10. How should an Appeal be lodged?

A single Appeal Notice form is used for all types of Appeals. The Appeal Notice is available by accessing the QIRC website.

This can be submitted in the following ways:

Email: QIRC.Registry@justice.qld.gov.au

Post: GPO Box 373, Brisbane, QLD 4001

Fax: (07) 3221 6074

Delivery: Level 21, 66 Eagle Street, Central Plaza 2 (Corner of Creek and Eagle Streets), Brisbane

11. What happens after an Appeal Notice is lodged?

Once an Appeal Notice is lodged with the Industrial Registry, the Appeal Notice will be referred to an IRC Member for management of the Appeal. The IRC Member will then issue Directions for the further conduct of the matter incorporating an order to stay the decision subject of the Appeal.

Depending on the matter in question, the parties will be asked for all relevant information and written submissions supporting their case.

12. What information is required from the parties to an Appeal?

A Department responding to an Appeal will be asked to provide –

- In the case of a promotion appeal - A copy of the selection report - including any material relevant to the panel's assessment of applicants to form a "shortlist" for interview, and referee reports obtained and relevant to the selection decision. The information must be filed with the Industrial Registry and also provided to the Appellant (redacted copies to be provided to the Appellant) within the timeframe given by the IRC Member. The Department is not required to provide the Appellant any document that has already been provided.
- In the case of all other appeals - The Department is to file in the Industrial Registry and serve a copy on the Applicant written submissions in response to the application.

Where there is a question regarding jurisdiction of an IRC Member to hear and determine an Appeal –

- The Department will be directed to supply the Applicant and file in the Industrial Registry a written submission on the jurisdiction for a Member of the Queensland Industrial Relations Commission to hear and determine the Appeal Notice. The written submission must not be longer than two (2) pages in length.
- The Applicant will be directed to supply to the Department and file in the Industrial Registry a written submission in response on the jurisdiction of a Member of the Queensland Industrial Relations Commission to hear and determine the Appeal Notice. The written submission must not be longer than two (2) pages in length.

All documentation for the Appeal is confidential and should not be shown to a person who is not a party to the Appeal except a person who is providing advice to a party to the Appeal.

13. Other relevant information

In some cases, the IRC Member may only initially require a written submission from the Appellant. This will be done if the IRC Member considers that the Appellant should provide an arguable case for why the Appeal should be heard. If the IRC Member is not satisfied the Appellant has established an arguable case, the IRC Member may determine to decline to hear the Appeal. See section 200 of the Act for further information.

If parties require an extension of time to submit documentation requested by the IRC Member they must make a request in writing outlining the reasons why they require more time. The IRC Member will then decide whether to allow an extension of time.

14. Listing the matter for hearing/conference

In most cases, the IRC Member will initially list the matter for conference. The parties are expected to make themselves available to attend at the time and on the date scheduled.

The IRC Member will take into account all submissions made by the parties, and will ensure both sides have a fair chance to express their case. The IRC Member will determine the format of the conference.

If the matter is not resolved at the conference, the IRC Member will refer the matter for a hearing.

The Act requires Appeals to be heard with as little formality and technicality as possible without compromising a fair and proper consideration of the issues. While the format is designed to allow parties to feel as comfortable with the process as possible, courtesy, respectful communication and professional conduct is expected. Parties are reminded that the Code of Conduct applies during a hearing. If a party fails to follow the IRC Members directions about personal conduct during a hearing/conference it may constitute a breach of the Code of Conduct and result in removal of the person from the hearing/conference. Hearings/conferences are generally completed within 2 hours.

At the beginning of a hearing, the IRC Member will explain how the hearing will be conducted, and may provide an opportunity for the parties to ask questions about the process. The Appellant will usually be asked to make his or her oral submission in support of the Appeal first. As the Appellant will have already provided a written submission in support of his/her Appeal, it is not necessary for the Appellant to repeat or read the submission. The Appellant can use the hearing process to restate or emphasise what he/she considers to be the most important points to be taken into account by the IRC Member, or to respond to submissions from the Department. This can be in the form of the Appellant's own words and or in a written format.

The Department is then invited to respond. Again, it is not necessary for the Department to repeat their written submission but they may choose to use the time at the hearing to summarise their response to the Appeal, to respond to the Appellant's submissions (if this has not already been done in the written submission) or to make important points.

The IRC Member may ask questions as the hearing proceeds. At the end, the IRC Member will usually invite the Appellant to make a closing statement.

15. Can a party have lawyers, other representation or support?

A party can be represented by someone else (for example, a union official, advocate, lawyer or family member) during the Appeal process leading up to the hearing/Conference. However at the hearing/Conference:

- a party can appear personally or by an agent. For example, a union official, advocate, friend or family member; and
- a lawyer cannot represent a party if, in so doing, they have been instructed to act as the party's lawyer, and would be subject to the *Legal Profession Act 2007*.

Each party is responsible for the cost of their own legal advice and any representation.

The Act stipulates that a party to a Promotion Appeal may only be represented at a hearing/conference with the leave of the IRC Member hearing the Appeal.

Any party to an Appeal proceeding (such as a hearing/Conference) is entitled to attend with a support person. The role of a support person is to provide emotional and other support to the party, not to speak or take an active role in the proceedings. A support person who attempts to represent a party or otherwise interrupt proceedings may be asked to leave by the IRC Member.

16. Can a party call witnesses or ask the IRC Member to attend an inspection?

A party can ask for witnesses to be called, and can ask for the IRC Member to attend an inspection. However, this will normally only be granted where there is a good reason for calling the witnesses or arranging an inspection, and the IRC Member must give permission.

It is important to remember the Appeal is a review of the decision being appealed against. It is not a fresh investigation of the matter, so there would not often be justification for introducing new evidence in the form of new witnesses or site inspections.

17. Is attendance at an Appeal proceeding part of the employee's duties?

Yes. Section 211 of the Act states that attending an Appeal proceeding is part of the Appellant's duties as an employee. The Appellant is also entitled to be paid travel expenses and allowances reasonably incurred in attending an Appeal proceeding (see section 212). This does not apply to an Appeal against a disciplinary declaration under section 194(1)(b)(ii).

18. Can new material be submitted at the hearing/conference?

The Act allows any relevant evidence to be taken into account by the IRC Member. However, the purpose of an Appeal is to review the decision made by the Department in light of the evidence available to the decision-maker at the time. This means new material will only be allowed if the IRC Member considers it is necessary and relevant to the issues under consideration.

19. Can the parties reach a settlement even if the hearing has commenced?

Yes. Parties are free to reach an agreement themselves at any time during the Appeal process up until the final decision is issued by the IRC Member. If a settlement is reached, or the Appellant no longer wishes to proceed with the Appeal for any reason, the Appellant may withdraw the Appeal by providing written notification to the Industrial Registry and the IRC Member dealing with the Appeal.

20. What happens after a hearing?

Unless the matter has been settled or withdrawn by the Appellant, the IRC member will issue written Reasons for Decision on the Appeal. The Reasons for Decision are confidential and will be provided to the parties to the Appeal and their representatives. Copies of those decisions are also provided to the Industrial Registrar and to the Public Service Commission Chief Executive.

It is considered inappropriate for a party to contact the IRC Members Chambers after the hearing of the Appeal is finalised.

If a party is dissatisfied with the outcome of the Appeal they may be able to seek a review of the decision under the *Judicial Review Act 1991*.