



# Public Service Appeals

## PROMOTION APPEALS

### PRACTICE DIRECTION No 3 of 2014

#### Definitions

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

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

"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.

"Senior Appeals Officer" means the Vice President of the Queensland Industrial Relations Commission appointed under section 88B of the Act as the Senior Appeals Officer.

"Appeals Officer" means a Member of the Queensland Industrial Relations Commission appointed under section 88A of the Act as an Appeals Officer.

"Appeals Directive" means [Directive 02/14 - Appeals](#) issued by the Public Service Commission Chief Executive.

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

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

"Promotion Appeal" means an Appeal against a decision to promote a public service employee made under section 194(1)(c) of the Act.

"Recruitment and Selection Directive" means [Directive No. 15/13 – Recruitment and Selection](#) issued by the Public Service Commission Chief Executive.

#### Background

1. This Practice Direction sets out the procedures by which Promotion Appeals under the Act are managed. The procedures emphasise the essential grounds for Promotion Appeals i.e. a flaw in the recruitment and selection decision making process.

2. The procedures are aimed at improving the efficiency of the appeal process while balancing the rights of Appellants and adhering to all legislative requirements. This is achieved by giving responsibility for the review of the recruitment and selection decision making process to the Senior Appeals Officer and/or an Appeals Officer in their role as independent adjudicators.
3. All Promotion Appeals received by the Senior Appeals Officer and/or an Appeals Officer will be managed in accordance with this Practice Direction, unless the Senior Appeals Officer and/or an Appeals Officer determines an alternative process should be followed for an individual Appeal.

### **Recruitment and selection process and documentation**

4. It is a legislative requirement that recruitment must be based on the merit principle taking into account the merit criteria prescribed by section 28 of the Act.
5. Selection panels must document how job applicants fulfil the key attributes of a role in accordance with clause 10.3 of the Recruitment and Selection Directive. The selection report must include a statement demonstrating how the selection panel "concluded that the recommended appointee is the most meritorious (i.e. had demonstrated superior merit against the key attributes of the role as compared to other applicants)". If an order of merit is determined by the selection panel, the selection panel must also provide a "comparative statement clearly describing the specific reasons why each recommended applicant is considered to be more meritorious than the next in the order of merit".

### **Post-selection feedback**

6. Parties to Appeals are reminded that clause 13.1 of the Recruitment and Selection Directive states that all applicants may request feedback. Clause 13.3 also states that feedback is to be provided to any applicant who seeks it. Departments are required to provide applicants who make a request with timely, specific and constructive feedback sufficient to explain why they were not successful.
7. The Senior Appeals Officer and/or an Appeals Officer maintains the discretion, under the Appeals Directive, to decline to hear a Promotion Appeal where the Appellant has failed to seek post-selection feedback prior to lodging an Appeal.

### **Appeal lodgment**

8. Lodgement of a Promotion Appeal will continue to be subject to all requirements contained in the Act and the Appeals Directive.
9. The Appellant must state their grounds of appeal when completing an Appeal Notice and may include an outline of their case.

### **Appeal registration and assessment**

10. The Industrial Registry will register the Appeal Notice and send it to the Senior Appeals Officer's Chambers. Once received at the Senior Appeals Officer's Chamber, the parties will be contacted within 24 hours to acknowledge the receipt of the Appeal Notice. The Senior Appeals Officer will issue an Order to stay the decision subject to the Appeal

and the Respondent will be asked to confirm if the Appellant is eligible to lodge an Appeal in accordance with the requirements of the Act and the Appeals Directive.

11. The Senior Appeals Officer will review the Appeal Notice and the Respondent's response to the Appellant's eligibility to Appeal. If the Appellant does not have a right to appeal the promotion decision, the Senior Appeals Officer will either write a decision or allocate the Appeal to an Appeals Officer to write a decision. If it was found that the Appellant has no right to appeal, the parties will be notified and the Industrial Registry will be directed to close the file.
12. If the Appellant does have a right to appeal the promotion decision, the Senior Appeals Officer will direct the Respondent to provide all information considered necessary for a proper assessment of the Appeal.
13. After assessing the recruitment and selection documentation provided by the Department, the Senior Appeals Officer may, depending on the circumstances in each case:
  - Determine whether information should be forwarded to the Appellant and if so which information to forward;
  - Request the Appellant to provide a written submissions and an arguable case in response to the material provided; and
  - Request the Respondent to provide a written submission in response to the Appellant's written submission.
14. Following the receipt of written submissions from the parties, the Senior Appeals Officer will either decide the matter or allocate the matter to an Appeals Officer.

### **Decisions on Appeal**

15. If after considering the material the Senior Appeals Officer and/or an Appeals Officer is of the view that there has been a breach of the Act or the recruitment and selection process used by the Department, the Senior Appeals Officer and/or an Appeals Officer may proceed to make a final decision without the need for a hearing/conference. This practice is consistent with section 203(1)(e) of the Act.
16. If after considering the material the Senior Appeals Officer and/or an Appeals Officer is of the view that there has been no breach of the Act or the recruitment and selection process used by the Department, the Senior Appeals Officer and/or an Appeals Officer will decline to hear the appeal pursuant to section 200(2) of the Act.
17. Notwithstanding the general approach to determining Promotion Appeals without a hearing as outlined in this Practice Direction, the Senior Appeals Officer and/or an Appeals Officer have the discretion to direct a hearing/conference where the circumstances require it. Hearings/conferences will only be held with the prior approval of the Senior Appeals Officer.
18. If, in preparing a submissions in response to a Promotion Appeal, a Department identifies that the decision does not comply with the Act or Regulation or a Directive, the Department may revoke the decision subject to the Appeal at any time before the

Senior Appeals Officer and/or an Appeals Officer issue a decision. If a Department takes this initiative, the Appeal will lapse in accordance with section 207 of the Act.

19. All Promotion Appeals should be finalised within five (5) weeks from the date that the last written submissions were filed by the parties or from the date that a matter is allocated to an Appeals Officer.

**D.M. LINNANE,**  
**Senior Appeals Officer**

**Operative Date: 15 July 2014**  
**Practice Direction - Promotion Appeals**