



Public Service Appeals

PRACTICE DIRECTION No 4 of 2014

APPEALS FROM TRANSFER DECISIONS MADE BY THE DEPARTMENT OF EDUCATION, TRAINING AND EMPLOYMENT

Definitions

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

"Appellant" means a teacher 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.

"Department" means, for the purpose of this Practice Direction, the Department of Education, Training and Employment which has made the decision that is subject of an Appeal.

"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.

"Teacher" means a Public Service Officer engaged as a teacher with the Department under the Act.

"Teacher Transfer decision" means a decision to transfer a Teacher in accordance with the Department's Teacher Transfer Guidelines and section 133 of the Act.

"Teacher Transfer Guidelines" means the internal guidelines developed by the Department to manage Teacher Transfers within the Department.

Background

1. This Practice Direction sets out the process for the management and hearing of Appeals made against transfer decisions made by the Department of Education, Training and Employment (the Department).
2. The Department's transfer decisions are initially made by local managers and communicated to departmental teaching staff around September each year. There are two types of teacher transfer decisions made by the Department: "Requested Transfer" decisions (including compassionate transfer requests on the basis of exceptional hardship); and "Required Transfer" decisions.

Requested Transfer decision

3. This type of decision is made where a teacher submits an application for transfer from one geographic area to another but the Department declines to approve the transfer. Teachers are unable to appeal "Requested Transfer" decisions in accordance with the Act. This also applies to "compassionate transfers" where a Teacher applies for a transfer on the basis of exceptional hardship or pressing personal circumstances. "Requested Transfer" decisions may be reviewed through the internal review system with the Department.

Required Transfer decision

4. This type of decision is made where the Department requires a Teacher to transfer from one geographic area to another and the Teacher wishes to challenge the decision.
5. In addition to their terms of employment, section 133(1) of the Act allows the Chief Executive of the Department to transfer or redeploy a Public Service Officer within the Department. Section 134 of the Act allows Public Service Officers to establish reasonable grounds for refusing the transfer to the satisfaction of the Chief Executive of the Department.
6. If the Teacher is dissatisfied with the decision by the local manager, the Teacher must seek the transfer decision to be reviewed internally in accordance with the Department's Teacher Transfer Guidelines (the [Guidelines](#)).
7. If the Teacher remains dissatisfied with the review decision, an Appeal can then be made under the Act by filing an Appeal Notice with the Industrial Registry.
8. Appeals relating to transfer decisions made by the Department will not be accepted by the Senior Appeals Officer and/or an Appeals Officer unless the teacher has sought review of the decision through the Department's internal review system.

Role of the Senior Appeals Officer and/or the Appeals Officers

9. The Senior Appeals Officer and/or an Appeals Officer's role is to assess whether the transfer decision was fair and reasonable. This assessment will be made after considering the Teacher's submissions on why the Teacher considers the transfer decision was not fair and reasonable and how the decision maker applied the [Guidelines](#) to the Teacher's individual circumstances.

10. The Act requires the Senior Appeals Officer and/or an Appeals Officer to perform their functions independently, impartially, fairly and in the public interest and that while performing their functions they are not subject to direction by the Public Service Commission, the Commission Chief Executive or any Minister (section 88G of the Act).
11. The Senior Appeals Officer and/or an Appeals Officer must decide the Appeal on the basis of evidence available to the decision maker when the decision was made, but the Senior Appeals Officer and/or an Appeals Officer is permitted to allow other evidence to be taken into account as they must be able to ascertain the transfer decision was confirmed.
12. In deciding an Appeal against a transfer decision, the Senior Appeals Officer and/or an Appeals Officer may:
 - confirm the decision appealed against; or
 - set the decision aside and substitute another decision; or
 - set the decision aside and return the issue to the decision maker with a copy of the decision on appeal and any directions considered appropriate.
13. In considering each Appeal, matters of particular importance include whether:
 - there is evidence the decision maker properly considered all evidence presented by the Teacher;
 - there is evidence that the transfer was reasonable in the circumstances; and
 - the decision maker considered the broader requirements of the legislation (including principles of procedural fairness).
14. The role of managing the teaching workforce is the Department's responsibility. The Senior Appeals Officer and/or an Appeals Officer cannot make findings on matters such as:
 - what subject teaching needs exist in particular schools or regions;
 - what level of resourcing is reasonable or necessary for a particular school or region; or
 - the Department's view (as a general principle) that a particular Teacher's career would benefit from allocation to a particular role or teaching area.
15. If a Teacher is successful in appealing a transfer, they should be aware that the Appeal relates to that particular transfer decision and does not prevent the Department from making future transfer decisions.

Process

16. An Appeal Notice is to be lodged with the Industrial Registry no later than 4.45pm, 21 days after the Teacher receives written notification of the regional director who

assessed the request for review of the required transfer decision (not the original transfer notification). The Appeal Notice can also be lodged by a representative of the Queensland Teachers' Union of Employees (the Union) on the Teacher's behalf.

17. Appellant Teachers should be aware that generally Appeals will be allocated for determination in order of receipt. This means that the earlier an Appeal is lodged, the sooner the decision will be available to the parties.
18. The Act allows the Senior Appeals Officer and/or an Appeals Officer to determine Appeals without a hearing (section 203(d)). Given the nature of teacher transfer Appeals and the need for prompt decisions, the standard approach will be that all teacher transfer Appeals will be determined following an exchange of written submissions.
19. The Senior Appeals Officer and/or an Appeals Officer will issue a written decision within the timeframe determined by the Senior Appeals officer at the time of allocation of the Appeal to an Appeals Officer.
20. In submitting an Appeal the Teacher gives an undertaking to be available to progress the Appeal. Extensions of time for lodging submissions will only be provided in exceptional circumstances.
21. All teacher transfer Appellants are entitled to be represented by the Union or other agent at all stages of the Appeal process. See Practice Direction 2 of 2014 - Representation of Parties for further information on representation and support.

D.M. LINNANE,
Senior Appeals Officer

Operative Date: 14 October 2014
Practice Direction - Appeals from Transfer Decisions Made by the Department of Education, Training and Employment