

DIRECTIVE

(refer Section 34 of the *Public Service Act 1996*)

No: 04/03

Supersedes: Directive 32/99

- 1. TITLE:** **Grievance Resolution**
- 2. PURPOSE** To specify the action to be taken to resolve public service employees' grievances.
- 3. LEGISLATIVE PROVISION** *Public Service Act 1996* — section 34
- 4. EFFECTIVE DATE:** 4 August 2003
- 5. DIRECTIVE:**

Principles

- 5.1 To promote the principles of public service employment under section 24 of the *Public Service Act 1996*, the chief executive must implement effective strategies:
 - (a) to resolve public service employees' grievances efficiently, effectively and confidentially;
 - (b) to actively address allegations of sexual harassment or workplace harassment; and
 - (c) to establish an effective and professional mediation system for aggrieved employees.
- 5.2 To ensure that, wherever possible, grievances are resolved locally and informally without the need for formal management under the provisions of this Directive.

Definitions

- 5.3 The following terms are defined for the purpose of this Directive:
 - (a) **“administrative decision”** is a decision made by a department in relation to the administration of its affairs (other than a decision described in section 95(2) of the *Public Service Act 1996*) and includes the failure to make a decision;
 - (b) **“chief executive”** includes a delegate of the chief executive, except where the chief executive is a party to the grievance;
 - (c) **“industrial determination”** has the meaning given to it in Schedule 3 of the *Public Service Act 1996*;

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- (d) **“lawyer”** means a barrister or solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State who derives his or her income from practice as a lawyer and has been engaged by a party to a grievance;
 - (e) **“public service employee”** has the meaning given to it by section 9 of the *Public Service Act 1996*;
 - (f) **“sexual harassment”** has the meaning given to it by section 119 of the *Anti-Discrimination Act 1991*.

Meaning of workplace harassment

- 5.4 An employee is subject to **“workplace harassment”** if the employee is subjected to repeated behaviour, other than behaviour amounting to sexual harassment, by the chief executive or a co-employee or group of co-employees of the person that—
- (a) is unwelcome and unsolicited; and
 - (b) the person considers to be offensive, intimidating, humiliating or threatening; and
 - (c) a reasonable person would consider to be offensive, intimidating, humiliating or threatening.
- 5.5 **“Workplace harassment”** does not include reasonable management action taken in a reasonable way by the chief executive in connection with the person’s employment.

EMPLOYEE RESPONSIBILITY IN LODGING A GRIEVANCE

Circumstances in which a grievance can be lodged

- 5.6 A grievance under this Directive may be lodged by a public service employee if that employee has an honest belief based on reasonable grounds that:
- (a) an administrative decision made in their agency and which adversely affects them is unfair or unreasonable; or
 - (b) the conduct of an employee, agent or contractor of the employing agency and which adversely affects them is unfair or unreasonable; or
 - (c) the behaviour of an employee, whether by action or inaction, constitutes sexual harassment or workplace harassment.
- 5.7 A grievance may not be lodged under this Directive:
- (a) by a public service employee unless that employee has made reasonable endeavours to resolve the matter locally or unless the chief executive determines that local resolution is not reasonable or appropriate; or
 - (b) about an act or omission that is the subject of another grievance procedure; or

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- (c) about a decision to discipline a public service employee; or
 - (d) about a decision to retire a public service employee in accordance with section 85(3)(b) of the *Public Service Act 1996*; or
 - (e) about a matter described in section 95(2) of the *Public Service Act 1996*; or
 - (f) by a person who is not a public service employee or a person not subject to this Directive by regulation.

Action required by an employee to lodge a grievance

- 5.8 An aggrieved employee may lodge a grievance with the chief executive. The grievance must be in writing and specify:
- (a) the grounds on which the public service employee believes they have been adversely affected by an administrative decision or by the conduct or behaviour of an employee, agent or contractor; and
 - (b) the action which the claimant believes would resolve the grievance; and
 - (c) the attempts that the employee has made to resolve the grievance locally.
- 5.9 Policy made by a department may require that reasonable endeavours be made to resolve grievances locally prior to the lodgement of a grievance under 5.8.

Action required by an employee to lodge a grievance directly about a chief executive

- 5.10 A grievance about an administrative decision (other than a decision or determination in relation to the resolution of a grievance) or alleged workplace harassment or sexual harassment of a public service employee directly by the chief executive may be lodged directly with the Public Service Commissioner in writing.
- 5.11 In cases where the grievance alleges workplace harassment of a public service employee, the Public Service Commissioner must, within two working days of receiving the grievance, initiate mediation between the parties¹.
- 5.12 For all other grievances the commissioner may, with the agreement of the parties and within two working days of receiving the grievance, institute mediation. Unless otherwise agreed between the parties, the mediation must be completed within 7 calendar days of commencement of the mediation process.

¹ To 'Initiate mediation' requires a discussion with the parties to establish whether mediation is likely to resolve the grievance; and, if appropriate, then organising a suitably qualified mediator, and arranging times for the mediation to proceed.

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- 5.13 If the Public Service Commissioner determines that mediation is not an appropriate remedy or if mediation does not resolve the grievance, the Public Service Commissioner must inquire into the circumstances giving rise to the grievance.
- 5.14 At the end of any inquiry the Public Service Commissioner must give the parties a written copy of the commissioner's findings, decisions and the reasons for the decisions.

EMPLOYER RESPONSIBILITY IN RESOLVING GRIEVANCES

Upon receipt of a grievance

- 5.15 For a grievance alleging workplace harassment the chief executive must take action, within two working days of receiving the grievance, to initiate mediation² between the parties. Unless otherwise agreed between the parties, the mediation must be completed within 7 calendar days of commencement of the mediation process.³
- 5.16 For all other grievances the chief executive may, with the agreement of the parties and within two working days of receiving the grievance, institute mediation. Unless otherwise agreed between the parties, the mediation must be completed within 7 calendar days of commencement of the mediation process.
- 5.17 If the mediation is successful, the chief executive is to ensure a record of the outcome of the mediation is prepared and retained.

If mediation fails, is not required or is not appropriate

- 5.18 Where:
- (a) the chief executive determines that mediation is not an appropriate remedy; or
 - (b) mediation fails to resolve the grievance; or
 - (c) the parties to a grievance about a matter other than workplace harassment decline to mediate —

² To 'Initiate mediation' requires a discussion with the parties to establish whether mediation is likely to resolve the grievance; and, if appropriate, then organising a suitably qualified mediator, and arranging times for the mediation to proceed.

³ Mediation is unlikely to be an option for resolving the grievance if there is:

- (a) a reasonable apprehension of violence to one of the parties; or
- (b) a clear indication that one of the parties will not participate; or
- (c) a clear intention of one party to use the process to further harass another party; or
- (d) diminished capacity of one party to negotiate on their own behalf which cannot be offset by the skill of the mediator; or
- (e) evidence that the process would cause unreasonable psychological stress to a party.

the chief executive is promptly to instigate appropriate action to resolve the grievance, ensuring that a written record is made of the action taken, any findings made, and the reason for any decision taken. Such action may include engaging the services of an independent investigator⁴ to investigate the grievance and prepare a report on it.

- 5.19 At the end of the investigation the chief executive must give the parties a written copy of the chief executive's findings, decisions and the reasons for the decisions.
- 5.20 Subject to the requirements of legislation, while the grievance procedure is being followed, normal work must continue as if the grievance had not been lodged, except in the case of a genuine safety issue, "issue of conscience"⁵, or where to do so could create a substantial financial or legal liability for the agency.
- 5.21 Unless otherwise agreed between the parties, the chief executive must make a decision in relation to the grievance within 21 calendar days of lodgement of the grievance.

APPEALS

- 5.22 Unless the parties otherwise agree, if the chief executive has not provided the parties to a grievance made under the terms of this Directive with a decision within 21 calendar days of receiving notice of the grievance, the aggrieved party may lodge a fair treatment appeal with the Public Service Commissioner.
- 5.23 A public service employee who is a party to a grievance may lodge a fair treatment appeal with the Public Service Commissioner within 21 calendar days of receiving the chief executive's decision on the grievance.

MISCELLANEOUS MATTERS

- 5.24 At any time before a decision is made on a grievance, a party to the grievance may request information about the progress made to resolve the grievance. The chief executive must provide the information within 7 calendar days, unless the request is unreasonable or provision of the information would prejudice the satisfactory resolution of the grievance.
- 5.25 Two or more grievances lodged by the same employee about related matters, or a grievance from more than one employee about related matters, may be dealt with as one grievance.

⁴ An 'independent investigator' may include engaging the services of a person from outside the agency or public service, an employee from another agency, or an employee from within the agency who has no conflict of interests and is acceptable to the parties.

⁵ "Issue of conscience" refers to a conflict between a religious or other similar belief, and the performance of a specific authorised work activity. (An example of an "issue of conscience" is a Catholic nurse who declines to assist in the lawful termination of a pregnancy in the course of his/her work duties because of a religious belief.)

- 5.26 In considering any allegations of misconduct, the chief executive must have regard to the law and, in particular, to the requirements of the *Public Service Act 1996*, the *Whistleblowers Protection Act 1994* and the *Crime and Misconduct Act 2001*.
- 5.27 A party to a grievance may not be represented by a lawyer, other than a lawyer who is an employee of an industrial association or, in the case of a department, an employee of the department
- 5.28 An employee may not lodge a grievance under this Directive if they have lodged a grievance about the same matter under an industrial determination.

REPORTING REQUIREMENTS

- 5.29 The chief executive must record information about:
- (a) the number of grievances lodged under this Directive; and
 - (b) the number of grievances lodged under an industrial determination; and
 - (c) the nature of each grievance lodged — whether regarding an administrative decision, employee conduct, sexual harassment, workplace harassment; and
 - (d) the organisational unit and geographic location of each grievance; and
 - (e) the gender of each of the parties to each grievance; and
 - (f) whether the grievance was resolved at mediation, following an investigation and determination by the chief executive or on appeal to the Public Service Commissioner.
- 5.30 The chief executive must provide a report to the Public Service Commissioner detailing the information required to be collected under this Directive within 30 working days of the end of each financial year.

NOTE: Click on the *Guideline for the Mediation Process* for supporting documentation to this Directive.