

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 2008* – section 53 (formerly *Public Service Act 1996* - section 47)

4. **Effective date:** 5 October 2007

5. Principles:

- 5.1 To promote the principles of public service employment under section 25 of the *Public Service Act 2008* (formerly section 24 of the *Public Service Act 1996*), the chief executive must implement effective strategies to:
- (a) resolve public service employees' grievances efficiently, effectively and confidentially;
 - (b) actively address allegations of sexual harassment or workplace harassment; and
 - (c) establish an effective and professional grievance resolution 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.
- 5.3 To ensure that all parties to the grievance are afforded natural justice prior to a determination being made.

6. Definitions:

The following terms are defined for the purpose of this directive:

“Administrative decision” is a decision made by an agency in relation to the administration of its affairs (other than a decision described in section 195(2) of the *Public Service Act 2008*) (formerly section 95 (2) of the *Public Service Act 1996*) and includes the failure to make a decision;

“Aggrieved employee” means the employee who has lodged a grievance;

“Chief executive” includes a delegate of the chief executive, except where the chief executive is a party to the grievance;

“Employing agency” means the agency that the aggrieved employee is engaged by, be it substantively, temporarily or by secondment;

“Facilitated discussion” means an attempt by an independent third party to bring about resolution between the parties to the grievance. Facilitated discussion may include but is not limited to mediation, conciliation or negotiation;

“Facilitator” means an independent third party who is assigned the responsibility of assisting the parties to reach a resolution. The facilitator must be independent from the matter but need not necessarily be external to the agency;

“Grievance procedure” means a grievance procedure under an industrial instrument, a grievance about the same matter previously lodged under this directive or a dispute about the same matter previously lodged under a dispute resolution procedure in an industrial instrument;

“Industrial instrument” has the meaning given to it for the purposes of the *Industrial Relations Act 1999*;

“Issue of conscience” refers to a conflict between religious or other similar belief, and the performance of a specific authorised work activity. For example, an issue of conscience might be a 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;

“lawyer” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State;

“Natural justice” is an administrative law principle that provides for fairness in decision-making.

Natural justice has two rules:

- Rule against bias – decision-makers are to be objective, free of bias and have no personal interest in the matter being decided; and
- Hearing rule – an individual is to be informed of the substance of an allegation/s against them and have the opportunity to present their case prior to a decision being made.

“Party” means the aggrieved employee and the respondent to the grievance for the purpose of this directive;

“Public service employee” has the meaning given to it for the purposes of the *Public Service Act 2008 (formerly Public Service Act 1996)*;

“Respondent” means the public service employee, agent or contractor who is the subject of a grievance;

“Sexual harassment” has the meaning given to it for the purposes of the *Anti Discrimination Act 1991*;

“Workplace harassment” is where a person is subjected to behaviour, other than sexual harassment that:

- is repeated, unwelcome and unsolicited;
- the person considers to be offensive, intimidating, humiliating or threatening;
- a reasonable person would consider to be offensive, humiliating, intimidating or threatening.

Workplace harassment is not:

- a single incident of harassing type behaviour;
- reasonable management action taken in a reasonable way;
- acts of unlawful discrimination, vilification or sexual harassment.

7. Employee responsibility in lodging a grievance

Circumstances in which a grievance can be lodged

7.1 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 employing agency adversely affects them and is unfair or unreasonable; or

- (b) the conduct of an employee, agent or contractor of their employing agency adversely affects them and is unfair or unreasonable; or
- (c) the behaviour of an employee of their employing agency, whether by action or inaction, constitutes sexual harassment or workplace harassment.

7.2 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 informally and locally. The exception to this is where the chief executive determines that local resolution was not reasonable or appropriate; or
- (b) about an act or omission that is the subject of another grievance procedure; or
- (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 178 (1)(b) of the *Public Service Act 2008* (formerly section 85(3)(b) of the *Public Service Act 1996*); or
- (e) about a matter described in section 195(2) of the *Public Service Act 2008* (formerly 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

7.3 An aggrieved employee may lodge a grievance with the chief executive. The grievance must be in writing and specify:

- (a) the attempts that the employee has made to resolve the grievance informally and locally; and
- (b) the grounds on which the employee believes they have been adversely affected by an administrative decision or by the conduct or behaviour of an employee, agent or contractor; and
- (c) the grounds on which the employee believes the administrative decision, conduct or behaviour is unfair or unreasonable; and
- (d) the action which the employee believes would resolve the grievance.

7.4 An aggrieved employee must lodge a grievance under this directive within 12 months of the administrative decision, alleged conduct or alleged behaviour occurring.

7.5 For a matter to be considered as a grievance under this directive, paragraphs 7.1, 7.2, 7.3 and 7.4 must be satisfied.

8. The grievance resolution process

Employer responsibility in resolving grievances other than a grievance lodged directly about a chief executive

Facilitated discussions:

- 8.1 Where possible, within two working days of receiving the grievance, the chief executive may, with the agreement of the parties, initiate a facilitated discussion between the parties in an attempt to resolve the grievance.
- 8.2 Unless otherwise agreed between the parties, the facilitated discussion must be completed within seven calendar days of commencing the process.
- 8.3 If the facilitated discussion successfully resolves the grievance the chief executive is to ensure that a written record of the outcome is prepared, signed by all parties to the grievance and retained in a confidential file.
- 8.4 Where a grievance involves alleged sexual harassment or workplace harassment, or where the chief executive deems it inappropriate for the parties to meet face to face, consideration should be given to allowing the parties to meet with the facilitator separately throughout the process.
- 8.5 Where one or all of the parties indicate an unwillingness to participate in the facilitated discussion, the chief executive may require one or all of the parties to attend a preliminary meeting independently with the facilitator to receive information about the proposed process. The purpose of this meeting is to enable the parties to make an informed decision about whether or not to participate in the process.

- 8.6 The chief executive may decide to take no further action in relation to the grievance if the aggrieved employee refuses to participate in the preliminary meeting and the refusal is unreasonable in the circumstances.

If facilitated discussions fail, are not required or are not appropriate:

- 8.7 Where the chief executive determines that the facilitated discussion has failed to resolve the grievance, is not required or is not appropriate, the chief executive should initiate alternative action as soon as practicable to resolve the grievance.
- 8.8 Alternative action may include but is not limited to:
- relevant training of the parties to the grievance;
 - other conflict resolution or negotiation strategies;
 - review of the reasons for an administrative action or decision;
 - investigation; or
 - other such reasonable action in the circumstances.
- 8.9 The chief executive is to retain a written record of the outcome of the alternative action.

Commission Chief Executive's responsibility in resolving grievances lodged by an employee directly about a chief executive

- 8.10 A grievance about an administrative decision made by the chief executive (other than a decision or determination in relation to the resolution of a grievance) or alleged sexual harassment or workplace harassment of a public service employee by the chief executive may be lodged directly with the Commission Chief Executive in writing.
- 8.11 Upon receipt of the grievance the Commission Chief Executive must first consider whether a facilitated discussion between the parties is likely to resolve the grievance. This should occur where possible within two working days of receiving the grievance.
- 8.12 If under section 8.11 the Commission Chief Executive deems it unlikely that a facilitated discussion will resolve the grievance or where a facilitated discussion takes place but does not resolve the grievance, the Commission Chief Executive should initiate alternative action as soon as practicable prior to making a determination on the grievance.
- 8.13 The Commission Chief Executive is to retain a written record of the outcome of the alternative action.

9. Timeframe for determination

- 9.1 Where the facilitated discussion has failed to resolve the grievance or is not appropriate the chief executive or Commission Chief Executive must make a determination on the grievance within 21 calendar days of receiving the grievance and issue the parties to the grievance with a written copy of the determination on the grievance including the reasons for the determination.
- 9.2 The 21 day timeframe may be extended by mutual agreement between the parties. A party to the grievance should not unreasonably withhold their agreement.
- 9.3 Mutual agreement is not required for an extension to the 21 day timeframe where the chief executive or Commission Chief Executive can demonstrate that reasonable attempts have been made to progress the grievance.
- 9.4 Where an extension to the 21 day timeframe occurs the parties to the grievance must be informed of the status of the grievance, the likely date of a determination and the reasons why a determination could not be made within the required timeframe.
- 9.5 At any time before a determination is made, a party to the grievance may request information about the progress of the grievance. The chief executive or Commission Chief Executive must provide the information within seven calendar days of receiving the request, unless the request is unreasonable or where the provision of such information would prejudice the satisfactory resolution of the grievance.

10. General Provisions

- 10.1 Subject to the requirements of legislation, while the grievance resolution process is being followed, work must continue as it was immediately prior to the grievance being lodged. The exception to this may be where there is a genuine health and safety issue, the grievance relates to sexual harassment or workplace harassment, the existence of an issue

of conscience or where to do so could create a legal or financial liability for the agency. No party will be prejudiced as to the final outcome as a result of this provision.

- 10.2 Throughout the grievance resolution process, the chief executive or Commission Chief Executive should ensure that the parties to the grievance receive regular and timely information as to the progress of the grievance.
- 10.3 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.
- 10.4 A party to a grievance may not be represented by a lawyer. However, a party may be accompanied by a support person during the grievance resolution process but not in a representative capacity.
- 10.5 The chief executive or Commission Chief Executive may determine to take no further action in relation to the grievance if there is evidence that the grievance is frivolous or vexatious. The chief executive or Commission Chief Executive must issue the parties to the grievance with a written copy of the determination including the reasons for the determination.
- 10.6 The matters surrounding the grievance and the grievance resolution process are to remain confidential. All parties to the grievance should be required to comply with confidentiality requirements.

11. Appeals

Appeals in relation to the 21 day timeframe

- 11.1 If the chief executive has not demonstrated that reasonable attempts have been made to progress the grievance within the 21 day timeframe, the aggrieved employee may lodge a fair treatment appeal with the Commission Chief Executive.
- 11.2 An appeal lodged under section 11.1 will be an appeal in relation to an unreasonable failure to comply with the 21 day time frame. An appeal lodged under section 11.1 will not give rise to a consideration of the substantive issues of the grievance by the Commission Chief Executive.

Appeals in relation to the grievance determination

- 11.3 A public service employee who is a party to a grievance may lodge a fair treatment appeal with the Commission Chief Executive within 21 calendar days of receiving the chief executive's decision on the grievance.
- 11.4 An appeal lodged under section 11.3 must be actually received by the Commission Chief Executive no later than 5pm on the 21st calendar day after the day on which the aggrieved employee received the written determination on their grievance.