

Public service appeals annual report

2018 - 19



Public service appeals annual report 2018–19

Published by the State of Queensland (Public Service Commission), May 2020



This document is licensed under a Creative Commons Attribution 3.0 Australia licence. To view a copy of this licence, visit creativecommons.org/licenses/by/3.0/au

© State of Queensland (Public Service Commission) 2019

You are free to copy, communicate and adapt the work, as long as you attribute the State of Queensland (Public Service Commission).

For more information contact:

Policy, Conduct and Performance, Public Service Commission, PO Box 15190, City East, Brisbane QLD 4002, email commission.psc@psc.qld.gov.au, phone (07) 3003 2800.

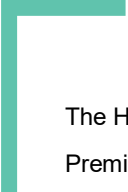
An electronic version of this document is available at <https://www.forgov.qld.gov.au/appeal-decision-affecting-your-employment>

Disclaimer:

The content presented in this publication is distributed by the Queensland Government as an information source only. The State of Queensland makes no statements, representations or warranties about the accuracy, completeness or reliability of any information contained in this publication. The State of Queensland disclaims all responsibility and all liability (including without limitation for liability in negligence) for all expenses, losses, damages and costs you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason reliance was placed on such information.

Contents

- Public service appeals system 5
 - Brief history..... 5
 - Appeal framework and categories..... 5
 - Contextual factors 6
- 2018–19 appeals..... 6
 - Overview 6
 - Achievement and priorities 7
 - Sound decision-making focus..... 7
 - Improving managerial capability 7
 - Appeal category data 7
 - Appeals against temporary employment decisions 7
 - Appeals against discipline decisions 8
 - Appeals against fair treatment decisions 9
 - Appeals against promotion decisions 9
 - Appeals against casual employment decisions 10
 - Appeals against decisions under a directive 10
 - Appeals against transfer decisions..... 11
 - Appeals against decisions under another Act 11
- Appendices 12



The Hon. Anastacia Palaszczuk MP
Premier of Queensland
Minister for Trade
Level 40
1 William Street
BRISBANE QLD 4000

Dear Premier

I am pleased to submit the annual report on public service appeals for the 2018–19 financial year.

The *Public Service Act 2008* (PS Act) enables employees to seek external review of certain employment decisions through the lodgement of a public service appeal with the Queensland Industrial Relations Commission. Appeals are heard and determined by independent Industrial Relations Commission members, as provided by section 88C of the PS Act.

This report has been prepared in compliance with section 218C of the PS Act, and provides information on appeals started, lapsed, withdrawn and decided during the 2018–19 financial year. The report also includes information about legislative and policy changes that may have impacted public service appeals.

Should you require any further information about a matter mentioned in this report, I am happy to assist.

Yours sincerely

Robert Setter
Commission Chief Executive
Public Service Commission

Public service appeals system

Brief history

The public service appeal system, established under the [Public Service Act 2008](#) (the PS Act), provides an avenue for Queensland public service employees to seek an external review of certain employment decisions that affect them.

Appeal rights operate in addition to other external review processes, including those provided for in the [Industrial Relations Act 2016](#). This supports integrity, accountability, and ethical and equitable work practices and decisions in the public service.

Appeal rights in their current form can be traced back to the now repealed [Public Sector Management Commission Act 1990](#) and have been heard and decided by various bodies and officers since that time, as set out in Table 1.

Table 1 Jurisdiction to hear and decide public service appeals

Date	Officer/body with jurisdiction to hear and decide public service appeals
1 July 2012–present	Industrial Relations Commission members (previously appeals officers) who are members of the Queensland Industrial Relations Commission
1 November 2010–30 June 2012	Statutory role of appeals officer who was appointed as a Senior Executive of the public service. Sessional adjudicators were also used as required by a delegation from the appeals officer
1996–2010	Appeals made to the Public Service Commissioner (who delegated power under the legislation to appropriately qualified public service employees to hear and decide appeals of public service employees)
1990–1996	Commissioner for Public Sector Equity or the Classification Review Tribunal

Appeal framework and categories

Chapter 7 of the PS Act provides the framework for appeals, setting out finite categories of appeal, establishing criteria for eligibility to appeal, and specifying the functions of the Queensland Industrial Relations Commission (QIRC) members and their decision-making authority.

Appeals may only be lodged about eight types of decisions:

- a decision to take, or not to take, action under a directive
- a decision under a disciplinary law to discipline
- a decision to promote a public service officer (a promotion decision)
- a decision to transfer a public service officer (a transfer decision)
- a decision under section 149 that a temporary employee's employment in a department is to continue as a temporary employee (a temporary employment decision)
- a decision under section 149A that the employment of a casual employee in a department is to continue as a casual employee (a casual employment decision)
- a decision a public service employee believes is unfair and unreasonable (a fair treatment decision)
- a decision about anything else against which another Act allows a person to appeal.¹

The QIRC administers the public service appeals function.

The [Appeals Guide](#) sets out an overview of procedures that the QIRC will usually adopt in managing public service appeals.

¹ For example, certain actions/decisions made under the [Public Interest Disclosure Act 2010](#) can be appealed.

Contextual factors

A number of changes occurred in March 2017 following 'A review of the industrial relations framework in Queensland: A Report of the Industrial Relations Legislative Reform Reference Group December 2015' (IR Reform Report) that continue to impact appeals finalised during the 2018-19 financial year.

The changes included the creation of casual employment appeals, the reinstatement of fair treatment appeals and Directive 02/17: Managing employee complaints, and a new Directive 8/17 Temporary Employment replacing the one made in 2010. These changes coincided with a significant increase in appeal numbers for the 2017-18 reporting period compared to previous years which has continued in the 2018-19 reporting period. However, lodged appeals overall reduced by 21 per cent from 2017-18, as set out below.

2018–19 appeals

Overview

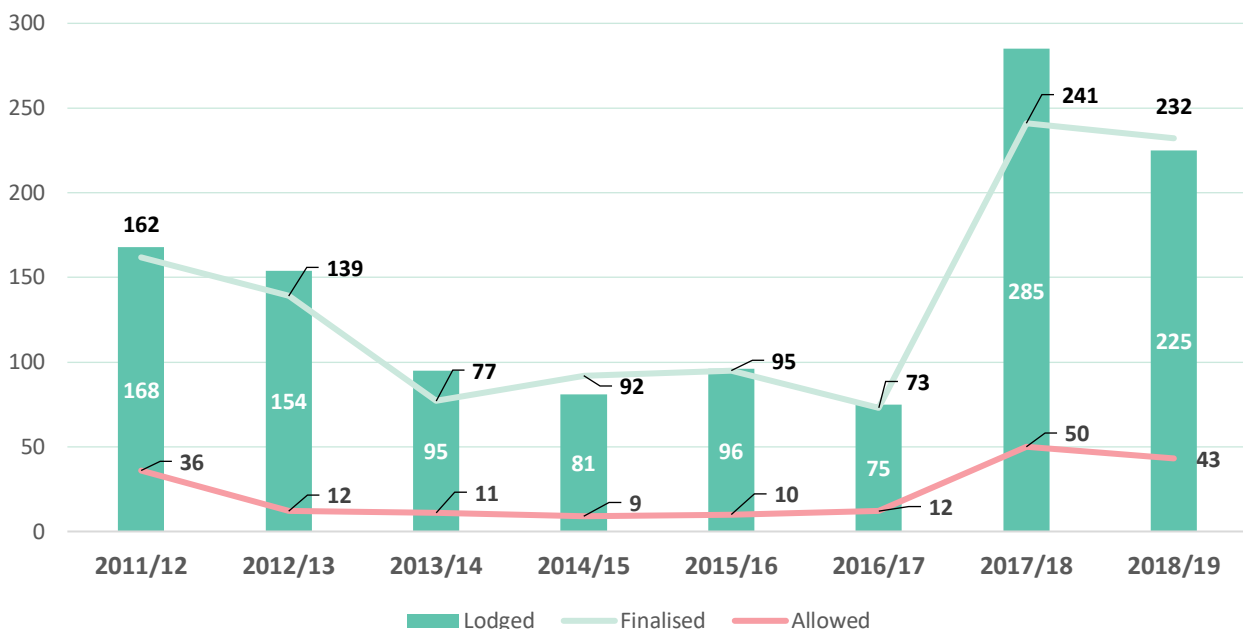
During the 2018–19 financial year, 225 appeals were lodged² and 232 appeals were finalised³ (see Chart 1). This is a decrease of 21 percent from 2017–18 where 285 appeals were lodged. Of the appeals finalised, 43 appeals (19%) were allowed.

In particular, there was a decrease in the number of temporary employment decision appeals (appeals against a decision not to convert a temporary employee to permanent). Of the 232 finalised appeals in 2018-2019, 93 (40 percent) related to temporary employment decisions, down 36 percent from 146 finalised temporary employment decision appeals in the 2017-18 reporting period.

During the 2018-19 reporting period, there was an increase of 75 percent of finalised appeals against fair treatment decisions (from 24 in 2017–18 to 42 in 2018–19). This may relate to greater employee and sector awareness of the new appeal right, which has a broad scope.

No new directives directly affecting appeal rights were introduced in the 2018-19 reporting period.

Chart 1: Appeals lodged, finalised and allowed (2011–12 to 2018–19)



² This includes 41 appeals lodged during 2018–19 but not finalised during the same 2018–19 financial year.

³ This includes 48 appeals lodged during 2017–18 but finalised in 2018-19.

The average timeframe from lodgement to finalisation of appeals during 2018–19 was 51 days, up from the average timeframe of 39 days in 2017–18. During 2018–19, 27 matters took over 100 days to finalise (an increase from eight in 2017–18).

Achievement and priorities

Poor decisions (including failure to comply with legislation and directives), failure to afford natural justice and poor communication about decisions can be underlying factors that contribute to public service appeals. Learnings from the outcome of appeals provide an opportunity to improve decision-making and managerial capability and to minimise disputes escalating to an appeal.

Sound decision-making focus

Developing capability in public sector decision-making was a key focus of PSC's work in 2018–2019. A particular focus was on supporting temporary employment decisions and conduct and performance matters. The PSC continues to work with agencies to support quality decision-making by:

- publishing notable cases on public service appeals to inform best practice
- developing and updating frequently asked questions for temporary employment decisions
- supporting managers and HR practitioners to manage and resolve conduct and performance issues and advise on public sector policy and legislation via the [CaPE and HR Assist advisory service](#)
- providing [web based self-guided resources](#), supporting material and templates and scenario-based training to more effectively support managing employee conduct and performance
- developing resources and holding workshops with agency HR professionals to support better decision-making about conduct and performance matters
- managing the Community of Practice for Ethical Behaviour (CoPEB) to share best practice approaches to ethics, enabling agency members to work together to solve issues, develop capability and model behaviour.

Improving managerial capability

During 2018–2019, the PSC continued its focus on improving the managerial capability of HR practitioners, team leaders, program leaders and executives to enable prompt resolution of issues as they arise. The PSC's key initiatives included:

- LEAD4QLD – launch of the leadership excellence assessment and development initiative. (More than 1400 public sector employees from 26 agencies were actively involved in the assessment process between October 2018 and June 2019.)
- release of the [Leadership competencies for Queensland](#) framework to describe what highly effective, everyday leadership looks like, and provide a common understanding of the foundations for success
- Leader Connect placement and exchange program
- targeted capability and development programs
- providing the [CaPE and HR Assist advisory service](#) to advise managers and HR practitioners on public sector policy and legislation
- providing support to agencies developing resources on ethics for executives in the public sector
- a partnership with IPAA Queensland to deliver thought leadership events and activities to promote and enhance the professionalism, capability and integrity of public administration.

Appeal category data

This section of the report provides information on the finalised appeals, lapsed, withdrawn and decided for each appeal category under the PS Act. A breakdown of appeal decisions per appeal category and agency are provided in the Appendices.

Appeals against temporary employment decisions

Under section 149 of the PS Act, the employment of a temporary employee must be reviewed to determine whether the employee should continue as a temporary employee or be converted to tenured (permanent) status. An initial review is required after two years of service in the same or substantially the same role, then every year thereafter.

Section 194(1)(e) of the PS Act allows a temporary employee to appeal against a decision to continue their employment on a temporary basis.

Temporary employment decisions constitute the highest number of public service appeals with 93 appeals finalised⁴ in 2018–19. While this represents 40 per cent of all appeals finalised in 2018–19, this is down 36 per cent from 146 temporary employment decision appeals in the 2017–18 reporting period (51 per cent of all appeals)⁵. Table 2 highlights the number of appeals lodged in 2018–19 under section 194(1)(e) comparison to previous years. Nine appeals under this category were lodged but not finalised during this period. A breakdown of appeals per agency is at **Appendix A**.

Table 2: Finalised appeals against temporary employment decisions

Year	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
2018–19	21	36	1	2	0	33	0	93
2017–18	35	41	1	2	33	31	3	146
2016–17	0	0	0	0	0	0	0	0
2015–16	0	0	0	0	0	0	0	0
2014–15	1	0	0	1	0	1	0	3

Appeals against discipline decisions

Section 194(1)(b) of the PS Act provides that an employee may lodge an appeal against a decision under disciplinary law to discipline.

Discipline decisions are the second highest category of appeals following temporary employment decisions, with 45⁶ appeals finalised. Table 3 sets out the outcomes of discipline appeals. Eleven appeals under this category were lodged but not finalised during 2018–19. A breakdown of appeals per agency is at **Appendix B**.

Table 3: Finalised appeals against discipline decisions

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
2018–19	8	26	1	0	1	0	5	4	45
2017–18	8	14	0	0	1	4	5	0	32
2016–17	10	13	0	1	3	4	9	0	40
2015–16	8	15	2	0	11	0	21	0	57
2014–15	6	24	2	2	5	0	14	0	53

⁴ This includes 28 appeals against a temporary employment decision lodged in 2017–18 but finalised in 2018–19.

⁵ As 28 appeals lodged in 2017-18 were finalised in 2018-19, the number of temporary employment appeals in 2019-20 is likely to decrease further as the impact of the commencement of *Directive 8/17: Temporary Employment* on 1 July 2017 stabilises.

⁶ This includes 5 appeals against fair treatment decisions in 2017-18 but finalised in 2018-19.

Appeals against fair treatment decisions

2017–18⁷ was the first financial year to include the new appeal category relating to fair treatment appeals under section 194(1)(eb) of the PS Act. Fair treatment appeals allow an employee to appeal a decision they believe is unfair and unreasonable such as suspension without pay. Section 195(3A) of the PS Act does provide some limitations on fair treatment appeals.

As outlined in Table 4, 42⁸ fair treatment decision appeals were finalised during 2018–19, a 75 percent increase from 24 finalised decisions in the 2017–18 reporting period. This increase is may be due to heightened employee awareness of the new appeal right. As it is a general appeal right this appeal category has a wide scope.

Ten appeals under this category were lodged but not finalised during 2018–19. A breakdown of appeals per agency is at **Appendix C**.

Table 4: Finalised appeals against fair treatment decisions

Year	Allowed	Dismissed	No right of appeal	Withdrawn	No jurisdiction	Total
2018–19	10	18	2	8	4	42
2017–18	2	14	0	6	2	24
2016–17	0	0	1	1	0	2

Appeals against promotion decisions

Section 194(1)(c) of the PS Act allows an employee to lodge an appeal against a promotion decision. A promotion decision is the appointment of an existing permanent public service employee to a higher classification level. To appeal, the employee must be a public service officer (a tenured employee) who applied for the position in question.

There were 22 appeals against a promotion decision finalised⁹ in 2018–19, as depicted in Table 6. This was an increase from ten appeals finalised in the 2017–18 reporting period, though seven of the 22 finalised appeals were carried over from the 2017–18 reporting period. One appeal under this category was lodged but not finalised during 2018–19. A breakdown of appeals per agency is at **Appendix D**.

Table 6: Finalised appeals against promotion decisions

Year	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
2018–19	2	13	0	2	0	2	3	22
2017–18	2	3	0	0	2	3	0	10
2016–17	2	7	0	2	0	6	0	17
2015–16	0	9	1	2	0	9	0	21

⁷ This appeal category was re-introduced in March 2017 in response to the recommendations of the IR Reform Report. Fair treatment appeals had previously been in place, being repealed in the 2012–13 period.

⁸ This includes four appeals against fair treatment decisions lodged in 2017–18 but finalised in 2018–19.

⁹ This includes seven appeals against a promotion decision lodged in 2017–18 but finalised in 2018–19.

2014–15	0	9	1	8	0	1	0	19
---------	---	---	---	---	---	---	---	----

Appeals against casual employment decisions

Section 194(1)(ea) of the PS Act is the newest appeal category, which allows a casual employee to appeal against a decision to continue their employment on a casual basis. This appeal category was introduced in March 2017 in response to the recommendations of the IR Reform Report. A one-year transition period applied to this appeal category which meant that casual employment appeals could only be made from 1 March 2018.

As outlined in Table 5, there were 16 appeals against a casual employment decision finalised¹⁰ in 2018–19. This represents the first full financial year period of the appeal category and directive being in place.

Four appeals under this category were lodged but not finalised during 2018–19. A breakdown of appeals per agency is at **Appendix E**.

Table 5: Finalised appeals against casual employment decisions

Year	Allowed	Dismissed	No right of appeal	Withdrawn	No jurisdiction	Total
2018–19	0	8	0	7	1	16
2017–18	3	4	0	11	1	19
2016–17	0	0	1	1	0	2

Appeals against decisions under a directive

Section 194(1)(a) of the PS Act allows an aggrieved employee to lodge an appeal against a decision to take, or not take, action under a directive. Directives under the PS Act are binding instruments issued by the Commission Chief Executive or the Industrial Relations Minister under sections 53 and 54 respectively.

In 2018–19, nine¹¹ appeals were finalised under this appeal category, up from two appeals in 2017–18. The outcomes of the appeals are set out in Table 8. Five appeals under this category were lodged but not finalised during 2018–19. A breakdown of appeals per agency is at **Appendix F**.

Table 8: Finalised appeals against decisions under a directive

Year	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	Total
2018–19	1	3	1	0	0	0	4	9
2017–18	0	1	0	0	0	1	0	2
2016–17	0	1	0	1	5	1	2	10
2015–16	2	6	0	0	4	0	0	12
2014–15	0	1	1	0	1	0	2	5

¹⁰ This includes one appeal against a casual employment decision lodged in 2017–18 but finalised in 2018–19.

¹¹ This includes two appeals against decisions under a directive lodged in 2017-18 but finalised in 2018-19.

Appeals against transfer decisions

Section 194(1)(d) of the PS Act allows an employee to lodge an appeal against a decision to transfer the employee. A transfer occurs where an employee remains engaged at the same classification level but is directed to undertake different duties and/or at a different location.

Three appeals against transfer decisions were finalised in 2018–19. Table 7 sets out the outcomes of the transfer appeals. All transfer appeals lodged in 2018–19 were finalised. A breakdown of appeals per agency is at **Appendix G**.

Table 7: Finalised appeals against transfer decisions

Year	Allowed	Dismissed	No right of appeal	Negotiated settlement	Withdrawn	Total
2018–19	1	1	0	0	1	3
2017–18	0	3	0	1	2	6
2016–17	0	2	0	0	1	3
2015–16	0	3	0	0	0	3
2014–15	2	2	1	0	4	9

Appeals against decisions under another Act

Section 194(1)(f) of the PS Act allows an appeal to be made about anything else against which another Act allows a person to appeal.

Two appeals against a decision under another Act were finalised during 2018–19¹². One appeal under this category was lodged but not finalised in 2018–9. As outlined in Table 9, appeals against decisions under another Act are infrequent, consistent with previous years. A breakdown of appeals per agency is at **Appendix H**.

Table 9: Finalised appeals against decisions under another Act

Year	Allowed	Dismissed	Lapsed	Withdrawn	Total
2018–19	0	1	0	1	2
2017–18	0	1	0	0	1
2016–17	0	1	0	0	1
2015–16	0	0	0	0	0
2014–15	0	0	0	0	0

¹² This includes one appeal against decision in another Act lodged in 2017-18 but finalised in 2018-19.

Appendices

APPENDIX A

Appeals against temporary employment decisions finalised 2018/19								
Agency	Allowed	Dismissed	Lapsed	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
Children's Health Queensland Hospital and Health Service						1		1
Department of Health		1		1		3		5
Department of Education	4	8				7		19
Department of Communities, Child Safety and Disability Services		2						2
Health Support Queensland	1	2						3
Cairns and Hinterland Hospital and Health Service	2	6				2		10
Gold Coast Hospital and Health Service	1					2		3
Queensland Family and Child Commission		1						1
Department of Agriculture and Fisheries		1						1
Sunshine Coast Hospital and Health Service	2	3				4		9
Metro South Hospital and Health Service	4	3				3		10
Queensland Curriculum and Assessment Authority		3				2		5
Metro North Hospital and Health Service	1							1
Torres and Cape Hospital and Health Service		1				1		2
Department of Housing and Public Works		2	1			2		5
Department of Health, eHealth	5	2		1				8
Department of Environment and Science						2		2
Department of Justice and Attorney-General	1					2		3
Townsville Hospital and Health Services						1		1
Department of State Development, Manufacturing, Infrastructure and Planning		1				1		2
Total appeals against temporary employment decisions	21	36	1	2	0	33	0	93

APPENDIX B

Appeals against discipline decisions finalised 2018/19

Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
Department of Transport and Main Roads		4					1		5
Metro North Hospital and Health Service	1	2					1		4
Townsville Hospital and Health Service							1		1
Department of Agriculture and Fisheries		1							1
Gold Coast Hospital and Health Service	1	4							5
Department of Education		2					1		3
Metro South Hospital and Health Service	2	3						2	7
Department of Environment and Science	1								1
Darling Downs Hospital and Health Service	1	1						1	3
West Moreton Hospital and Health Service		1			1				2
Wide Bay Hospital and Health Service		1							1
Torres and Cape Hospital and Health Service	1								1
Public Safety Business Agency		1							1
Queensland Building and Construction Commission		1							1
Department of Child Safety, Youth and Women		1							1
Office of Industrial Relations		1							1
Department of Health		1	1						2
Cairns and Hinterland Hospital and Health Service		1					1		2
Queensland Reconstruction Authority		1							1
Queensland Corrective Services	1								1
Department of Natural Resources, Mines and Energy								1	1
Total appeals against discipline decisions	8	26	1	0	1	0	5	4	45

APPENDIX C

Appeals against fair treatment decisions finalised 2018/19

Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
Metro South Hospital and Health Service		2							2
Cairns and Hinterland Hospital and Health Service	1	1			1		1		4
Gold Coast Hospital and Health Service		2							2
Queensland Fire and Emergency Services							1		1
Office of the Public Guardian							1		1
Department of Environment and Science	1	1						1	3
Public Safety Business Agency		1						1	2
Department of Transport and Main Roads	2	1							3
Department of Health		1							1
Metro North Hospital and Health Service	4	2					1		7
Sunshine Coast Hospital and Health Service	1				1				2
Department of Education	1	1					2	1	5
Queensland Health Ombudsman		1							1
Department of Justice and Attorney-General		1							1
Department of Child Safety, Youth and Women								1	1
Queensland Police Service							1		1
Department of Corrective Services		1					1		2
Department of Natural Resources and Mines		1							1
Townsville Hospital and Health Service		1							1
Department of Communities, Disability Services and Seniors		1							1
Total appeals against fair treatment decisions	10	18	0	0	2	0	8	4	42

APPENDIX D

Appeals against promotion decisions finalised 2018/19

Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
State Library Queensland		1							1
Department of Justice and Attorney-General	1	2							3
Office of Industrial Relations		4							4
Department of Transport and Main Roads	1	1					1		3
Townsville Hospital and Health Service							1		1
Department of Corrective Services								1	1
Department of Environment and Science		1							1
Department of Education		1			1			1	3
Metro South Hospital and Health Service		1							1
Torres and Cape Hospital and Health Service					1			1	2
Department of Housing and Public Works		1							1
Department of Health, eHealth		1							1
Total appeals against promotion decisions	2	13	0	0	2	0	2	3	22

APPENDIX E

Appeals against casual employment decisions finalised 2018/19

Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
Department of Environment and Heritage Protection		1							1
Department of Communities, Disability Services and Seniors							3		3
Department of Justice and Attorney-General								1	1
Metro South Hospital and Health Service		4					1		5
Mackay Hospital and Health Service							1		1
Sunshine Coast Hospital and Health Service		2					1		3
West Moreton Hospital and Health Service							1		1
Cairns and Hinterland Hospital and Health Service		1							1
Total appeals against casual employment decisions	0	8	0	0	0	0	7	1	16

APPENDIX F

Appeals against decision under a directive finalised 2018/19									
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
Office of Industrial Relations							1		1
Metro South Hospital and Health Service		1							1
Department of Natural Resources and Mines	1								1
Department of Communities, Disability Services and Seniors			1						1
Queensland Racing Integrity Commission		1							1
Department of Education							2		2
Mackay Hospital and Health Service							1		1
Queensland Police Service		1							1
Total appeals against decisions under a directive	1	3	1	0	0	0	4	0	9

APPENDIX G

Appeals against transfer decisions finalised 2018/19									
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
Department of Agriculture and Fisheries		1							1
Department of Education							1		1
Department of Justice and Attorney-General	1								1
Total appeals against transfer decisions	1	1	0	0	0	0	1	0	3

APPENDIX H

Appeals against decision under another Act finalised 2018/19									
Agency	Allowed	Dismissed	Lapsed	Declined to hear	No right of appeal	Negotiated settlement	Withdrawn	No jurisdiction	Total
West Moreton Hospital and Health Service							1		1
Department of Agriculture and Fisheries		1							1
Total appeals against decisions under another Act	0	1	0	0	0	0	1	0	2

Level 27, 1 William Street

Brisbane QLD 4000

(07) 3003 2800

commission.psc@psc.qld.gov.au



Queensland
Government