

Queensland



Subordinate Legislation 1997 No. 203

Public Service Act 1996

PUBLIC SERVICE REGULATION 1997

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PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Public Service Regulation 1997*.

Commencement

2. This regulation commences on 5 July 1997.

Definitions

3. In this regulation—

“**appellant**” means a person who has given the commissioner a notice under section 18.¹

“**performance**”, of a public service employee, means performance of the employee’s duties.

PART 2—PROVISIONS ABOUT EMPLOYMENT

Division 1—General

Employee must give employing authority evidence of employee’s age

4. A public service employee must, within 1 month after starting employment in the public service, give the employee’s employing authority—

- (a) a certified copy or certified extract of the employee’s birth registration; or
- (b) if it is not practicable to obtain a document mentioned in

¹ Section 18 (Starting an appeal)

paragraph (a)—another document the employing authority considers satisfactorily establishes the employee’s age.

Division 2—Appointment on probation

Performance appraisal during probation period

5. The chief executive of a department must ensure a regular system of appraisal is established to give an officer employed in the department on probation information about—

- (a) the officer’s performance during the period of probation; and
- (b) if the officer’s performance is considered unsatisfactory—appropriate remedial steps to be taken by the officer to improve the performance.

Show cause notice about proposed extension of probation period or termination of appointment

6.(1) This section applies if the chief executive of a department proposes extending an officer’s period of probation, or terminating the officer’s appointment, under section 73 of the Act.²

(2) The chief executive must give the officer a written notice (a “**show cause notice**”) that—

- (a) states the action (the “**proposed action**”) the chief executive proposes taking; and
- (b) states the reason for the proposed action; and
- (c) invites the officer to show, in writing, within 14 days after receiving the notice (the “**show cause period**”), why the proposed action should not be taken.

(3) The chief executive must consider the officer’s written representations made during the show cause period.

² Section 73 (Appointments on probation)

Extension of probation period or termination of employment

7.(1) This section applies if, after considering an officer's representations made during the show cause period, the chief executive still considers a reason exists to extend the officer's period of probation or terminate the officer's appointment.

(2) The chief executive may, by written notice given to the officer—

- (a) if the proposed action stated in the show cause notice was to extend the period of probation by a stated period—extend the period of probation by not longer than the stated period; or
- (b) if the proposed action stated in the show cause notice was to terminate the officer's appointment—
 - (i) extend the officer's period of probation; or
 - (ii) terminate the appointment.

(3) The decision takes effect on the later of the following—

- (a) the day the notice is given to the officer;
- (b) the day of effect stated in the notice.

Division 3—Resignation**Resignation of senior executives employed on tenure**

8.(1) This section applies only to senior executives employed on tenure.³

(2) A senior executive may resign by signed notice of resignation given to the officer's chief executive—

- (a) at least 2 weeks before the notice is to take effect; or
- (b) within a shorter period approved by the chief executive.

(3) A notice under subsection (2) takes effect in accordance with its terms and without needing the chief executive's acceptance.

³ Sections 53 (Basis of employment for chief executives), 62 (Basis of employment for senior executives) and 74 (Resignation) of the Act deal with the resignation of other officers.

Forfeiting salary instead of giving notice of resignation

9.(1) This section applies to an officer—

- (a) whose conditions of employment are not governed by a contract of employment dealing with resignation; and
- (b) who resigns without giving the chief executive signed notice of resignation—
 - (i) at least 2 weeks before the notice is to take effect; or
 - (ii) within a shorter period approved by the chief executive.

(2) The chief executive may direct that the officer forfeit an amount equal to the officer's salary for the number of working days by which the officer's notice of resignation is short of the period of notice required to be given under subsection (1)(b).

Example—

If the officer is required to give 2 weeks notice and gives only 1 week's notice, the chief executive may direct that the officer forfeit an amount equal to 1 week's salary.

Division 4—Mental or physical incapacity**Medical examination report**

10.(1) This section applies if a public service employee has been required to submit to a medical examination under section 85(2) of the Act.⁴

(2) The medical examination report must include the examining doctor's opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's performance.

(3) If the doctor considers the employee has an illness or disability mentioned in subsection (2), the report must also include the doctor's opinion as to the following—

- (a) the likely direct or indirect effect of the illness or disability on the employee's performance;

⁴ Section 85 (Mental or physical incapacity)

- (b) an estimate of how long the illness or disability or its effects are likely to last;
- (c) whether or not disclosing the information in the report to the employee might be prejudicial to the employee's mental or physical health or wellbeing.

(4) If the doctor's opinion is that the disclosure will not be prejudicial to the employee's mental or physical health or wellbeing, the employee's employing authority must give a copy of the report to the employee as soon as practicable after it is obtained.

(5) If the doctor's opinion is that the disclosure might be prejudicial to the employee's mental or physical health or wellbeing, the employee's employing authority must not make the disclosure to the employee.

(6) However, if asked by the employee in writing, the employing authority may make the disclosure to another doctor nominated by the employee in the request.

Record of requirement for medical examination

11.(1) The employing authority must keep a record of—

- (a) each requirement made by it for a public service employee to submit to a medical examination under section 85(2)(b) of the Act;⁵ and
- (b) the report of the medical examination.

(2) If the employing authority considers it necessary to protect the employee's interests, the employing authority may keep the record separate from other records about the employee.

Employee not to be given sick leave if employee fails to submit to medical examination

12. A public service employee must not be given sick leave for any period during which the employee fails to submit to a medical examination in accordance with a requirement made under section 85(2) of the Act.

⁵ Section 85 (Mental or physical incapacity)

Division 5—Disciplinary action**Employee must give employing authority notice if charged with an indictable offence or convicted of any offence**

13.(1) This section applies if a public service employee is—

- (a) charged with an indictable offence; or
- (b) convicted by a court of any offence.

(2) The employee must give the employing authority written notice stating—

- (a) if the employee has been charged with an indictable offence—
 - (i) that the employee has been charged; and
 - (ii) the details of the alleged offence; or
- (b) if the employee has been convicted of an offence—
 - (i) that the employee has been convicted of an offence; and
 - (ii) the details of the offence; and
 - (iii) the penalty imposed on the employee.

(3) The notice must be given—

- (a) if the employee has been charged with an indictable offence—immediately after the employee is charged; or
- (b) if the employee has been convicted of an offence—immediately after the employee is convicted.

(4) In this section—

“convicted” includes a finding of guilt, whether or not a conviction is recorded.

Action that may be taken by supervising employee

14.(1) This section applies if—

- (a) a public service employee (the **“first employee”**) has acted in a way that makes the employee liable to discipline; and

- (b) a public service employee (the “**supervising employee**”) whose duties include supervising the first employee becomes aware that the first employee has acted in the way mentioned in paragraph (a).

(2) The supervising employee must take the action that the supervising employee considers reasonable in the circumstances.

(3) However, the supervising employee must comply with the Act and any relevant directive of the commissioner.

Division 6—Records about employees

Particular documents to be noted by employee before being placed on departmental records

15.(1) The employing authority must ensure that a report, correspondence item or any other document about a public service employee’s performance that could reasonably be considered to be detrimental to the employee’s interests, is not placed on a departmental record unless—

- (a) the employee has initialled the document or, if the employee refuses to initial it, the refusal is noted on the record; and
- (b) the employee has been given—
- (i) a copy of the document; and
 - (ii) the opportunity to respond in writing to its contents within 14 days after receiving the copy.

(2) The employing authority must ensure that the employee’s written response is placed on the record.

(3) This section applies subject to section 10(5).⁶

Access to employee’s record

16.(1) This section does not apply to a medical examination report about

⁶ Section 10 (Medical examination report)

a public service employee that states that disclosure of information in it to the employee might be prejudicial to the employee's mental or physical health or wellbeing.

(2) A public service employee may, at a time and place convenient to the relevant department—

- (a) inspect any departmental record about the employee; and
- (b) take extracts from, or obtain a copy of details in, the record.

(3) The employee must not remove anything from the record.

PART 3—APPEALS

Division 1—Preliminary

Things commissioner must consider in deciding if recruitment or selection process is deficient

17.(1) In deciding if a recruitment or selection process used by a public sector unit that employs persons under the Act is deficient, the commissioner must have regard to whether or not the process complies with the Act, this regulation or a directive of the commissioner.

(2) In deciding if a recruitment or selection process used by a public sector unit that employs persons other than under the Act is deficient, the commissioner must have regard to whether or not the process complies with—

- (a) the Act, this regulation or a directive of the commissioner; or
- (b) the Act establishing the public sector unit or a regulation under it.

Division 2—Procedure

Starting an appeal

18.(1) A person who may, and wants to, appeal under the Act⁷ must start the appeal by giving the commissioner a written notice stating—

- (a) details identifying the decision appealed against; and
- (b) why the person is appealing against the decision.

(2) The commissioner must give a copy of the notice to—

- (a) each other party to the appeal; and
- (b) for an appeal against a promotion decision involving an officer's promotion to employment in a different public sector unit to the unit in which the officer was employed immediately before the promotion (the "**former unit**")—the former unit's chief executive.

(3) As soon as possible after receiving a notice under this section, the commissioner must give written notice of its receipt to the appellant.

Withdrawing an appeal

19.(1) An appellant may withdraw the appeal by written notice given to the commissioner.

(2) The notice must be given to the commissioner before the commissioner gives the appellant the commissioner's decision on the appeal.

(3) The commissioner must give written notice of the withdrawal to the other parties to the appeal and to anyone else the commissioner considers has an interest in the appeal.

Lapse of appeal

20. An appeal lapses if the appellant stops being—

⁷ See section 96 of the Act (Who may appeal against decisions).

- (a) a public sector unit employee; or
- (b) a person who may appeal against the decision.⁸

Commissioner's decision on appeal

21.(1) The commissioner's decision on an appeal must be written, stating—

- (a) whether the appeal is allowed or dismissed; and
- (b) why it is allowed or dismissed.

(2) The commissioner must give a copy of the decision to the parties to the appeal as soon as possible after it is available.

Division 3—General

Attendance at an appeal is part of an employee's duties

22. Attendance at an appeal proceeding is part of a public sector employee's duties if the employee—

- (a) is a party to the appeal; or
- (b) is requested or directed by the commissioner to attend the proceeding.

Employee's entitlement to travelling and other expenses and allowances

23.(1) A public sector employee must be paid travelling expenses and allowances reasonably incurred in attending an appeal proceeding as part of the employee's duties.

(2) The amount payable to the employee under subsection (1) is to be decided by the commissioner.

(3) However, this section does not apply to an employee who is the

⁸ See section 96 of the Act (Who may appeal against decisions).

appellant and is suspended from duty without pay, unless the employee's appeal is allowed.

Reimbursement of expenses

24.(1) A person, other than a public sector employee, who is requested by the commissioner to attend an appeal proceeding must be reimbursed for any expenses reasonably incurred by the person in attending the proceeding.

(2) The amount payable to the person under subsection (1) is to be decided by the commissioner.

Public sector unit must pay costs, expenses, allowances and other amounts

25.(1) The public sector unit whose decision is appealed against must pay—

- (a) the costs of the appeal, including—
 - (i) the commissioner's reasonable costs attributable to the appeal; and
 - (ii) reasonable costs incurred by the Office of the Public Service for the appeal; and
- (b) the travelling expenses and allowances payable under section 23; and
- (c) the amount reimbursed under section 24.

(2) An amount payable under subsection (1)(a)—

- (a) is the amount the commissioner considers to be reasonable; and
- (b) is not to be more than the reasonable cost incurred.

(3) The unit's chief executive must ensure prompt payment of amounts payable by the unit under this division.

PART 4—MISCELLANEOUS

Application of appeal provisions to certain government entities

26.(1) Part 7 of the Act⁹ applies to a government entity specified in schedule 1, column 1.

- (2) The part applies to an employee of the government entity as if—
- (a) the government entity were a department; and
 - (b) the employee were a public service officer; and
 - (c) the head of the government entity specified in schedule 1, column 2 opposite the name of the government entity were the chief executive of the department.

(3) The commissioner must declare, under a directive, the employees of the government entity to whom section 95(1)(g) of the Act¹⁰ applies as if they were senior executives or senior officers.

(4) The commissioner may make the declaration only if the commissioner considers that the employee is performing duties that would, if the employee were a public service officer, be duties of—

- (a) for an employee to whom the section is to apply as if the employee were a senior executive—a senior executive; or
- (b) for an employee to whom the section is to apply as if the employee were a senior officer—a senior officer.

(5) For this section, the government entity is a public sector unit.

Application of appeal provisions to health service employees

27.(1) Part 7 of the Act⁹ applies to a health service employee within the meaning of the *Health Services Act 1991*.

(2) The part applies to the employee as if the employee were a public service officer.

⁹ Part 7 (Appeals)

¹⁰ Section 95(1)(g) (Decisions against which appeals may not be made)

(3) The commissioner must declare, under a directive, the health service employees to whom section 95(1)(g) of the Act¹¹ applies as if they were senior executives or senior officers.

(4) The commissioner may make the declaration only if the commissioner considers that the employee is performing duties that would, if the employee were a public service officer, be duties of—

- (a) for a health service employee to whom the section is to apply as if the employee were a senior executive—a senior executive; or
- (b) for a health service employee to whom the section is to apply as if the employee were a senior officer—a senior officer.

Declared office holders—Act, s 109

28. An office holder mentioned in schedule 2 is declared for section 109(3)(i) of the Act.¹²

Declared public service offices and their heads—Act, sch 1, item 12

29.(1) An entity specified in schedule 3, column 1 is declared to be a public service office.

(2) The person specified in schedule 3, column 2 opposite the name of the office is declared to be the head of the office.

(3) If a day is specified in schedule 3, column 1 as the day until which an entity is a public service office, the entity is declared to be a public service office only until the end of the specified day.

Act, uncommenced provisions—commencement

30.(1) In this section—

“postponed law” means the uncommenced provisions of the Act.

(2) The period before automatic commencement under the *Acts*

¹¹ Section 95(1)(g) (Decisions against which appeals may not be made)

¹² Section 109 (Who is a “term appointee”)

Interpretation Act 1954, section 15DA(2)¹³ of the postponed law is extended to 21 October 1998.

(3) This section expires on 21 October 1998.

Regulation amended in sch 4

31.(1) Schedule 4 has effect.

(2) This section and schedule 4 expire the day after this section commences.

Repeal

32.(1) The *Public Service Regulation 1996* is repealed.

(2) This section expires the day after it commences.

¹³ Section 15DA (Automatic commencement of postponed law)

SCHEDULE 1
GOVERNMENT ENTITIES TO WHICH APPEAL PROVISIONS APPLY, AND THEIR HEADS

section 26

column 1	column 2
Government entities	Heads of entities
1. Burdekin Agricultural College Board	Director of the college
2. Dalby Agricultural College Board	Director of the college
3. Emerald Agricultural College Board	Director of the college
4. Legal Aid Queensland	Chief executive officer of Legal Aid Queensland
5. Library Board of Queensland	Director and State librarian
6. Longreach Pastoral College Board	Director of the college
7. Queensland Ambulance Service	Commissioner of the service
8. Queensland Art Gallery Board of Trustees	Director
9. Queensland Building Services Authority	General manager of the authority
10. Queensland Building Tribunal	Chairperson of the tribunal
11. Queensland Coal Board	Chairperson of the board

 SCHEDULE 1 (continued)

- | | | | | |
|------------|-----------------------------------|----------------------------------|---|------------------------|
| 12. | Queensland
Services Commission | Corrective
Commission | Director-General
of
Services | Corrective
Services |
| 13. | Queensland
Trust | Cultural
Centre | Director | |
| 14. | Queensland
Authority | Fire and Rescue
Authority | Chief commissioner
for the
authority | |
| 15. | Queensland
Meat Authority | Livestock and
Meat Authority | Chief executive officer
of the
authority | |
| 16. | Queensland
Trustees | Museum Board of
Trustees | Director of the museum | |
| 17. | Queensland | Nursing Council | Executive officer of the council | |
| 18. | Queensland
Corporation | Small Business
Corporation | Chair of the corporation | |
| 19. | Residential
Authority | Tenancies
Authority | Chief executive officer
of the
authority | |
| 20. | Royal
Company | Queensland
Theatre
Company | Chairperson of the board
of the
theatre company | |

SCHEDULE 2

DECLARED OFFICE HOLDERS

section 28

- 1. Aboriginal Land Act 1991**
Member of the Land Tribunal.

- 2. Anti-Discrimination Act 1991**
Anti-discrimination commissioner
Member of the Anti-Discrimination Tribunal.

- 3. Australian Financial Institutions Commission Code [1992]**
Member of the Appeals Tribunal.

- 4. Children's Commissioner and Children's Services Appeals Tribunals Act 1996**
Children's commissioner.
Member of the panel for children's services appeals tribunals.

- 5. Classification of Computer Games and Images (Interim) Regulation 1995**
Member of the Computer Games and Images Appeals Tribunal.

- 6. Classification of Films Regulation 1992**
Member of the Films Appeals Tribunal.

SCHEDULE 2 (continued)

- 7. Classification of Publications Regulation 1992**
Member of the Publications Appeals Tribunal.
- 8. Corrective Services (Administration) Act 1988**
Commissioner of the Queensland Corrective Services Commission.
- 9. Electoral Act 1992**
Deputy electoral commissioner.
- 10. Fisheries Act 1994**
Member of the Fisheries Tribunal.
- 11. Fruit Marketing Organisation Act 1923**
Member of the committee of direction appointed under the *Fruit Marketing Organisation Act 1923*, section 9(1).
- 12. Gaming Machine Act 1991**
Commissioner of the Queensland Machine Gaming Commission.
- 13. Health Rights Commission Act 1991**
Health rights commissioner.
- 14. Law Reform Commission Act 1968**
Member of the Law Reform Commission.
- 15. Legal Aid Queensland Act 1997**
Chief executive officer of Legal Aid Queensland.

SCHEDULE 2 (continued)

16. Legislative Standards Act 1992

Parliamentary counsel.

17. Meat Industry Act 1993

Member of the Meat Industry Tribunal.

18. Public Trustee Act 1978

Public trustee.

19. Queensland Building Services Authority Act 1991

Member of the Queensland Building Tribunal.

20. Queensland Competition Authority Act 1997

Member of the Queensland Competition Authority.

21. Torres Strait Islander Land Act 1991

Member of the Land Tribunal.

SCHEDULE 3

DECLARED PUBLIC SERVICE OFFICES AND THEIR HEADS

section 29

column 1	column 2
Public service offices	Heads of offices
1. Audit Commission Implementation Office (until 30 June 1998)	Executive director of the office
2. Office of the Board of Senior Secondary School Studies	Director of the office
3. Office of the Board of Teacher Registration	Director of the office
4. Office of the Queensland School Curriculum Council	Director of the office
5. Office of the Tertiary Entrance Procedures Authority	Executive director of the office
6. Queensland Electricity Reform Unit (until 31 December 1998)	Director of the unit

SCHEDULE 4**AMENDMENT OF PUBLIC SERVICE
MANAGEMENT AND EMPLOYMENT REGULATION
1988**

section 31

1. Section 3, definitions “adoption agency”, “adoption leave”, “adoption order”, “child”, “former position”, “maternity leave”, “parental leave”, “paternity leave”, “primary care giver”, “senior executive” and “spouse”—

omit.

2. Sections 5 to 7, part 2, sections 36 and 37, part 3 divisions 5 and 8, parts 4 to 7, sections 103 and 104A and part 9—

omit.

3. Schedules 1 to 3—

omit.

ENDNOTES

1. Made by the Governor in Council on 3 July 1997.
2. Notified in the gazette on 4 July 1997.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of the Premier and Cabinet.