

Queensland



Public Sector Management Commission Act 1990

PUBLIC SECTOR MANAGEMENT COMMISSION REGULATION 1991

**Reprinted as in force on 25 July 1996
(includes amendments up to SL No. 336 of 1995)**

Reprint No. 1A

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Information about this reprint

This regulation is reprinted as at 25 July 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**PUBLIC SECTOR MANAGEMENT
COMMISSION REGULATION 1991**

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PUBLIC SECTOR MANAGEMENT COMMISSION REGULATION 1991

[as amended by all amendments that commenced on or before 25 July 1996]

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Public Sector Management Commission Regulation 1991*.

Definitions

1A. In this regulation—

“**appellant**” means a person who has given a notice of appeal to the Commissioner for Public Sector Equity;

“**appointee**”, in relation to an appeal against an appointment, means the person whose appointment is the subject of the appeal;

“**appointment**” means an appointment of the type mentioned in section 5.3(1)(c) of the Act, but does not include an appointment under section 16(2);

“**deficient**”, in relation to the process of recruiting or selecting a person for a position, has the meaning given by section 1B;

“**discipline standard**” means the *Public Sector Management Standard for Discipline*.

“**notice of appeal**” means a notice under section 3(2);

“**notified in the Gazette**” includes the meaning given by section 1C;

“**proceeding**” includes a conference;

“**selection standard**” means the *Public Sector Management Standard for Recruitment and Selection*.

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Interpretation—Deficient recruitment or selection process

1B. A recruitment or selection process is deficient—

- (a) if it is used by a unit of the public sector which employs persons under the *Public Service Management and Employment Act 1988*—the process is not in accordance with the Act, this regulation, the Selection Standard, the *Public Service Management and Employment Act 1988* and the *Public Service Management and Employment Regulation 1988*; or
- (b) if it is used by another unit of the public sector—the process is not in accordance with the Act, this regulation, the Selection Standard, the Act establishing or continuing the unit and any regulation made under that Act.

Interpretation—‘Gazette’ may mean another publication

1C. When—

- (a) a unit of the public sector does not advertise a vacant position or give notice of an appointment in the Gazette but so advertises or gives notice in a publication other than the Gazette; and
- (b) a reference is made in this regulation to the notification in the Gazette of a vacant position, an appointment or a revocation;

the reference must be taken to be to the publication used by the unit.

Laws prescribed for definition “disciplinary law”

1D. For the Act, section 1.3(1), definition “disciplinary law”, paragraph (c), the following laws are prescribed—

- *Corrective Services (Administration) Act 1988*
- *Fire Service Act 1990*
- discipline standard.

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Persons prescribed for definition “eligible public sector employee”

1E. For the Act, section 5.3(5), definition “eligible public sector employee”, paragraph (a), the following persons are prescribed—

- (a) a public sector employee to whom the discipline standard applies (other than a temporary employee);
- (b) a person appointed to, or employed or engaged in, the Queensland Fire Service as an auxiliary fire officer.

Prescribed standard for definition “eligible public sector employee”

1F. For the Act, section 5.3(5), definition “eligible public sector employee”, paragraph (b), the selection standard is a prescribed standard.

**PART 2—PRESCRIBED GUIDELINES FOR PUBLIC
SECTOR MANAGEMENT STANDARDS**

Prescribed guidelines for standards

2.(1) The Commission may issue standards with respect to the following matters—

- (a) recruitment and selection processes;
- (b) position evaluation;
- (c) remuneration standards;
- (d) performance planning and review;
- (e) training and development;
- (f) management of unsatisfactory work performance;
- (g) position descriptions;
- (h) equal employment opportunity;
- (i) management of redundancies;

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- (j) discipline;
- (k) investigations of complaints;
- (l) management and administration generally of the public sector;
- (m) personnel management generally within the public sector.

(2) Subsection (1) is a prescribed guideline for the purposes of section 4.13(1)(a) and (b) of the Act.

PART 3—APPEALS AGAINST CERTAIN ADMINISTRATIVE ACTIONS

Division 1—Appeal matters generally

Institution of appeal by giving notice

3.(1) This section applies to a person who has a right of appeal under the Act and wants to exercise that right.

(2) The person must give to the Commissioner for Public Sector Equity a written notice that sets out all of the following matters—

- (a) details that identify the thing against which the person is appealing;
- (b) the grounds for the appeal;
- (c) any other details which the person believes supports his or her appeal.

(3) The Commissioner must, as soon as possible after the Commissioner has received the notice of appeal, give notice of its receipt to the appellant.

Conduct of appeals

4.(1) The appeal tribunal dealing with an appeal may determine the way

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in which the appeal will be conducted including the persons who are the other parties to the appeal.

(2) The tribunal may join (wholly or partially)—

- (a) appeals that relate to the same action mentioned in section 5.3(1)(a) of the Act; or
- (b) appeals that relate to the same action mentioned in section 5.3(1)(b) of the Act; or
- (c) appeals that relate to the same appointment; or
- (d) appeals that relate to the same application of any remuneration standard.

(3) The tribunal may also join appeals if the appellant in each appeal is the same person or the appeals arise out of the same or a similar set of circumstances.

(4) The tribunal's determination under subsection (1) is subject to this regulation.

Tribunal may hold conferences

5.(1) The appeal tribunal may decide to hold a conference with 1 or more of the parties to a proceeding for such purpose as the tribunal thinks fit.

(2) Without limiting the generality of subsection (1), the tribunal may hold a conference for any of the following purposes—

- (a) to clarify the facts or issues in dispute;
- (b) to find out if the parties agree to the tribunal determining the appeal without holding a hearing or to holding a hearing by telephone;
- (c) to determine if, under section 5.6(6) of the Act, the tribunal must not hear an appeal;
- (d) to determine if, under section 5.6(6A) of the Act, the tribunal may decline to hear an appeal;
- (e) to determine the timing of the hearing.

(3) A conference may be held by telephone.

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(4) An appeal tribunal's decision at a conference is not a determination upon appeal, except—

- (a) a determination, under section 5.6(6) of the Act, that the tribunal must not hear the appeal; and
- (b) a determination, under section 5.6(6A) of the Act, to decline to hear the appeal.

Attendance at appeal to be part of employee's performance of duty

6.(1) If a public sector employee—

- (a) is an appellant; or
- (b) is requested or directed by an appeal tribunal to attend its proceedings;

the employee's attendance at the appeal proceedings is part of his or her duties.

(2) The employee must be paid all travelling expenses and allowances to the same extent as if he or she attended the appeal proceedings as part of his or her duties and the amount of the travelling expenses and allowances is to be taken as a reasonable amount determined by the appeal tribunal.

(3) This section does not apply to an employee who is suspended from duty without pay.

Determination of appeal tribunal

7.(1) When an appeal tribunal dealing with an appeal determines it, the determination—

- (a) must be in writing; and
- (b) must specify whether the tribunal allows or dismisses the appeal; and
- (c) must set out the tribunal's reasons for its determination.

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

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Withdrawal of appeal

8.(1) This section applies when—

- (a) an appellant has appealed under section 5.3 or 5.4 of the Act; and
- (b) the appeal tribunal dealing with the appeal has not given its determination to the appellant.

(2) The appellant may withdraw the appeal by written notice given to the appeal tribunal.

(3) The tribunal must give copies of the notice to the other parties to the appeal and to any other person whom it considers has an interest in the appeal.

Lapsing of appeal

9. An appeal lapses if the appellant—

- (a) ceases to be a public sector employee; or
- (b) no longer satisfies the requirements of the class of appeal in question.

Departments etc. to be liable for costs, other expenses and allowances and sums

10.(1) The unit of the public sector whose decision is the subject of an appeal is liable for—

- (a) the costs of the appeal (including the costs of the appeal tribunal attributable to the appeal or costs incurred by the Commission for the appeal); and
- (b) any expenses and allowances of an employee under section 6(2) in relation to the appeal; and
- (c) any sums which, under section 7.5 of the Act, persons are entitled to be paid when they attend before the appeal tribunal to produce any information, record or thing in relation to the appeal.

(2) The appeal tribunal dealing with an appeal may determine the amount of the costs, expenses, allowances or sums at the end of the appeal

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proceedings or at a later time.

(3) The chief executive of the unit must ensure prompt payment of all amounts for which the unit is liable.

Division 2—Appeals against appointments by way of promotions

Right of appeal

11.(1) For the purposes of section 5.3(2)(c) of the Act, an eligible public sector employee must satisfy all of the following requirements—

- (a) the employee must have applied for a vacant position that was notified in the Gazette and to which another eligible public sector employee was appointed;
- (b) the employee's application for the vacant position must have been received before the deadline for the receipt of applications;
- (c) the employee's notice of appeal must be actually received by the Commissioner for Public Sector Equity before the deadline for its receipt;
- (d) the employee must continue to be appointed within a unit of the public sector to which the Selection Standard applies.

(2) Subject to subsection (3), the deadline for the actual receipt of the notice of appeal is 5 p.m. on the 21st day after the day on which the appointment of the other eligible public sector employee was notified in the Gazette.

(3) The deadline for the actual receipt of a notice of appeal by an appellant—

- (a) who was appointed, by way of promotion, to an office; but
- (b) whose appointment was revoked under section 16(2);

is 5 p.m. on the 21st day after the day on which the revocation is published in the Gazette.

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Parties of appeal against an appointment

12.(1) The parties to an appeal under section 5.3(1)(c) of the Act are—

- (a) the appellant; and
- (b) the appointee; and
- (c) the chief executive of the unit of the public sector in which the appointment was made.

(2) The chief executive may appoint, in writing, a person to represent the chief executive for the purposes of the appeal.

Conduct of an appeal against an appointment

13. When the appellant has given a notice of appeal to the Commissioner for Public Sector Equity, the appellant must give a copy of the notice—

- (a) to the other parties to the appeal; and
- (b) if, immediately before the appointment, the appointee was employed in a unit of the public sector other than the unit to which he or she was appointed— to the chief executive of that unit.

Grounds for appeal

14. A notice of appeal may contain 1 or both of the following grounds of appeal—

- (a) the recruitment or selection process was deficient;
- (b) the appellant demonstrated the highest level of merit overall.

Effect if appeal allowed on the basis of deficient process

15.(1) This section applies when—

- (a) 1 of the grounds of appeal is that the recruitment or selection process used by a unit of the public sector was deficient; and
- (b) the Commissioner determines that the recruitment or selection process was deficient and the deficiency was substantial.

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(2) The Commissioner may—

- (a) revoke the appointment of the appointee and direct the unit to commence the process again (including advertising the position as vacant) or to continue with the process from a particular time or event; or
- (b) deal with the appeal by determining if during the appeal—
 - (i) the appointee or the appellant demonstrated the highest level of merit overall; or
 - (ii) the appointee or—when the proceedings consist of appeals joined under section 4—1 of the appellants demonstrated the highest level of merit overall.

(3) The revocation must be notified in the Gazette by the Commissioner.

Effect if appeal allowed on the basis of merit

16.(1) This section applies when the Commissioner for Public Sector Equity allows an appeal because, during the appeal, an appellant demonstrated the highest level of merit overall.

(2) The Commissioner, must by notice in the Gazette, revoke the appointment of the appointee and appoint the appellant to the position.

(3) The appellant must be paid—

- (a) the salary for the position on and after the day of his or her appointment, even if he or she does not commence duties in the position until a later day; and
- (b) any annual salary increment for the office on the anniversary of the day of the appointee's appointment.

(4) The person whose appointment is revoked—

- (a) if his or her previous position is vacant—resumes the position and classification which he or she held immediately before his or her appointment; and
- (b) in any other case—continues to be employed in the unit of the public sector in which he or she was appointed immediately before his or her appointment and his or her rate of salary must

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be not less than he or she was paid immediately before the appointment.

Division 3—Appeals against disciplinary actions

Deadline for beginning appeal against disciplinary action

18.(1) A notice of appeal against a disciplinary action must be actually received by the Commissioner for Public Sector Equity before the deadline for its receipt.

(2) The deadline for the actual receipt of the notice is 5 p.m. on the 21st day after the day on which the employee received written notice of the disciplinary action.

Deferral of disciplinary action until after appeal

19.(1) This section applies to a decision to take disciplinary action against an employee, other than dismissal or suspension.

(2) The action does not take effect until—

- (a)** if the employee's notice of appeal is received before the deadline—the appeal tribunal dealing with the appeal allows or dismisses it; or
- (b)** in any other case—the end of the period of 21 days after the employee received the written notice of the decision.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 25 July 1996. Future amendments of the Public Sector Management Commission Regulation 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to SL No. 201 of 1994	17 June 1994

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of Table	Reprint No.
Obsolete and redundant provisions	1

6 List of legislation

Public Sector Management Commission Regulation 1991

pubd gaz 14 January 1991 p 111
commenced on date of publication

as amended by—

Public Sector (Appeals) Regulation 1991 SL No. 131 s 2 sch

pubd gaz 16 November 1991 pp 1212–26
commenced on date of publication

Public Sector Management Commission Amendment Regulation (No. 1) 1994 SL No. 201

notfd gaz 10 June 1994 pp 896–8
commenced on date of notification

Public Sector Management Commission Amendment Regulation (No. 1) 1995 SL No. 31

notfd gaz 24 February 1995 pp 816–18
commenced on date of notification

Public Sector Management Commission Amendment Regulation (No. 2) 1995 SL No. 336

notfd gaz 8 December 1995 pp 1449–53
ss 1–2 commenced on date of notification
remaining provisions commenced 8 December 1995 (see s 2 and 1995 SL
No. 355)

7 List of annotations

PART 1—PRELIMINARY

pt hdg ins 1991 SL No. 131 s 2 sch

Short title

s 1 sub 1991 SL No. 131 s 2 sch

Definitions

s 1A ins 1991 SL No. 131 s 2 sch
def “**disciplinary law**” ins 1994 SL No. 201 s 3
sub 1995 SL No. 31 s 3
om 1995 SL No. 336 s 4(1)
def “**discipline standard**” ins 1995 SL No. 336 s 4(2)
def “**eligible public sector employee**” sub 1994 SL No. 201 s 3
sub 1995 SL No. 31 s 3
om 1995 SL No. 336 s 4(1)
def “**selection standard**” sub 1995 SL No. 336 s 4

Interpretation—Deficient recruitment or selection process

s 1B ins 1991 SL No. 131 s 2 sch

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Interpretation—‘Gazette’ may mean another publication

s 1C ins 1991 SL No. 131 s 2 sch

Laws prescribed for definition “disciplinary law”

s 1D ins 1995 SL No. 336 s 5

Persons prescribed for definition “eligible public sector employee”

s 1E ins 1995 SL No. 336 s 5

Prescribed standard for definition “eligible public sector employee”

s 1F ins 1995 SL No. 336 s 5

**PART 2—PRESCRIBED GUIDELINES FOR PUBLIC SECTOR
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pt hdg ins 1991 SL No. 131 s 2 sch

Prescribed guidelines for standards

s 2 amd 1991 SL No. 131 s 2 sch

PART 3—APPEALS AGAINST CERTAIN ADMINISTRATIVE ACTIONS

pt hdg ins 1991 SL No. 131 s 2 sch

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div hdg ins 1991 SL No. 131 s 2 sch

Institution of appeal by giving notice

s 3 ins 1991 SL No. 131 s 2 sch

Conduct of appeals

s 4 ins 1991 SL No. 131 s 2 sch

Tribunal may hold conferences

s 5 ins 1991 SL No. 131 s 2 sch

Attendance at appeal to be part of employee’s performance of duty

s 6 ins 1991 SL No. 131 s 2 sch

Determination of appeal tribunal

s 7 ins 1991 SL No. 131 s 2 sch

Withdrawal of appeal

s 8 ins 1991 SL No. 131 s 2 sch

Lapsing of appeal

s 9 ins 1991 SL No. 131 s 2 sch

Departments etc. to be liable for costs, other expenses and allowances and sums

s 10 ins 1991 SL No. 131 s 2 sch

Division 2—Appeals against appointments by way of promotions

div hdg ins 1991 SL No. 131 s 2 sch

Right of appeal

s 11 ins 1991 SL No. 131 s 2 sch

Parties of appeal against an appointment

s 12 ins 1991 SL No. 131 s 2 sch

Conduct of an appeal against an appointment

s 13 ins 1991 SL No. 131 s 2 sch

Grounds for appeal

s 14 ins 1991 SL No. 131 s 2 sch

Effect if appeal allowed on the basis of deficient process

s 15 ins 1991 SL No. 131 s 2 sch

Effect if appeal allowed on the basis of merit

s 16 ins 1991 SL No. 131 s 2 sch

Prescription of standard for purposes of definition

s 17 ins 1991 SL No. 131 s 2 sch
om 1995 SL No. 336 s 6

Division 3—Appeals against disciplinary actions

div hdg ins 1991 SL No. 131 s 2 sch

Deadline for beginning appeal against disciplinary action

s 18 ins 1991 SL No. 131 s 2 sch

Deferral of disciplinary action until after appeal

s 19 ins 1991 SL No. 131 s 2 sch