

EMPLOYMENT INSTRUCTION NUMBER 8

MANAGEMENT OF GRIEVANCES

1. SCOPE AND PURPOSE

This Employment Instruction deals with the management of employee grievances both within agencies and when a request is lodged with the Commissioner for Public Employment. An employee:

- may request that his or her grievance be dealt with internally through the agency's grievance settling procedures.
- under section 59 of the *Public Sector Employment and Management Act* (the Act), may request the Commissioner to review an action, intended action, or decision regarding his or her employment. This may include the failure to act.

This Employment Instruction may also apply to a former employee.

2. LEGISLATIVE BASIS

Section 59 of the Act.

3. OTHER SOURCES OF INFORMATION

The following should be read in conjunction with this Employment Instruction:

- Agency specific grievance settling procedures;
- Employment Instruction Number 2 – Probation;
- Employment Instruction Number 5 - Medical Incapacity;
- Grievance settling procedures specified in Awards or Certified Agreements; and
- Section 32 of the *Work Health Act*.

4. AGENCY ACTION REQUIRED

Chief Executive Officers shall establish written grievance settling procedures for their agencies, which should be made available to all employees and, at a minimum, should address the following issues:

- how the grievance can be resolved at the immediate supervisory/ management level to which the aggrieved employee reports;

- how appropriate steps can be taken to ensure that the privacy of parties is protected;
- that procedures are not unduly cumbersome; and
- that the resolution of a grievance relating to discrimination or harassment requires particular skills and expertise.

An employee's grievance should initially be addressed by the agency concerned, through its grievance settling procedures, so that only those grievances that cannot be resolved within the agency are brought to the Commissioner's attention.

5. EMPLOYEE'S OBLIGATION

An employee must carry out an instruction about which he or she may be aggrieved until a review of the grievance has been finalised except where:

- an employee believes an official instruction to be unlawful;
- the Commissioner determines otherwise; or
- section 32 of the *Work Health Act* applies, which states in part that:

“Where there is an immediate risk of severe injury to a worker at a workplace and that risk is not removed by the employer, the worker may cease work in the area in which the risk is present.”

Section 32 also provides that an employee can be assigned alternative work where the employee has ceased work because of an immediate risk. The means of settling any dispute between the employer and employee about an immediate risk is also provided for in section 32.

6. EMPLOYEE REQUEST FOR REVIEW

Before making a request to the Commissioner, except in the case of termination of probationary employment, the employee should attempt to have the matter addressed through the grievance settling procedures of the agency concerned.

Where an agency has been unable to resolve a grievance, or an employee considers that he or she cannot seek redress within the agency, the employee may direct his or her grievance to the Commissioner for review, indicating the reason(s) why he or she cannot utilise agency grievance settling procedures.

A request to the Commissioner must be made within a period of three months after the action, inaction, intended action, treatment or decision, for which he or she is aggrieved. However, a request for review in relation to termination of probationary employment must be submitted to the Commissioner within 14 days.

It should be noted that the Commissioner may decline to review a grievance where the Commissioner is of the view that the grievance is vexatious, frivolous or not made in good faith.

7. REQUEST TO THE COMMISSIONER

7.1 Commissioner Consideration

A request for a review should be in writing, detailing the specific grounds for the grievance and what action the employee considers may resolve the matter.

Where an employee has not taken steps to have the grievance addressed within his or her agency, the Commissioner may, if applicable, refer the grievance to the relevant Chief Executive Officer for consideration within a specified time frame. No further action will be taken by the Commissioner pending the Chief Executive Officer's advice on resolution or otherwise.

7.2 Commissioner Review

Where a review is undertaken, the Commissioner shall request the Chief Executive Officer of the agency concerned to provide a report on the circumstances giving rise to the grievance. The Commissioner may seek additional information.

After considering the information provided, the Commissioner shall:

- (i) confirm the action, intended action or decision; or
- (ii) direct the Chief Executive Officer of the agency concerned to take, or refrain from taking, as the case requires, a specified action.

The Commissioner may give reasons in writing to the parties for the decision reached.

D J HAWKES
COMMISSIONER FOR PUBLIC EMPLOYMENT

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