

INTERNAL AGENCY COMPLAINTS AND SECTION 59 GRIEVANCE REVIEWS

Employment Instruction Number 8

1. **Scope**

1.1. This Employment Instruction:

- a) sets out rules for handling internal employee grievances and procedures for employees lodging grievances in accordance with section 59 of the *Public Sector Employment and Management Act* (the Act);
- b) is issued in accordance with section 16 of the Act;
- c) is to be read in conjunction with, and subject to, section 59 of the Act; and
- d) is to be read in conjunction with Employment Instruction Number 3 (Natural Justice).

2. **Agency Policy and Procedure**

2.1. A Chief Executive Officer must develop an internal employee grievance handling policy and procedure consistent with the Act, its subordinate legislation and any relevant award or enterprise agreement.

2.2. At a minimum the internal employee grievance-handling policy and procedure must:

- a) enable an employee to lodge an internal grievance about any aspect of his or her treatment in employment, including treatment by other employees in the workplace, and actions and/or decisions of the agency;
- b) set out a process that is not overly complex and that ensures that employee grievances are handled promptly;
- c) provide that an employee grievance is to be handled by an impartial officer with appropriate expertise and sensitivity;
- d) encourage early intervention and where possible, resolution at the immediate supervisory/management level to which the aggrieved employee reports; and
- e) make it explicit that regardless of the outcome of the employee grievance no employee will be victimised for having lodged a grievance.

2.3. An employee's grievance will generally be handled by the agency in accordance with the agency's internal employee grievance-handling procedure, except where:

- a) The action or decision of the agency has been finalised;

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- b) The grievance is regarding termination of probationary employment; or
 - c) The circumstances are such that the employee cannot reasonably seek redress within the agency.

3. Section 59 Grievances

- 3.1. An employee's request to the Commissioner to review the employee's treatment in employment must be lodged in writing to the Commissioner, detail the specific grounds for the grievance and must:
 - a) be about treatment which has directly affected the employee seeking the review;
 - b) relate to an action, inaction, intended action, or decision of the employee's agency; and
 - c) provide details of the circumstances, and the specific agency action, inaction, intended action or decision which has aggrieved the employee.
- 3.2. In reviewing the grievance the Commissioner may seek such further information as he or she sees fit, and may request or direct the Chief Executive Officer of the agency or the employee to provide any information required to assist in the review process.

4. Employee's obligation

- 4.1. An employee must comply with any instruction of the Chief Executive Officer until a review of the grievance has been finalised, except where:
 - a) an employee reasonably believes an official instruction to be unlawful;
 - b) the Commissioner determines otherwise; or
 - c) the instruction involves a serious and immediate risk to a worker's health or safety.



GRAHAM SYMONS
Commissioner for Public Employment

14 December 2011