

APPEALS – 2023-2026 AGREEMENT PROVISIONS

Section J Appeal Mechanism for Misconduct, Underperformance and Other Matters

J1 - Objective and Application

- J1.1 This section sets out an appeal mechanism for an employee where the employee (referred to in this section as “the appellant”) is not satisfied with the outcome of decisions described in the following clause.
- J1.2 The head of service must nominate a person, or position, to be the Convenor of Appeals (“the Convenor”).
- J1.3 This appeal mechanism applies to all the following decisions:
- J1.3.1 Decisions to suspend the employee without pay under clause G6 -of this Agreement.
 - J1.3.2 Decisions relating to findings of misconduct under clause G8 -, provided that such and appeal can only be made after a decision about disciplinary action under clause G9 - has been made, except a decision to terminate the employee’s employment.
 - J1.3.3 Decisions to take disciplinary action under subclause G9 - of this Agreement, except a decision to terminate the employee’s employment.
 - J1.3.4 Decisions to take underperformance action under subclause H2.17 of this Agreement, except a decision to terminate the employee’s employment.
 - J1.3.5 Decisions taken in relation to an employee’s eligibility for benefits under clauses L6 -of this Agreement and the amount of such benefits, the amount payable by way of income maintenance under clause L10 -, and the giving of a notice of involuntary redundancy under clause L9 -.
 - J1.3.6 Any other decision that is subject to appeal under the PSM Act.
- J1.4 In relation to appeals about misconduct findings and disciplinary action in accordance with subclause J1.3.2 and subclause J1.3.3, only one application for appeal can be made in relation to the same misconduct matter. The application must state which one of the following the application relates to:
- J1.4.1 The finding of misconduct under clause G8 -.

J1.4.2 The disciplinary action under clause G9 -.

J1.4.3 Both the finding of misconduct under clause G8 - and the disciplinary action under clause G9 -.

J1.5 An employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This is the sole right of review of such an action.

J2 - Initiating an Appeal

J2.1 The appellant, or the appellant's union or other employee representative on the appellant's behalf, may initiate an appeal under these procedures by making an application to the Convenor in accordance with all of the following:

J2.1.1 It is in writing.

J2.1.2 It describes the decision or action taken or to be taken, the reasons for the application and the outcome sought.

J2.1.3 It is received by the Convenor within 14 calendar days of being notified, or the appellant becoming aware, of the decision to take the action.

J2.1.4 It seeks to appeal an appealable decision as set out in subclause J1.3.

J2.2 Notwithstanding any other provisions in this section, the Convenor has the authority to dismiss an appeal if the appellant obstructs, unreasonably delays or fails to co-operate with the process.

J3 - Independent Appeal Members

J3.1 The public sector standards commissioner must keep a list of approved independent appeal members.

J3.2 Where an application is received by the Convenor in accordance with the requirements set out in subclause J2.1 and subclause J2.2 the Convenor must select a person from the approved list of independent appeal members to conduct a single member determinative appeal.

J4 - Powers and Role of the Independent Appeal Member

J4.1 In considering an application, the independent appeal member must have due regard to the principles of natural justice and procedural fairness. Proceedings of the appeal are to be conducted as quickly as practicable and consistent with a fair and proper consideration of the issues.

J4.2 The Convenor must invite the appellant to have a support person, who may be the appellant's union or other employee representative, present at any meetings held between the independent appeal member and the appellant and must allow reasonable opportunity for this to be arranged.

J4.3 The independent appeal member must be provided with all relevant information and evidence that was available to the decision-maker in the making of the original decision or in taking the original action.

- J4.4 The independent appeal member has the discretion to decide not to conduct a review of the appeal application, or, if it has commenced reviewing the application, to decide not to proceed further if the independent appeal member believes any of the following apply:
- J4.4.1 The application is frivolous or vexatious, or not made in good faith.
 - J4.4.2 The appellant making the appeal may apply to another person or authority about the application who may more appropriately deal with the application.
 - J4.4.3 Further review of the application is not warranted.

Conducting an appeal

- J4.5 Where the independent appeal member determines that an application for appeal should proceed, the independent appeal member must conduct a procedural review on the papers provided under subclause J4.3 to determine whether all of the following apply:
- J4.5.1 It was open to the head of service to take the action they did.
 - J4.5.2 The principles of procedural fairness and natural justice were complied with in taking the original action or decision.
 - J4.5.3 The final decision of the head of service, the Public Sector Standards Commissioner or both was appropriate in all of the circumstances.
- J4.6 Where the independent appeal member is satisfied that a fundamental piece of evidence was not considered in the original process, the independent appeal member may request that the Convenor refer the matter back to the head of service, Public Sector Standards Commissioner or both for further investigation.
- J4.7 The head of service or Public Sector Standards Commissioner, after considering the referral from the Convenor under subclause J4.6, must do one of the following:
- J4.7.1 As soon as possible, arrange for a further investigation to be conducted, in line with the referral of the Convenor, and must provide any further information, evidence or outcomes of the further investigation to the independent appeal member in order that they may complete their review.
 - J4.7.2 Provide written reasons to the independent appeal member, within 14 calendar days, for not accepting their referral for further investigation.
- J4.8 After reviewing any application under this section, the independent appeal member must, subject to subclause J4.6, make a determination of the appeal and do one of the following:
- J4.8.1 Confirm the original decision.
 - J4.8.2 Vary the original decision.
 - J4.8.3 Prescribe that other action be taken.
- J4.9 The independent appeal member must provide a report to the Public Sector Standards Commissioner and the head of service which must include the determination and the reasons for the determination. A copy of the report must also be provided to the appellant.

J5 - Costs

- J5.1 The Territory are not liable for any costs associated with representing an appellant in these procedures.

J6 - Right of External Review

- J6.1 The employee, or the employee's union or other employee representative on the employee's behalf, may seek a review by the FWC of a decision under subclause J4.8.
- J6.2 The FWC is empowered to resolve the matter in accordance with the powers and functions set out in clause F6 - of this Agreement. The decision of the FWC is binding, subject to any rights of appeal against the decision to a Full Bench in accordance with subclause F6.14.

Section K Appeal and Process Reviews of certain recruitment decisions

K1 - Application

- K1.1 Under this section, procedures are established for officers to seek a review of recruitment processes or appeal certain recruitment decisions.
- K1.2 These procedures for appeals and reviews account for the principles of procedural fairness and natural justice in this context.
- K1.3 For the purposes of this section, an action includes a decision and a refusal or failure to make a decision.
- K1.4 Decisions made by Joint Selection Committees in accordance with clause B4 - cannot be reviewed or appealed.

K2 - Appeals about Promotions and Temporary Transfer to Higher Office

- K2.1 The head of service must nominate a person, or position, to be the Convenor of Appeals (“the Convenor”), which may or may not be the same person, or position, nominated under subclause J1.2.
- K2.2 This appeal mechanism applies to both the following:
 - K2.2.1 Decisions about promotion or temporary transfer to a higher office or role (for periods in excess of 6 months) affecting the officer where the officer was an applicant for the position, except decisions made on the unanimous recommendation of a joint selection committee (see PSM Act and PSM Standards).
 - K2.2.2 Decisions to promote an officer after acting for a period of 12 months or more in a position at or below Administrative Services Officer Class 6 (or equivalent classification).
- K2.3 For the purposes of subclause K2.2, an appeal may only be made in relation to promotions or temporary transfer to a higher office or role where the pay applicable is any classification with a maximum pay that is less than the minimum pay of a classification equivalent to a Senior Officer Grade C, or unless otherwise specified in the PSM Act. For positions above Administrative Services Officer Class 6 (or equivalent classification) an application may be made for a process review in accordance with clause K3 -of this Agreement.
- K2.4 For the purposes of paragraph K2.2.2, any suitably qualified officer may appeal the decision.
- K2.5 For appeals concerning promotion or transfer to a higher office or role under subclause K2.2, the only ground on which the independent appeal member can review the decision is that the officer making the appeal would be more efficient in performing the duties of the position than the person promoted or selected for temporary transfer.

Initiating an appeal

- K2.6 An officer (“the appellant” for the purposes of this section) or the appellant’s union or other employee representative on the appellant’s behalf, may initiate an appeal under these procedures by making an application to the Convenor in accordance with all of the following:
 - K2.6.1 It is in writing.

K2.6.2 It is received by the Convenor within 14 calendar days of the decision to take the action being notified in the Gazette. For decisions relating to the temporary transfer to a higher office or role for periods in excess of 6 months that are not required to be notified in the gazette, it is received by the Convenor within 14 calendar days of the applicant being notified or becoming aware of the outcome of the process.

K2.6.3 It seeks to appeal an appellable decision as set out in subclause K2.2.

K2.7 Notwithstanding any other provisions in this section, the Convenor has the authority to dismiss an appeal if the appellant obstructs, unreasonably delays or fails to co-operate with the process.

Independent Appeal Members

K2.8 Where an application is received by the Convenor in accordance with the requirements set out in subclause K2.6, subject to subclause K2.7 the Convenor must select a person from the approved list of independent appeal members held by the Public Sector Standards Commissioner to conduct a single member determinative appeal.

Independent Appeal Member Recommendations

K2.9 After reviewing an application about promotion or temporary transfer to a higher office or role affecting the appellant, the independent appeal member must recommend to the head of service to do one of the following with regard to the decision that is the subject of the application:

K2.9.1 Confirm the original decision.

K2.9.2 Vary the original decision.

K2.9.3 Prescribe that other action be taken.

K2.10 The head of service must inform the appellant and affected parties in writing of their decision and the reasons for the decision, within 28 calendar days.

Note: Process Reviews (K3) are not considered Appeals and has therefore not been included in this document