

State Service Act 2000

Commissioner's Direction No 7

REVIEW OF ACTIONS

ISSUE DATE: 19 December 2007

OPERATION DATE: 4 February 2008

[Replaces and supersedes Commissioner's Direction No.7 issued on 12 October 2004, which is hereby revoked]

Commissioner's Direction No. 7

Review of Actions

Issue date: 19 December 2007

1. APPLICATION:

- 1.1 This Direction is issued in accordance with Section 20 of the *State Service Act 2000* (the Act) and applies to all Agencies.
- 1.2 This Direction is binding on all Officers and employees.

2. PURPOSE:

- 2.1 The purpose of this Direction is to establish the procedure for a review in accordance with Section 51(1) of the Act.

3. INTRODUCTION:

- 3.1 Section 50(1) of the Act provides employees with the entitlement to make application to the State Service Commissioner (the Commissioner) for the review of a State Service action.
- 3.2 Section 50(1) of the Act provides two distinct types of review as follows:
 - a) Section 50(1)(a) of the Act provides employees with a right of review of the selection of a person or an employee to perform duties other than duties to be performed for a specified term or for the duration of a specified task.
 - b) Section 50(1)(b) of the Act provides employees with a right of review of any other State Service action that relates to their employment in the State Service.
- 3.3 Heads of Agencies must, in accordance with Section 34(1)(j) of the Act, develop internal grievance resolution systems for their Agencies that reflect the principles of natural justice and procedural fairness.
- 3.4 Employees who have a grievance about any matter relating to their employment in the State Service, except a selection decision in relation to a permanent appointment, will normally be expected to utilise internal Agency grievance resolution systems in an attempt to resolve their grievance.

4. APPLICATION FOR REVIEW OF A SELECTION IN ACCORDANCE WITH SECTION 50(1)(a) OF THE ACT:
- 4.1 To make an application for the review of a selection, an employee must:
- (a) Submit a “*Notice of Intention to Lodge an Application for Selection Review*” (Form 1 attached to this Direction), in accordance with clause 4.2; **AND**
 - (b) Lodge an “*Application for Selection Review*” (Form 2 attached to this Direction), with a statement outlining the particulars of the circumstances which form the basis of the selection review, in accordance with clause 4.4.
- 4.2 An employee intending to lodge an application for a selection review in accordance with Section 50(1)(a) of the Act must first submit a “*Notice of Intention to lodge an Application for Selection Review*” to the Office of the State Service Commissioner, within 7 calendar days after the date appearing on the written advice to the employee of the selection. Only an employee who submits Form 1 will be entitled to lodge a formal selection review. No approval will be given to extend the 7 calendar day period.
- 4.3 In the event that a “*Notice of Intention to Lodge an Application for Selection Review*” is not received in relation to a proposed selection to a vacancy, the Office of the State Service Commissioner will authorise the Agency to finalise that selection.
- 4.4 The lodgement of a formal “*Application for Selection Review*” must be submitted to the Office of the State Service Commissioner, within 14 calendar days after the date appearing on the advice to the employee of the selection.
- 4.5 Subject to clause 4.7, if an “*Application for Selection Review*” has not been lodged within the 14 calendar day timeframe prescribed in clause 4.4, any previously submitted “*Notice of Intention to Lodge an Application for Selection Review*” will be considered to have lapsed.
- 4.6 An “*Application for Selection Review*” is to contain particulars of the circumstances giving rise to the review and in sufficient detail to enable the respondent to provide the Commissioner with a response to the issues raised by the applicant.
- 4.7 An application to extend the time for lodging an “*Application for Selection Review*” must be made in writing to the Commissioner prior to the expiration of the timeframe prescribed in clause 4.4. In response to such an application, the Commissioner may extend that timeframe.
- 4.8 An applicant may seek leave of the Commissioner to discontinue an application at any stage of the proceedings. A request to discontinue must be in writing and may be made on a “*Notice of Discontinuation*” (Form 4 attached to this Direction).

- 4.9 Agencies must:
- (a) notify employees who were candidates for the vacancy of the selection outcome in written form; and
 - (b) ensure that the written notification is dispatched to the employee no later than the date appearing on the said notification; and
 - (c) include in the notification information on the review right available to the employee and the timeframes for exercising that right in accordance with clauses 4.2 and 4.4 of this Direction.
5. APPLICATION FOR REVIEW OF ANY OTHER STATE SERVICE ACTION IN ACCORDANCE WITH SECTION 50(1)(b) OF THE ACT:
- 5.1 An application for review of any Other State Service Action in accordance with Section 50(1)(b) of the Act is made by lodging an “*Application for Review of any Other State Service Action*” (Form 3 attached to this Direction), within 14 days after the occurrence of the event that has given rise to the review.
 - 5.2 An application for review in accordance with Section 50(1)(b) in respect of the promotion of a permanent employee without advertising in accordance with Section 40 of the Act must be lodged within a period of 14 calendar days after the notification in the Gazette of the intention to seek the Commissioner’s approval to promote without advertising.
 - 5.3 An application for review is to contain particulars of the circumstances giving rise to the review and in sufficient detail to enable the Respondent to provide the Commissioner with a response to the issues raised by the Applicant.
 - 5.4 If an employee seeks resolution of an issue through the Agency’s internal grievance resolution system, or otherwise seeks to resolve a matter through direct negotiation or consultation, the event referred to in Clause 5.1 shall be the advice of the outcome of that internal process.
 - 5.5 An application for extension of the timeframe may be made in writing to the Commissioner prior to the expiration of the specified time. In response to such an application, the Commissioner may extend the timeframe.
 - 5.6 In exceptional circumstances, the Commissioner may accept a late application for a review of any Other State Service Action [Section 50(1)(b) of the Act].
 - 5.7 An applicant may seek leave of the Commissioner to discontinue an application at any stage of proceedings. A request for discontinuation must be in writing and may be made on Form 4 attached to this Direction.

6. APPOINTMENT AND DELEGATION OF PERSONS AND REVIEW PANELS:

- 6.1 The Commissioner may appoint, in writing, a person to determine a review and delegate such powers of the Commissioner as are relevant to make that determination. That person shall be known as the Commissioner's Delegate.
- 6.2 The Commissioner may establish a Review Panel in accordance with Regulation 15 of *State Service Regulations 2001* to determine a review and delegate such powers of the Commissioner as are relevant to make that determination.

7. PROCEDURE FOR THE DETERMINATION:

- 7.1 A reference to the Commissioner in the following procedures also means the Commissioner's delegate or a Review Panel established by the Commissioner.
- 7.2 The parties to a review are the Applicant, the Respondent and any other person or body that the Commissioner determines to have a relevant interest in the review.
- 7.3 A person who is nominated to represent the Respondent (Agency) in proceedings before the Commissioner must be authorised to have full carriage of the case.
- 7.4 An applicant for review of an Other State Service Action in accordance with Section 50(1)(b) of the Act is entitled to be represented by an advocate other than a Barrister or a Legal Practitioner within the meaning of the *Legal Professions Act 1993*.
- 7.5 In the conduct of a review, the Commissioner:
- (a) is to determine the review expeditiously and with procedural fairness;
 - (b) is not bound by the rules of evidence, but may inform himself or herself on any matter in such a way as he or she thinks just;
 - (c) is to act according to equity, good conscience, and the merits of the case without regard to technicalities or legal forms;
 - (d) is to regulate his or her own procedure;
 - (e) may hold conferences with the parties and/or conduct hearings;
 - (f) may allow an advocate, other than a Barrister or a Legal Practitioner within the meaning of the *Legal Professions Act 1993*, to represent any of the parties to a selection review in accordance with Section 50(1)(a) of the Act;
 - (g) may, in appropriate circumstances and on application from a party to a review, allow that party to be represented by an advocate who is a Barrister or a Legal Practitioner within the meaning of the *Legal Professions Act 1993*;

- (h) may sit at any place and adjourn to any time and place;
- (i) may dismiss an application if it is considered to be frivolous or vexatious;
- (j) may allow a person, other than an advocate, to accompany the Applicant on the basis that such person shall have no formal role or part in the proceedings;
- (k) may summon as a witness any person whose evidence may be material;
- (l) may require any person to produce documents;
- (m) may take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations;
- (n) may make a determination and give reasons for that determination in writing to all parties;
- (o) may make recommendations and directions resulting from a determination;
- (p) is not to compel a person to answer a question or produce a document that may tend to incriminate that person;
- (q) may record the substance of proceedings manually and/or electronically, but is not obliged to provide copies or prepare transcripts for the parties;
- (r) may proceed to hear and determine a matter or any part of a matter in the absence of any party to it who has been duly summoned to appear or been duly serviced with a notice of the proceedings; and
- (s) may refer any matter to an expert and accept his or her report as evidence.

7.6 In an application determined by a Review Panel, the decision is to be by majority of members.

8. OPERATIVE DATE:

8.1 This Commissioner's direction will be operative on and from 4 February 2008.

Issued by authority of the State Service Commissioner pursuant to Section 20 of the *State Service Act 2000*.

Date: 19 December 2007

Robert J. Watling
STATE SERVICE COMMISSIONER



Office of the State Service Commissioner

State Service Act 2000

NOTICE OF INTENTION TO LODGE AN APPLICATION FOR SELECTION REVIEW

In accordance with Section 50(1)(a) of the *State Service Act 2000* I intend to lodge an application for review following the selection of a person or an employee to perform duties other than duties to be performed for a specific term or for the duration of a specific task.

My full application – i.e. a completed “*Application for Selection Review*” (Form 2) and supporting statement outlining the basis of the selection review based on evidence from the original selection process - is:

To be provided within 14 calendar days after the date appearing on the notice notifying me of the selection.

OR

Attached to this notice.

Name of selected person:

Vacancy Title: Vacancy No.:

Agency: Division: Location:

DETAILS OF APPLICANT SEEKING THE REVIEW:

Full Name: (Mr/Mrs/Miss/Ms)

..... (SURNAME) (GIVEN NAMES)

Home Address: Postcode:

Phone No: (Business) (Private).....

Agency: Division:

Current Title: Location:

NOTE: (1) The information you supply with your application will be made available to the respondent and the person selected for the vacancy.

(2) I understand that, in accordance with clause 4.4 of Commissioner’s Direction No.7, in the event that an “Application for Selection Review” (Form 2) is not received within the prescribed 14 calendar day timeframe, this “Notice of Intention to Lodge an Application for Selection Review” (Form 1) will be considered to have lapsed.

Signed:

Date: / /



Office of the State Service Commissioner

State Service Act 2000

APPLICATION FOR SELECTION REVIEW

In accordance with Section 50(1)(a) of the *State Service Act 2000* I request a review following the selection of a person to perform duties other than duties to be performed for a specific term or for the duration of a specific task.

A full statement supporting my application, based on evidence from the original selection process, is attached.

Name of selected person:

Vacancy Title: Vacancy No.:

Agency: Division: Location:

DETAILS OF APPLICANT SEEKING THE REVIEW:

Full Name: (Mr/Mrs/Miss/Ms)

.....
(SURNAME) (GIVEN NAMES)

Home Address: Postcode:

Phone No: (Business) (Private)

Current Title:

Agency: Division: Location:

NOTE: The information you supply with your application will be made available to the respondent and the person selected for the vacancy.

Signed:

Date: / /

**Office of the State Service Commissioner
2nd Floor, 144 Macquarie Street, Hobart, Tasmania
Telephone: (03) 6233 3637
Internet: <http://www.osscc.tas.gov.au>**

**GPO Box 621, Hobart 7001
Facsimile: (03) 6233 2693
Email: osscc@dpac.tas.gov.au**



Office of the State Service Commissioner

State Service Act 2000

APPLICATION FOR REVIEW OF ANY OTHER STATE SERVICE ACTION

In accordance with Section 50(1)(b) of the *State Service Act 2000* I request a review of a State Service action that relates to my employment in the State Service.

A full statement supporting my application is attached, including supporting documentary evidence.

DETAILS OF APPLICANT SEEKING THE REVIEW:

Full Name: (Mr/Mrs/Miss/Ms)

.....
(SURNAME) (GIVEN NAMES)

Home Address: Postcode:

Phone No: (Business) (Private)

Agency: Division:

Current Title: Location:

NOTE: (1) The information you supply with your application will be made available to the respondent.

(2) You are entitled, at any conference and/or hearing, to be accompanied by a support person(s) or be represented by an advocate. However, if the proposed advocate is to be a Barrister or a Legal Practitioner within the meaning of the Legal Professions Act 1993, the approval of the Commissioner is required.

Signed:

Date: / /

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Office of the State Service Commissioner

State Service Act 2000

REQUEST FOR DISCONTINUATION OF ANY REVIEW OF STATE SERVICE ACTION

I wish to withdraw from the following review process.

OR

I wish to advise that the following review has been resolved.

Accordingly, I request the matter be discontinued and the file closed.

DETAILS OF THE REVIEW (Please print clearly)

Name of Employee:

.....
(SURNAME) (GIVEN NAMES)

Application No:

Type of Review: *“Application for Selection Review”*

OR

“Application for Review of any Other State Service Action”

Agency: Location:

Signed:

Date: / /