

## Merit Instruction 8b

### Internal review and external review for Public Service vacancies, and vacancies in public sector agencies to which Part 7 of the Public Sector Act applies

Certain rights of internal and external review of employment decisions are provided under the South Australian *Public Sector Act 2009* (PS Act). Employment decisions include the appointment of a person to a set of duties.

Public service employees who apply for and, are eligible for, appointment to a vacancy that must be filled by a merit selection process, have the right to apply for an internal review pursuant to Section 61 of the PS Act and Regulation 26 of the Public Sector Regulations 2010, or directly for an external review pursuant to Section 62 and Regulation 27. In these circumstances the recommended candidate must be a public sector employee.

A number of appointments are not subject to merit-based selection processes (Regulation 17 of the Public Sector Regulations).

#### Internal review

Internal reviews are limited to considering whether there were serious irregularities in the selection process, including if:

- the process was affected by any form of favouritism, patronage or nepotism;
- the process was not based on a proper assessment of respective merits;
- the selected candidate was not eligible for appointment.

#### Lodging a request for an internal review

The process for requesting an internal review is as follows:

- Applicants are notified of the name of the applicant who the Chief Executive or delegate proposes to appoint to a vacancy as the result of a merit selection process. (Applicants are responsible for ensuring their contact details for notification are correct and up to date.)
- When notified, applicants may request a copy of the section of the panel report that relates to them, including the names of any referees contacted, the questions asked of the referees and a summary of the comments taken. This must be provided to applicants prior to the closure of the request for internal review period.
- Applicants must lodge a review application within seven calendar days of notification of the outcome of a selection process. This date may be extended in particular cases.
- Applications for a review must be lodged on the approved form in accordance with the processes outlined in this Instruction.
- Applications for a review are investigated using the DECD internal review processes.
- Applications for review must be submitted to the Executive Director, Human Resources and Workforce Development, by email directed to [decd.ecu@sa.gov.au](mailto:decd.ecu@sa.gov.au)
- Applications for a review must be received by 5 p.m. on the last nominated day for receipt of review applications.
- The application for review must contain a clear description of any alleged procedural irregularity, the manner in which it is alleged any irregularity influenced the panel recommendation, and any evidence supporting the allegations.

Applicants will be provided with an opportunity to provide relevant information and make submissions in writing, and may be assisted to present their case by another person (not a legal practitioner).

Regulation 26(5) requires that an internal review be completed within 21 days of an applicant providing final

information and making submissions on an application. This time may be extended under special circumstances.

It should be noted that where the employment decision was made personally by the Chief Executive, the review will be carried out by a person who is not a DECD employee; for example, in cases where the Chief Executive proposes to appoint some person other than the applicant recommended by the selection panel.

### **Outcomes of an internal review**

A person conducting an internal review of merit selection processes should consider if:

- there is some serious procedural irregularity;
- the recommended applicant was eligible for appointment to the relevant vacancy;
- the process was affected by any form of favouritism, nepotism or patronage, or otherwise not properly based on an assessment of the respective merits of the applicants.

If an internal review identifies a flaw in the selection process, the reviewer may recommend that the selection process should be recommenced from the beginning or from some later stage of the process. An internal reviewer has no authority to overturn the decision of a panel.

The review applicant, and other applicants where relevant, should be informed of any outcome.

### **External review**

The grounds for any application for external review are similarly limited to whether there were serious irregularities in the selection process, including if:

- the process was affected by any form of favouritism, nepotism or patronage;
- the process was not otherwise based on a proper assessment of respective merits;
- the selected applicant was not eligible for appointment.

### **Lodging a request for an external review**

#### ***After an internal review***

An applicant who is aggrieved by an employment decision may, after an internal review, make an application for an external review to the Public Sector Grievance Review Commission (the Commission).

The application must be made within seven days of notification of the outcome of the internal review.

#### ***Direct application for external review***

Employees can make an application for an external review without having applied for an internal review.

The application must be made within seven days of notification of the outcome of the selection process.

### ***Outcomes of an external review***

If the Commission identifies a flaw in a selection process, it may determine that the selection process should be recommenced from the beginning or from some later stage of the process.

Further information on external reviews is available at the [Office for the Public Sector](#) website.

## **Ethical Conduct Unit**

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