



Department of
Education

Managing a Breach of the Public Sector Standard Claims Framework

Effective date: 15 February 2022

This framework must be read in conjunction with the Managing a Breach of the Public Sector
Standard Claims Policy.

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This framework must be read in conjunction with the Managing a Breach of the Public Sector Standard Claims Policy.

1. Framework

1.1 Introduction

The Public Sector Management Act 1994 forms the legislative framework for public sector standards in human resources management. These standards are:

- Employment Standard (Commissioner's Instruction No. 1)
- Discipline Standard (Commissioner's Instruction No. 3)
- Redeployment Standard (Commissioner's Instruction No.11)
- Grievance Resolution Standard;
- Performance Management Standard; and
- Termination Standard.

The Public Sector Management (Breaches of Public Sector Standards) Regulations 2005 provide for impartial handling of a claim of breach of a Standard and provision for relief.

1.2 Application

Breach provisions apply where a reviewable decision is made to which a Public Sector Standard applies.

Refer to Appendix A for information on:

- human resource transactions to which Employment Standard breach claim rights and notifications apply; and
- which breach claims of the Employment Standard may suspend the implementation of a decision.

Breach claims cannot be made:

- against Level One and Level Two grievances covered by The School Education Act

Employees' (Teachers and Administrators) General Agreement;

- against the Discipline Standard, as separate legislative appeal provisions apply. See the [Staff Conduct and Discipline Policy Appendices B-D](#);
- for quarantined selection processes used to minimise the potential for displacement of existing permanent employees at their substantive level;
- for appointments to fill vacancies of six months or less, unless the advertisement indicated there was a possibility of permanency or an extension beyond six months;
- by a successful applicant to an appointment pool about decisions to appoint people to fill a vacancy from the pool; and
- against the Redeployment Standard for redeployment and redundancy matters covered by Part 6 of the Public Sector Management Act 1994 and the [Public Sector Management \(Redeployment and Redundancy\) Regulations 2014](#).

Refer to Application in the Explanatory Notes of the Public Sector Commission's [Public Sector Standards in Human Resource Management](#) for further information on exclusions under each Standard.

1.3 Notifiable Decisions

The Regulations establish when notification must be provided for decisions relating to some employment decisions and completed grievance processes.

Notifiable employment decisions are required for:

- appointments to fill a vacancy of more than six months;
- appointments to fill a vacancy of six months or less if the vacancy was advertised on the basis that appointment could be extended to more than six months or made permanent;
- for selection to form part of an appointment pool; and
- acting appointments to fill a temporary vacancy which is advertised that appointment could be made permanent.

While the Regulations do not require the Department to notify employees about decisions covered by the Redeployment, Performance Management or Termination Standards, good management practice should apply with human resource decisions communicated to relevant persons, assisting them to understand the process undertaken and the reason/s for the decision.

1.4 Prescribed Timeframes for Lodgement

The Public Sector Commissioner has the discretion to approve the late lodgement of claims after the prescribed lodgement period or early claims before a reviewable decision is made.

See the Public Sector Commission [Breach of Standard claims - Claimant guide](#) and [Breach claim materials](#) for further information.

Decisions requiring notification under the Employment Standard	The date given in the notification will be a minimum of four working days. The panel may provide a longer lodgement period.
Decisions requiring notification under the Grievance Resolution Standard	The date given in the notification will be 10 working days after it is reasonable to expect the notification would be received.
All other reviewable decisions to which Standards apply	The date will be 10 working days after a person becomes aware of the reviewable decision, or 30 working days after the decision was made, whichever period expires first.

1.5 Responsibilities of Principals and Line Managers

Employment Standard

For 'notifiable employment decisions' principals, line managers and panel chairs:

- give written notice to unsuccessful applicants regarding:
 - the decision that a breach of public sector standards claim may be lodged;
 - how a breach claim may be made; and
 - the breach claim closing date;

- include contact details to allow applicants to seek feedback on their application;
- be available during any specified breach period to provide feedback, if sought;
- seek clearance at the end of the breach claim period before appointment/s are made;
- suspend a proposed appointment to a vacancy or the transfer of an employee where there is an active breach;
- be available to assist in the Department's review of the process and provide documentation and information as required; and
- implement remedies and relief related to the outcome of the review in a timely manner.

Grievance Resolution Standard

For 'reviewable grievance decisions', principals and line managers at the conclusion of a formal grievance process, will give written notice to complainants and any employee who was the subject of a grievance:

- that a breach of public sector standards claim may be lodged;
- how a breach claim may be made; and
- the breach claim closing date.

This notification is also required where the decision results in no action taken.

1.6 Lodging a claim

A person may lodge a breach of Standard claim by writing to the Department, setting out the reasons why they consider the Standard has been breached and how they have been adversely affected by that breach.

Prior to lodging a breach claim of the Employment Standard, applicants are advised to seek information from the selection panel chair or delegate to gain an understanding of the process undertaken and the reason/s for the decision.

The process for the claimant is as follows:

- lodge the claim in writing with the Department;
 - within the breach period stated in the letter of notification for 'notifiable decisions' under the Employment Standard or Grievance Resolution Standard; or
 - within the prescribed timeframe for lodgement (to midnight) for all other 'reviewable

decisions' to which the Employment, Redeployment, Performance Management or Termination Standards apply;

- set out the reasons why you believe the Standard has been breached
 - how you have been adversely affected by the breach; and
 - any documentation to support the claim;
- submit the claim marked "Private and Confidential" to:
 - WorkforcePolicy.breachclaim@education.wa.edu.au

A Breach of Standard claim form is available on the Public Sector Commission website.

The breach claim process is not for the purpose of reassessing an individual's competitiveness for a position or to undertake a reassessment of applications, the process by which applicants are assessed is reviewed.

For claims against the Grievance Resolution Standard, the review process does not include judging or reassessing the merits of the grievance.

1.7 Withdrawing a claim

A claimant can withdraw the claim in writing:

- at any time during the breach claim process to cease the process; or
- to finalise the claim where an explanation or action resolves the claim.

1.8 Managing a claim

The Workforce Policy and Coordination Directorate:

- acknowledges receipt of the claim in writing; and
- reviews the process.

The Director, Workforce Policy and Coordination:

- refers unresolved claims to the Public Sector Commissioner for conciliation or review within 15 working days of receipt of the claim; and
- where required, notifies within 10 working days the Commissioner and claimant of the Department's response to the Commissioner's review; and within 10 days after relief, if provided.

1.9 Records management

Principals and line managers, or the Worksite/School Consultative Committee or Regional Grievance Committee for School Education Act Employees' (Teachers and Administrators) General Agreement (Agreement) grievances, will document and retain records of human resource processes and the reasons for decisions in accordance with the Records Management Policy and Procedures.

Documented records of human resource decisions should be clear and concise and may include:

- how and why a decision was made;
- actions taken to address effectively any conflicts of interest (perceived or actual);
- remedial actions, if any;
- reasons for delays or deviation from usual practices, where applicable; and
- records of communications.

Refer to the General Disposal Authority for State Government Information for record retention and disposal information for human resources decisions covered by the Standards:

- Recruitment (see Authority 80);
- Grievance (see Authority 49);
- Employee performance (see Authority 68); and
- Redeployment and Termination (see Authority 90 and 40.2).

1.10 Related Documents

Relevant legislation or authority

Code of Ethics (Commissioner's Instruction No. 7)

Discipline Standard (Commissioner's Instruction No. 3)

Employment Standard (Commissioner's Instruction No. 1)

Grievance Resolution Standard

[Interpretation Act 1984](#)

[Performance Management Standard](#)

[School Education Act Employees' \(Teachers and Administrators\) General Agreement](#)

[Termination Standard](#)

[Redeployment Standard \(Commissioner's Instruction No.11\)](#)

[Filling a Public Sector Vacancy \(Commissioner's Instruction No. 2\)](#)

[Public Sector Management Act 1994](#)

[Public Sector Management \(Breaches of Public Sector Standards\) Regulations 2005](#)

[Public Sector Management \(Redeployment and Redundancy\) Regulations 2014](#)

[Public Sector Standards in Human Resource Management](#)

Related Department policies

[Employee Performance](#)

[Recruitment, Selection and Appointment](#)

[Secondment](#)

[Staff Conduct and Discipline](#)

Other documents

[Breach claims - An agency guide](#)

[Breach of Standard claims – Claimant guide](#)

[Code of Conduct and Standards \(staff only\)](#)

[Commissioner's Instruction – Employment Standard: Questions and Answers](#)

[Commissioner's Instruction – Filling a Public Sector Vacancy: Questions and Answers](#)

[Grievance Framework](#)

2. Definitions

Breach claim

A claim of a breach of Standard made in accordance with the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005.

Claimant

A person who makes a claim.

Working day

A complete 24-hour period to midnight, excluding Saturday, Sunday, public service holiday or bank holiday throughout the State. For the purposes of notification, the breach period closing date does not include a portion of a day such as a specified closing time. Refer to the [Interpretation Act 1984 Section 61](#).

Notifiable employment decision

Notifiable decisions are:

- appointments to fill a vacancy of more than six months;
- appointments to fill a vacancy of six months or less if the vacancy was advertised on the basis that appointment could be extended to more than six months or made permanent;
- for selection to form part of an appointment pool; and
- acting appointments to fill a temporary vacancy advertised that appointment could be made permanent.

Reviewable grievance decision

The decision that ends the formal grievance process.

Reviewable decision

A decision made by an employing authority as a result of the completion of a process to which a Public Sector Standard applies.

3. Contact information

Workforce Policy and Coordination T: (08) 9264 4925

E: WorkforcePolicy.breachclaim@education.wa.edu.au

4. Appendices

Appendix A: [Appendix A](#) (PDF file - 60.4kB)

5. More information

Supporting content

Policy

[Managing a Breach of the Public Sector Standard Claims Policy](#)
