



Department of
Education

Managing a Breach of the Public Sector Standard Claims Framework

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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 (issued as a Commissioner's Instruction);
- Grievance Resolution Standard;
- Performance Management Standard;
- Redeployment Standard;
- Discipline 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 the Public Sector Commission's Breach claims - An agency guide (pages 16, 17, 20 and 22) for information on:

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

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 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 Responsibilities of Principals and Line Managers

For 'notifiable employment decisions' principals and line managers:

- 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;
- provide feedback during the nominated breach period, where it has been requested; and
- suspend a proposed appointment to a vacancy, or the transfer of an employee where there is an active breach.

Notification timeframes are provided in the Public Sector Commission's [prescribed timeframes for lodgement](#):

- the [Employment Standard](#) (minimum of four working days after notification given and expected to be received);
- the [Grievance Resolution Standard](#) (10 working days after notification given and expected to be received); and

- for all other reviewable decisions to which the Standards apply (10 working days after the person becomes aware of the reviewable decision or 30 working days after the decision was made, whichever period expires first).

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.

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.

1.4 Lodging a claim

When a 'reviewable decision' has been made, a person to whom a Standard applies may lodge a claim if they believe the decision has breached a Standard and they have been adversely affected by that breach.

The process for the claimant is as follows:

- lodge the claim in writing;
 - 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, where notification is not required to be provided;
- state how the Standard has been breached and how they have been adversely affected by the breach;
- submit the claim marked "Private and Confidential" to:
 - WorkforcePolicyandCoordinationBOSC@education.wa.edu.au (email); and

- withdraw the claim in writing:
 - at any time to cease the process; or
 - to finalise the claim where an explanation or action resolves the claim.

Prior to lodging a breach claim of the Employment Standard, employees or applicants are encouraged to seek information from the principal/line manager or, where appropriate the selection panel chair, to gain an understanding of the process undertaken and reason/s for the decision.

The Public Sector Commissioner has 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.

1.5 Managing a claim

The Workforce Policy and Coordination Directorate:

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

The Executive Director, Workforce:

- refers unresolved claims to the 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.

1.6 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).

1.7 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 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 Regulations.

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 5081.

4. More information

Supporting content

Policy

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