



Department of
Education

Managing a Breach of the Public Sector Standard Claims framework

Effective date: 17 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:

- [Recruitment](#)
- [Transfer](#)
- [Discipline](#)
- [Redeployment](#)
- [Grievance Resolution](#)
- [Performance Management](#)
- [Termination](#)

The *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* (the Regulations) set out the timeframes in which a claim can be made and, together with the *Industrial Relations Act 1979*, the procedures for resolving claims.

This framework supports the Department's Managing a Breach of the Public Sector Standard Claims policy.

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 decisions to which Recruitment and Transfer breach claim rights and notifications apply

- which breach claims may delay certain human resources activities.

Breach claims cannot be made on certain types of decisions:

Recruitment

- for appointments to fill vacancies of 12 months or less, where no possibility of permanency or an extension beyond 12 months was communicated
- by a suitable applicant to an appointment pool about decisions to appoint people to fill a vacancy from the pool
- a temporary move to a specific project at the same level with the same agency – employees can raise concerns through an agency's internal process

Grievance Resolution

- against Level One and Level Two grievances covered by the School Education Act Employees' (Teachers and Administrators) General Agreement 2023

Discipline

- against the Discipline Standard, as separate legislative appeal provisions apply

Redeployment

- a redeployment placement (for registrable and registered employees) as different rules apply (if a redeployee applies for a position outside of the redeployment process, a claim may be possible)
- 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 the Public Sector Commission's Public Sector Standards in Human Resources Management for further information on exclusions under each Standard.

1.3 Notifiable employment decisions

Notification must be provided for certain reviewable decisions to which a public sector standard applies. The notification must include the person's right to make a claim, and the applicable procedures and timeframes.

Recruitment decisions may be made following an advertised process, or using limited search methods under Commissioner's Instructions 48, Commissioner's Instructions 49, and Commissioner's Instructions 50.

Notifications are required for the following recruitment decisions:

- appointments to fill a vacancy of more than 12 months
- appointments to fill a vacancy of 12 months or less if the vacancy was filled with the possibility of extension past 12 months and/or permanency
- for selection to form part of an appointment pool
- acting appointments to fill a temporary vacancy where it was filled with the possibility of permanency

Notifications are required for the following grievance decisions:

- Conclusion of a formal grievance under the Department's Grievance Framework

While the Regulations do not require the Department to notify employees of applicable breach rights under the Transfer, Redeployment, Performance Management, or Termination Standards, it is recommended that managers consult with and communicate decisions to relevant employees, helping them understand the process followed and the reasons for the decision.

1.4 Prescribed timeframes for lodgement

The Regulations prescribe timeframes for a person making a claim in relation to a reviewable decision.

Breach claim timeframes

Decisions requiring notification under the Recruitment Standard	The date given in the notification will be a minimum of 4 business days. The panel may provide a longer lodgement period.
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Decisions requiring notification under the Grievance Resolution Standard

The date given in the notification will be 10 business days after the day on which the person was given notification.

All other reviewable decisions to which Standards apply

The date will be 10 business days after a person becomes aware of the reviewable decision, or 30 business days after the decision was made, whichever period expires first.

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.

The Department has 21 calendar days to attempt to resolve the claim from the day after the claim is lodged.

1.5 Responsibilities of principals and line managers and panel chair

Recruitment Standard

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

- give written notice to unsuccessful applicants 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
- allow 24 hours for Employee Relations to advise of a breach claim, or 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 (multiple vacancies can be filled provided at least one is kept vacant)
- be available to assist in the Department's review of the process and provide

documentation and information as required

- 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, must 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
- the breach claim closing date.

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

1.6 Responsibilities of claimants

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 Recruitment 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 breach claim process reviews the process used to assess applicants. It is not intended to reassess an individual's competitive merit for a position or to re-evaluate applications.

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

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 under the Recruitment Standard or Grievance Resolution Standard
 - within the prescribed timeframe for lodgement for all other 'reviewable decisions' to which the Recruitment, Transfer, 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
 - any documentation to support the claim
- submit the claim marked “Private and Confidential” to employeerelations.breachclaim@education.wa.edu.au

Refer to the Public Sector Commission website:

- [Breach of standard claims](#)
- [How to lodge a claim](#)
- [Breach of standards claims resources for forms and notifications.](#)

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
- to finalise the claim where an explanation or action resolves the claim.

1.8 Unresolved claims

Breach claims that have not been resolved by agreement or withdrawn during the agency resolution period:

- will be forwarded by the Department to the Public Sector Commission if the claim relates to the Recruitment Standard
- may be referred by the claimant or their union to the Western Australian Industrial Relations Commission (WAIRC) if the claim relates to Standards applying to Transfer, Performance Management, Grievance Resolution, Redeployment and Termination.

The WAIRC requires claimants to refer unresolved claims no more than 28 days from the end of the agency resolution period. The WAIRC may accept a referral outside this time limitation. Refer to the WAIRC’s guidance [Application to refer breach of public sector standards claim.](#)

1.9 Central services support

If a breach claim is lodged, the Department must make reasonable attempts to resolve the

claim with the claimant within 21 calendar days after the claim was lodged.

Employee Relations Directorate will:

- acknowledge receipt of the claim in writing
- discuss the claim with the claimant
- provide the claimant with relevant information outlining the resolution process
- assess the claim
- discuss the Department's assessment with the claimant as soon as practicable and
- notify the claimant of the process for referring their unresolved claim.

The Director, Industrial and Employee Relations:

- refers unresolved Recruitment Standard claims to the Public Sector Commissioner for conciliation or review after the agency resolution period
- where required, notifies the Commissioner and claimant of the Department's response to the Commissioner's review within 10 business days; and within 10 days after relief, if provided
- notifies claimants with an unresolved claim related to Transfer, Performance Management, Grievance Resolution, Redeployment and Termination of employment, that the claimant (or their union) may refer the claim to the WAIRC within 28 days from the end of the agency resolution period.

1.10 Records management

Principals, hiring managers and panel chairs are responsible for managing records in accordance with the *State Records Act 2000*, and the Department's Records Management policy and related 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

- records of communications.

1.11 Relevant legislation or authority

[Commissioner's Instruction 11: Redeployment Standard](#)

[Commissioner's Instruction 40: Ethical Foundations](#)

[Commissioner's Instruction 48: Recruitment, Selection and Appointment to Permanent Vacancies \(effective from 1 July 2026\)](#)

[Commissioner's Instruction 49: Recruitment, Selection and Appointment to Fixed Term Vacancies \(effective from 1 July 2026\)](#)

[Commissioner's Instruction 50: Backfilling Temporary Vacancies \(effective from 1 July 2026\)](#)

[Commissioner's Instruction 51: Transfer Standard \(effective from 1 July 2026\)](#)

[Discipline Standard](#)

[Grievance Resolution Standard](#)

[*Industrial Relations Act 1979*](#)

[Performance Management Standard](#)

[*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](#)

[Termination Standard](#)

[*State Records Act 2000*](#)

1.12 Related Department policies

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

[Employee Performance and Development policy](#)

[Records Management Policy](#)

[Secondment policy](#)

[Staff Conduct and Discipline policy](#)

1.13 Other documents

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

[Grievance Framework](#)

2. Definitions

Agency resolution period

The period for a public sector body to resolve the claim with the claimant is 21 calendar days, commencing the day after the claim was lodged.

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.

Business day

Any day other than a Saturday, Sunday or public holiday

Notifiable employment decision

Notifiable employment decision means a reviewable decision in respect of:

- appointments to fill a vacancy of more than 12 months
- appointments to fill a vacancy of 12 months or less if the vacancy was filled with the possibility of extension past 12 months and/or permanency
- for selection to form part of an appointment pool
- acting appointments to fill a temporary vacancy where it was filled with the possibility of permanency.

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

Industrial and Employee Relations

Telephone: 9264 4921 (option 2)

Email: employeerelations.breachclaim@education.wa.edu.au

4. Appendices

Appendix A: [Appendix A - Managing a Breach of the Public Sector Standard Claims](#) (PDF file - 145.5kB)

5. More information

Supporting content

Policy

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