



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:

- Commissioner's Instruction No.1: Employment Standard
- Discipline Standard
- Commissioner's Instruction No.11: Redeployment Standard
- Grievance Resolution Standard
- Performance Management Standard
- Termination Standard.

The Public Sector Management (Breaches of Public Sector Standards) Regulations 2005 and the *Industrial Relations Act 1979* 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
- 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
- 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
- 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 scope and application or 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
- 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.

<b>Decisions requiring notification under the Employment Standard</b>	The date given in the notification will be a minimum of four working days. The panel may provide a longer lodgement period.
<b>Decisions requiring notification under the Grievance Resolution Standard</b>	The date given in the notification will be 10 working days after it is reasonable to expect the notification would be received.
<b>All other reviewable decisions to which Standards apply</b>	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 and panel chair

### Employment Standard

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

- give written notice to unsuccessful applicants regarding:
  - a breach of public sector standards claim may be lodged
  - how a breach claim may be made
  - 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
- 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
- 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 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.

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](#)
- 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
  - any documentation to support the claim
- submit the claim marked "Private and Confidential" to:
  - [employeeerelations.breachclaim@education.wa.edu.au](mailto:employeeerelations.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 Employment Standard (excluding transfer decisions)
- may be referred by the claimant or their union to the Western Australian Industrial Relations Commission (WAIRC) if the claim relates to the Employment Standard (transfers decisions only), Performance Management Standard, Grievance Resolution Standard, Redeployment Standard and Termination Standard.

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 [Application to refer breach of public sector standards claim](#) and [Form 24](#).

## 1.9 Managing a claim

The Industrial and Employee Relations Directorate:

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

The Director, Industrial and Employee Relations:

- refers unresolved claims to the Public Sector Commissioner for conciliation or review after the agency resolution period.
- 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.
- 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 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
- records of communications.

Refer to the General Disposal Authority for State Government Information DA 2023-004 for record retention and disposal information for human resources decisions covered by the Standards:

- Recruitment/Separations (terminations) section 79
- Grievance section 49
- Employee performance section 66
- Redeployment section 40

## **1.11 Relevant legislation or authority**

**Commissioner's Instruction 1: Employment Standard**

**Commissioner's Instruction 40: Ethical Foundations**

**Commissioner's Instruction 2: Filling a Public Sector Vacancy**

**Commissioner's Instruction 11: Redeployment Standard**

**Discipline Standard**

**Grievance Resolution Standard**

**Industrial Relations Act 1979**

**Interpretation Act 1984**

**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**

**School Education Act Employees' (Teachers and Administrators) General Agreement**

## **Termination Standard**

### **1.12 Related Department policies**

[Employee Performance and Development policy](#)

[Recruitment, Selection and Appointment policy](#)

[Secondment policy](#)

[Staff Conduct and Discipline policy](#)

### **1.13 Other documents**

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

[Commissioner's Instruction 1: Employment Standard: Questions and Answers](#)

[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.

**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
- 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

Industrial and Employee Relations

Telephone: 9264 4921

Email: [employeerelations.breachclaim@education.wa.edu.au](mailto:employeerelations.breachclaim@education.wa.edu.au)

### 4. Appendices

Appendix A: [Appendix A - Managing a Breach of the Public Sector Standard Claims](#) (PDF file - 201.9kB)

### 5. More information

#### Supporting content

##### Policy

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

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