



Western Australia

Public Sector Management Act 1994

## **Public Sector Management (Examination and Review Procedures) Regulations 2001**

These regulations were repealed by the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* r. 31 as at 1 Sep 2005 (see s. 2 and *Gazette* 15 Jul 2005 p. 3349)

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## **Public Sector Management (Examination and Review Procedures) Regulations 2001**

### **Part 1 — Preliminary**

**1. Citation**

These regulations may be cited as the *Public Sector Management (Examination and Review Procedures) Regulations 2001*.

**2. Commencement**

These regulations come into operation on 1 July 2001.

**3. Definitions**

In these regulations —

“**appointment pool**” means a number of persons selected by a public sector body as suitable to be considered by the public sector body for appointment to fill a future vacancy or a particular class of future vacancies;

“**claim**” means a claim lodged under regulation 5 or 7;

“**claim documents**” means the claim and statement given to an examiner under regulation 14;

“**claimant**” means a person who lodges a claim;

“**day**” does not include a Saturday, Sunday, public service holiday or public holiday;

**“examiner”** means a person appointed by the Commissioner under section 97(1)(b) of the Act on whom functions are conferred by regulation 15;

**“notified applicant”** means a person given notice by a public sector body under regulation 4(1);

**“reviewer”** means a person appointed by the Commissioner under section 97(1)(b) of the Act on whom functions are conferred by regulation 19;

**“vacancy”** means a vacant office, post or position.

## **Part 2 — Lodging claims of breaches of public sector standards**

### **4. Notice to be given of decisions about appointments and selections**

- (1) A public sector body is to give written notice that complies with subregulation (2) to each person —
  - (a) who applies unsuccessfully to the public sector body to be appointed to fill a vacancy; or
  - (b) who applies to the public sector body for selection to form part of an appointment pool.
- (2) Notice complies with this subregulation if it states —
  - (a) in a case to which subregulation (1)(a) applies — the name of the person (if any) the public sector body proposes to appoint to fill the vacancy;
  - (b) that these regulations provide for a claim to be lodged by a person if —
    - (i) the person considers that a public sector body has breached a public sector standard in relation to a decision made or action taken by the public sector body in relation to an appointment or selection; and
    - (ii) the person is adversely affected by the decision or action;
  - (c) that information is available on request from the public sector body about how a claim may be lodged;
  - (d) the name and contact details of a person from whom a notified applicant may obtain information about the process that took place in the assessment of his or her application;
  - (e) that, before lodging a claim, a notified applicant is to ask for information about the process that took place in the

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assessment of his or her application from the person referred to in paragraph (d); and

- (f) the date no later than which a claim may be lodged, which is to be at least 8 days after notice is given under subregulation (1).

**5. Lodging claims of breaches of public sector standards relating to recruitment, selection and appointment**

- (1) In this regulation —

**“public sector standard”** means a public sector standard established in respect of the recruitment, selection or appointment of employees.

- (2) Subject to subregulation (3) and regulation 6, a person may lodge a claim under this regulation if —

- (a) the person considers that a public sector body has breached a public sector standard in relation to a decision made or action taken by the public sector body —

- (i) to appoint or not appoint a person to fill a vacancy; or

- (ii) to select or not select a person to form part of an appointment pool;

and

- (b) the person is adversely affected by the decision or action.

- (3) Before a notified applicant may lodge a claim under this regulation, the notified applicant is to ask for information about the process that took place in the assessment of his or her application from the person referred to in regulation 4(2)(d).

- (4) A claim —

- (a) is to be made in writing and lodged with the employing authority of the public sector body;



- (b) is to set out the grounds on which the claim is based; and
- (c) if the claim is made by a notified applicant —
  - (i) is to give details of any request made under subregulation (3) and any information given in response to the request under regulation 9(1); and
  - (ii) if any of that information was given in the form of a document — is to include a copy of the document.

**6. Limitations on lodging claims under regulation 5**

- (1) A person cannot lodge a claim under regulation 5 in relation to a decision or action referred to in regulation 5(2) in relation to which the person has previously lodged a claim under that regulation.
- (2) A person cannot lodge a claim under regulation 5 in relation to the appointment of a person to fill a vacancy if —
  - (a) the appointment is made from an appointment pool; and
  - (b) the appointment pool was formed for the purpose of filling —
    - (i) that vacancy; or
    - (ii) a particular class of vacancies to which that vacancy belongs.
- (3) A person cannot lodge a claim under regulation 5 —
  - (a) in relation to an appointment to fill a vacancy for a period of not more than 6 months;
  - (b) on the ground that the claimant was, or would have been, a better applicant than another applicant to be appointed to fill a vacancy or to form part of an appointment pool; or
  - (c) after the date referred to in regulation 4(2)(f).

**7. Lodging claims of breaches of other public sector standards**

- (1) In this regulation —
- “**employee**” includes a former employee who was an employee at the time the relevant breach of a public sector standard is claimed to have taken place;
- “**public sector standard**” does not include a public sector standard established in respect of the recruitment, selection or appointment of employees or in respect of substandard performance or disciplinary matters.
- (2) Subject to subregulation (3) and regulation 8, an employee of a public sector body may lodge a claim under this regulation if —
- (a) the employee considers that the public sector body has breached a public sector standard in relation to a decision made or action taken by the public sector body; and
  - (b) the employee is adversely affected by the decision or action.
- (3) Before an employee may lodge a claim under this regulation, the employee is to ask the public sector body to give him or her explanatory information about the decision made or action taken in relation to which the employee claims there has been a breach of a public sector standard.
- (4) A claim —
- (a) is to be made in writing and lodged with the employing authority of the public sector body;
  - (b) is to set out the grounds on which the claim is based; and
  - (c) is —
    - (i) to give details of any request made under subregulation (3) and any information given in response to the request under regulation 9(2); and

- (ii) if any of that information was given in the form of a document — to include a copy of the document.

**8. Limitations on claims under regulation 7**

- (1) An employee cannot lodge a claim under regulation 7 in relation to a decision or action referred to in regulation 7(2) in relation to which the employee has previously lodged a claim under that regulation.
- (2) An employee cannot lodge a claim under regulation 7 more than —
  - (a) 8 days after the employee first became aware of the decision or action in relation to which the employee claims there has been a breach of a public sector standard; or
  - (b) 6 months after that decision was made or that action was taken,

whichever is the earlier.

**9. Public sector body to ensure that certain information is given**

- (1) If a person asks for information —
  - (a) under regulation 5(3) about the process that took place in the assessment of his or her application; or
  - (b) from a public sector body about how a claim may be lodged,

the public sector body is to ensure that the information needed to understand that process or how to lodge a claim is given to the person not more than 3 days after the request is made.

- (2) If an employee asks for explanatory information under regulation 7(3) about a decision made or action taken by a public sector body, the public sector body is to ensure that information is given to the employee that the public sector body

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considers adequately explains the decision or action not more than 3 days after the request is made.

**10. Effect of lodging a claim**

(1) In this regulation —

**“entry-level appointment”** means an appointment of a person at the lowest level of classification at which appointments of a particular class are made to the Public Sector;

**“promotional appointment”** means an appointment of a person that is not an entry-level appointment.

(2) If a public sector body proposes to make an entry-level appointment, the public sector body may make the appointment despite a claim being lodged under regulation 5 in relation to that appointment.

(3) If a public sector body proposes —

(a) to make a promotional appointment and a claim is lodged under regulation 5 in relation to that appointment; or

(b) to transfer an employee and a claim is lodged under regulation 7 in relation to that transfer,

the public sector body cannot make the appointment or give effect to the transfer unless subregulation (4) applies.

(4) This subregulation applies if —

(a) the claim is dismissed by the Commissioner under regulation 16(3);

(b) the Commissioner gives notice to the public sector body under regulation 23(1) that the Commissioner has not been satisfied that the public sector body has breached a public sector standard;

(c) the public sector body gives notice to the claimant under regulation 24(2); or

(d) the claimant withdraws the claim under regulation 25(1).

- (5) If the proposed promotional appointment or transfer of a person cannot be made or given effect because of the operation of subregulation (3), the public sector body is to give written notice to the person accordingly.

## **Part 3 — Procedures for examination and review of claims**

### **Division 1 — Examination of claims**

#### **11. Public sector body to consider claim and seek resolution**

- (1) Within 8 days after a claim is lodged under regulation 5 or 7, the public sector body is to —
  - (a) consider the claim;
  - (b) take all appropriate steps to resolve the claim with the claimant;
  - (c) make a written record of the steps taken under paragraph (b); and
  - (d) give notice to the claimant of the response it proposes to make to the claim under regulation 14(1)(b) if the claim is not resolved.
- (2) Subregulation (1) does not operate to prevent the public sector body from taking steps to resolve a claim with the claimant at any time.

#### **12. If claim not resolved Commissioner to be asked to appoint examiner**

If a public sector body does not resolve a claim with the claimant within the period referred to in regulation 11(1), the public sector body is to ask the Commissioner to appoint an examiner to examine the claim.

#### **13. Appointment of examiners and their terms and conditions of appointment**

- (1) When a request is made to the Commissioner under regulation 12, the Commissioner is to appoint an examiner under section 97(1)(b) of the Act to examine the claim.
- (2) The appointment of an examiner may be revoked at any time.

- (3) Subject to section 98(c) of the Act, the remuneration and the terms and conditions of appointment of an examiner are as determined from time to time by the Commissioner.

**14. Examiners to be provided with certain materials**

- (1) Within 3 days after an examiner is appointed to examine a claim, the public sector body on whose request the appointment was made is to give to the examiner —
- (a) the claim; and
  - (b) a written statement setting out the public sector body's response to the claim and the steps it has taken to resolve the claim with the claimant.
- (2) The public sector body is to keep a copy of the claim and statement given to the examiner under subregulation (1).

**15. Functions of examiner**

- (1) The examiner is to examine a claim by considering the claim documents and forming an opinion on whether —
- (a) the claim is vexatious or frivolous;
  - (b) the claimant has shown that he or she has a claim that has substance; and
  - (c) the public sector body has complied with these regulations.
- (2) If the examiner considers that a statement in the claim documents needs to be explained to the examiner before he or she is able to form an opinion under subregulation (1), the examiner may interview by telephone the claimant or an appropriate officer of the public sector body, as the case requires, to seek an explanation of the statement.
- (3) On the completion of the examination, the examiner is to give to the Commissioner the claim documents and a written report that sets out —
- (a) details of the claim; and
  - (b) the examiner's opinion on whether —

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- (i) the claim is vexatious or frivolous;
  - (ii) the claimant has shown that he or she has a claim that has substance; and
  - (iii) the public sector body has complied with these regulations and, if the examiner's opinion is that the public sector body has not complied with any of these regulations, the reasons for that opinion.
- (4) The examiner is to include in the report a recommendation that the claim should be dismissed by the Commissioner if the examiner forms the opinion that —
  - (a) the claim is vexatious or frivolous;
  - (b) the claimant has not shown that he or she has a claim that has substance; or
  - (c) the claim was lodged contrary to regulation 6(3)(b).
- (5) The examiner is to include in the report a recommendation that the claim should be reviewed by a reviewer if the examiner does not form an opinion referred to in subregulation (4).

**16. Consideration by Commissioner of examiner's report**

- (1) When the Commissioner is given the claim documents and examiner's report under regulation 15(3), the Commissioner is to —
  - (a) consider the claim documents and the report and have regard to the examiner's recommendation in the report; and
  - (b) determine whether, on the basis of the claim documents and the report, the claimant has or has not shown that he or she has a claim that has substance.
- (2) If the Commissioner determines that the claimant has shown that he or she has a claim that has substance, regulation 17 applies to the claim.



- (3) If the Commissioner determines that the claimant has not shown that he or she has a claim that has substance, the Commissioner is to dismiss the claim.
- (4) The Commissioner is to give written notice to the public sector body concerned of the Commissioner's —
  - (a) determination under subregulation (2); or
  - (b) dismissal of the claim under subregulation (3).
- (5) The public sector body is to give written notice to the claimant of the determination or dismissal referred to in subregulation (4).

### **Division 2 — Review of claims**

#### **17. Appointment of reviewers and their terms and conditions of appointment**

- (1) If this regulation applies to a claim, the Commissioner is to appoint a reviewer under section 97(1)(b) of the Act to review the claim.
- (2) The appointment of a reviewer may be revoked at any time.
- (3) Subject to section 98(c) of the Act, the remuneration and the terms and conditions of appointment of a reviewer are as determined from time to time by the Commissioner.

#### **18. Reviewers to be provided with certain materials**

- (1) Within 3 days after a reviewer is appointed to review a claim, the public sector body concerned is to give to the reviewer a copy of the claim documents.
- (2) The public sector body is also to give to the reviewer a copy of any other document —
  - (a) that is in the possession or control of the public sector body; and

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- (b) that the reviewer considers relevant to the claim and asks the public sector body to provide.
- (3) The Commissioner is to give to the reviewer a copy of the report given by the examiner to the Commissioner under regulation 15(3).
- (4) The claimant is to give to the reviewer a copy of any document —
  - (a) that is in the possession or control of the claimant; and
  - (b) that the reviewer considers relevant to the claim and asks the claimant to provide.
- (5) This regulation does not limit the documents that the reviewer may obtain and have regard to for the purposes of reviewing a claim.

**19. Functions of reviewer**

- (1) The reviewer is to review a claim by —
  - (a) considering —
    - (i) the claim documents and other documents given to the reviewer under regulation 18; and
    - (ii) any other document obtained by the reviewer that the reviewer considers relevant to the claim;
  - (b) interviewing the claimant —
    - (i) if the claimant lives in the Perth metropolitan area — in person; or
    - (ii) if the claimant lives outside the Perth metropolitan area — by telephone;
  - (c) interviewing in person or by telephone, as the reviewer thinks fit, an appropriate officer of the public sector body; and
  - (d) interviewing in person or by telephone, as the reviewer thinks fit, any other person who the reviewer considers may have information relevant to the claim.

- (2) On the completion of the review, the reviewer is to give to the Commissioner a written report that sets out a detailed description of the facts and circumstances that gave rise to the claim.

**20. Representation during review**

Neither the claimant, nor any other person interviewed by a reviewer in a review, may be represented by another person during the interview unless the reviewer otherwise determines on the ground that the interview cannot proceed effectively without that representation.

**Division 3 — Reports and notices after review**

**21. Definition**

In this Division —

**“notified breach”** means a breach of a public sector standard notice of which has been given to a claimant under regulation 23(3)(a).

**22. Consideration by Commissioner of reviewer’s report**

When the Commissioner is given the reviewer’s report under regulation 19(2), the Commissioner is to —

- (a) consider —
- (i) the claim documents and the facts and circumstances described in the report; and
  - (ii) any other document or information that the Commissioner considers relevant to the claim;
- and
- (b) determine whether, on the basis of the material considered under paragraph (a) —
- (i) the public sector body concerned has breached a public sector standard; or

- (ii) the Commissioner has not been satisfied that the public sector body has breached a public sector standard.

**23. Commissioner to give notice to public sector body of determination**

- (1) The Commissioner is to give written notice to the public sector body that the Commissioner —
  - (a) has determined that the public sector body has breached a public sector standard; or
  - (b) has not been satisfied that the public sector body has breached a public sector standard.
- (2) If the Commissioner determines that the public sector body has breached a public sector standard, the notice under subregulation (1) is to specify each public sector standard determined to have been breached and is to set out the facts and circumstances on the basis of which the Commissioner has made that determination.
- (3) When the public sector body is given notice under subregulation (1), the public sector body is to give written notice to the claimant that the Commissioner —
  - (a) has determined that the public sector body has breached a public sector standard, specifying each public sector standard determined to have been breached; or
  - (b) has not been satisfied that the public sector body has breached a public sector standard.

**24. Public sector body to respond to Commissioner's determination**

- (1) Within 15 days after a public sector body is given a notice under regulation 23(1)(a), the public sector body is to —
  - (a) consider —
    - (i) the facts and circumstances on the basis of which the Commissioner has determined that the public

- 
- sector body has breached a public sector standard; and
- (ii) whether any action is proposed to be taken by the public sector body in response to that determination;
- and
- (b) give written notice to the Commissioner of —
- (i) the action proposed to be taken by the public sector body and an explanation of how that proposed action would remedy the notified breach; or
- (ii) the reasons why no action is proposed to be taken by the public sector body.
- (2) Within 3 days after the prescribed period, and having considered any response to the notice under subregulation (1)(b) that the Commissioner makes to the public sector body within that period, the public sector body is to —
- (a) determine whether any action is to be taken in response to the notified breach; and
- (b) give written notice to the claimant of —
- (i) the action to be taken by the public sector body and an explanation of how that action will remedy the notified breach; or
- (ii) the reasons why no action is to be taken by the public sector body.
- (3) The public sector body is to give a copy of the notice given to the claimant under subregulation (2)(b) to the Commissioner.
- (4) In subregulation (2) —
- “the prescribed period”** means 15 days after notice is given to the Commissioner under subregulation (1)(b).

### **Division 4 — General**

**25. Withdrawal of claim**

- (1) A claimant may at any time withdraw a claim by giving written notice to the employing authority of the public sector body with which the claim was lodged.
- (2) If a claimant withdraws a claim while an examination or a review of the claim is being conducted, the public sector body is immediately to inform the Commissioner, and the examiner or reviewer, accordingly.

**26. Suspension of examination or review because of section 24 investigation**

If the Commissioner —

- (a) is conducting, or proposes to conduct, an investigation under section 24 of the Act; and
- (b) considers that the matters being, or to be, investigated are or include the matters in relation to which a claim has been lodged,

the Commissioner may cause any examination or review of the claim to be suspended for any period the Commissioner thinks fit.

**27. Commissioner may report to Minister and Parliament**

If the Commissioner determines that a public sector body has not complied with any of these regulations, the Commissioner may give to —

- (a) the public sector body; and
- (b) the Minister responsible for the public sector body,

a written report setting out the details of that determination and may cause a copy of the report to be laid before each House of Parliament.

## **Part 4 — Repeal and transitional**

### **28. Repeal**

The *Public Sector Management (Review Procedures) Regulations 1995* are repealed.

### **29. Transitional**

If a claim has been lodged under the regulations repealed by regulation 28 and immediately before the commencement of these regulations —

- (a) the claim has not been rejected or withdrawn; and
- (b) the review of the claim, or any report relating to that review, has not been completed,

the claim or the report, as the case requires, is to be dealt with as if those repealed regulations had not been repealed.



### Notes

- <sup>1</sup> This is a compilation of the *Public Sector Management (Examination and Review Procedures) Regulations 2001* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

#### Compilation table

Citation	Gazettal	Commencement
<i>Public Sector Management (Examination and Review Procedures) Regulations 2001</i>	20 Apr 2001 p. 2165-88	1 Jul 2001 (see r. 2)

**These regulations were repealed by the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* r. 31 as at 1 Sep 2005 (see s. 2 and *Gazette* 15 Jul 2005 p. 3349)**

- <sup>2</sup> On the date as at which this compilation was prepared, the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* Pt. 5 had not come into operation. It reads as follows:

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#### Part 5 — Repeal and transitional

##### 32. Transitional

- (1) If —
- (a) a claim has been lodged under Part 2 of the former regulations; and
  - (b) immediately before the commencement of these regulations, the claim has not been completely dealt with under those regulations or withdrawn by the claimant,
- then, despite regulation 31, the former regulations continue to have effect for the purposes of dealing with the claim.
- (2) In subregulation (1) —
- “**former regulations**” means the regulations repealed by regulation 31.

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Defined terms

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
appointment pool .....	3
claim .....	3
claim documents .....	3
claimant.....	3
day .....	3
employee.....	7(1)
entry-level appointment .....	10(1)
examiner .....	3
notified applicant .....	3
notified breach .....	21
promotional appointment.....	10(1)
public sector standard .....	5(1), 7(1)
reviewer .....	3
the prescribed period.....	24(4)
vacancy .....	3