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PUBLIC SECTOR MANAGEMENT ACT 1994

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**PUBLIC SECTOR  
MANAGEMENT (REVIEW  
PROCEDURES)  
REGULATIONS 1995**



WESTERN AUSTRALIA

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**PUBLIC SECTOR MANAGEMENT  
(REVIEW PROCEDURES)  
REGULATIONS 1995**

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PUBLIC SECTOR MANAGEMENT ACT 1994  
**PUBLIC SECTOR MANAGEMENT (REVIEW PROCEDURES)  
REGULATIONS 1995**

Made by His Excellency the Governor in Executive Council.

**PART 1 — PRELIMINARY**

**Citation**

1. These regulations may be cited as the *Public Sector Management (Review Procedures) Regulations 1995*.

**Commencement**

2. These regulations come into operation on the day Part 7 of the *Public Sector Management Act 1994* comes into operation.

**Interpretation**

3. In these regulations —

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

“**reviewer**” means a person appointed by the Commissioner from time to time under section 97 (1) (b) of the Act;

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

## **PART 2 — REVIEWERS**

### **Commissioner may invite nominations from employing authorities**

4. When proposing to appoint a reviewer, the Commissioner may invite nominations from one or more employing authorities.

### **Reviewer may be appointed whether or not employed in the Public Sector or nominated**

5. The Commissioner may appoint a person as a reviewer whether or not the person, at the time of his or her appointment —

- (a) is an employee or is employed outside the Public Sector; or
- (b) has been nominated under regulation 4.

### **Appointment of reviewer may be revoked except while review is being conducted**

6. (1) Subject to subregulation (2), the Commissioner may revoke the appointment of a reviewer at any time.

(2) The Commissioner shall not revoke the appointment of a reviewer while the reviewer is conducting a review under Division 2 of Part 3.

### **Terms and conditions of employment of reviewer**

7. (1) Subject to subregulation (2), the terms and conditions of appointment of a reviewer, including the remuneration to be paid to a reviewer, are as determined from time to time by the Commissioner.

(2) Subregulation (1) does not apply to a reviewer who is an employee.

**PART 3 — PROCEDURES FOR REVIEWS OF BREACHES OF PUBLIC  
SECTOR STANDARDS**

***Division 1 — Applications for review***

**Applications for review of breach of public sector standards**

8. (1) Subject to regulation 10 and section 96 of the Act, a person, other than a chief executive officer or chief employee, who is aggrieved by a decision made or action taken by —

- (a) a department or organization; or
- (b) the employing authority of a department or organization,

that the person considers to be a breach of a public sector standard, may apply to the employing authority of the department or organization to have the decision or action reviewed by a reviewer.

(2) An applicant under subregulation (1) shall apply in writing, setting out the grounds on which the applicant considers that the public sector standard has been breached and any other information that the applicant considers relevant to the review.

(3) Subject to subregulation (4) and regulation 9, an application under this regulation shall be made within 15 days after the decision was made or action was taken, as the case may be, that the applicant considers to be a breach of a public sector standard.

(4) An employing authority may accept an application made under this regulation after the period of 15 days has expired if the authority considers that, in all the circumstances, it is just and reasonable to do so.

**Applications for review of breach of public sector  
standards — recruitment, selection or appointment**

9. (1) An application under regulation 8 —

- (a) by an unsuccessful applicant for a vacancy in a department or organization; and

- (b) on the ground that, in relation to the unsuccessful application, the department or organization or the employing authority of the department or organization breached a public sector standard established in respect of the recruitment, selection or appointment of employees,

shall be made within 7 days after written notification is served on the applicant by the employing authority of the department or organization informing the applicant —

- (aa) of the completion of the selection process;
- (bb) subject to subregulation (2), of the name of the person who has been recommended for appointment to the vacancy; and
- (cc) that an application for a review in relation to the unsuccessful application may be made in accordance with this Division.

(2) The employing authority is not required to give written notification that complies with subregulation (1) (bb) if the authority considers that naming the person who has been recommended for appointment to the vacancy would prejudice the person in his or her current employment.

**Certain persons not eligible to apply for review in relation to recruitment, selection or appointment**

10. A person who is an unsuccessful applicant for a vacancy in a department or organization is not eligible to apply under regulation 8 on the ground referred to in regulation 9 (1) (b) if the unsuccessful application was made in respect of an appointment —

- (a) for a period not greater than 3 months; or
- (b) at the lowest level of classification at which appointments of that class are made to the Public Sector.

**Successful applicant not to be confirmed until review completed**

11. If —

- (a) an unsuccessful applicant for a vacancy in a department or organization applies under regulation 8 for a review on the ground referred to in regulation 9 (1) (b); and

- (b) the application under regulation 8 is not rejected under regulation 14 (1),

the employing authority shall not confirm the appointment of a person to the vacancy until the authority has considered the written report given to the authority under regulation 15.

**No review permissible of respective merits of applicants for vacancy**

12. Nothing in this Division permits an unsuccessful applicant for a vacancy in a department or organization to apply under regulation 8 for a review on the ground that he or she is a better applicant for the vacancy than any other such applicant.

***Division 2 — Review procedure***

**Employing authority to select reviewer from reviewers nominated by Commissioner**

13. (1) As soon as practicable after the employing authority receives an application under regulation 8 —

- (a) the authority shall select a reviewer to conduct the review from any reviewers whose names have been given to the authority by the Commissioner; or
- (b) if no names of reviewers have been given to the authority by the Commissioner, or none of the reviewers named is for any reason available to conduct the review, the authority shall request the Commissioner to select a reviewer to conduct the review.

(2) If the Commissioner receives a request under subregulation (1) (b), the Commissioner shall select a reviewer to conduct the review and shall inform the employing authority accordingly.

(3) The employing authority shall give to the reviewer selected under subregulation (1) or (2) —

- (a) the application; and
- (b) any other documents that the authority considers relevant to the review.

**Review procedure**

**14.** (1) The reviewer shall consider the application and any other documents given to the reviewer under regulation 13 (3) and —

- (a) shall reject the application if the reviewer considers the application —
  - (i) to be vexatious, trivial or without substance; or
  - (ii) otherwise not to warrant any further action,and shall inform the employing authority accordingly; or
- (b) shall proceed with a review of the matters referred to in the application in accordance with this regulation.

(2) In conducting a review, the reviewer —

- (a) shall proceed with as little formality and technicality, and as speedily, as the requirements of these regulations and a proper review permit;
- (b) is not bound by the rules of evidence but may inform himself or herself of any matter in any manner that he or she considers appropriate; and
- (c) subject to these regulations and the rules of natural justice, may determine his or her own procedure.

(3) Without limiting subregulation (2), the reviewer may —

- (a) limit the review to a review of the matters referred to in the application and any other documents that are given to the reviewer under regulation 13 (3) or that the reviewer considers relevant to the matters referred to in the application;
- (b) interview the applicant or any other person considered by the reviewer to have information relevant to the matters referred to in the application, either separately or together, by telephone or in person;

- (c) seek documents in the possession of, or written information from, the applicant or any other person considered by the reviewer to be in the possession of documents, or able to give written information, relevant to the matters referred to in the application.

**Reviewer to provide employing authority with report and may make recommendations**

15. (1) When a review is completed, the reviewer —
- (a) shall give to the employing authority a written report in relation to the matters referred to in the application; and
  - (b) may include in the report recommendations as to any action the reviewer considers appropriate for the authority to take in response to those matters.
- (2) If the report includes a finding that the employing authority breached a public sector standard, the reviewer shall give to the Commissioner a copy of the report.

**Employing authority may take any appropriate action**

16. (1) Having considered the report given to the employing authority under regulation 15, and in particular any recommendations made by the reviewer in the report, the authority —
- (a) may take any action, or no action, as the authority considers appropriate in response to the report; and
  - (b) shall give to the applicant written notification —
    - (i) of the action taken, including the reasons for taking the action; or
    - (ii) of the reasons why no action was taken.
- (2) If the report includes a finding that the employing authority breached a public sector standard, the authority shall give to the Commissioner a copy of the notification given to the applicant under subregulation (1) (b).

**Commissioner may report to Minister on failure by employing authority to act on reviewer's recommendations**

17. If the Commissioner considers that an employing authority has failed to take action within a reasonable period in accordance with a recommendation in a report given to the authority under regulation 15, the Commissioner may give to the Minister responsible for the authority a written report in relation to that failure.

**Representation**

18. Neither the applicant nor any other person who takes part in a review under this Division may be represented by another person during the review unless the reviewer otherwise determines on the ground that the review cannot proceed effectively without that representation.

**Withdrawal of application**

19. (1) An applicant may at any time withdraw an application under regulation 8 by giving written notification to the employing authority to which the application was made.

(2) If notification is given to an employing authority under subregulation (1) after the application has been given to a reviewer under regulation 13 (3), the authority shall inform the reviewer of the withdrawal of the application and the reviewer shall then stop dealing with it.

***Division 3 — Effect of section 24 investigation on review***

**Effect of section 24 investigation on review**

20. If —
- (a) the Commissioner is to investigate the activities of a department or organization under section 24 of the Act; and
  - (b) the activities to be investigated include the matters that are the subject of a review under Division 2,

the Commissioner shall inform the reviewer conducting the review accordingly and the reviewer shall then stop dealing with the review until the investigation under section 24 of the Act has been completed.

## PART 4 — CONSEQUENTIAL AMENDMENTS

### Principal regulations

21. In this Part the *Industrial Relations Commission Regulations 1985\** are referred to as the principal regulations.

[\* *Published in Gazette of 28 February 1985 at pp. 717-67.*  
*For amendments to 23 November 1995 see 1994 Index to Legislation of Western Australia, Table 4, pp. 145-6, and Gazette of 24 February 1995.*]

### Part XI repealed

22. Part XI of the principal regulations is repealed.

### Forms 11 to 20 deleted

23. Forms 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the principal regulations are deleted.

By Command of the Deputy of the Governor,

J. PRITCHARD, Clerk of the Council.

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