



Western Australia

## **Public Sector Management (Breaches of Public Sector Standards) Regulations 2005**

Compare between:

[01 Sep 2005, 00-a0-06] and [01 Nov 2008, 00-b0-03]



## Public Sector Management (Breaches of Public Sector Standards) Regulations 2005

### Part 1 — Preliminary

**1. Citation**

These regulations are the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*.

**2. Commencement**

These regulations come into operation on 1 September 2005.

**3. Terms used in these regulations**

- (1) In these regulations, unless the contrary intention appears —
- 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 future vacancies of a particular class;
  - claim* means a claim for relief under regulation 6;
  - claimant* means a person who makes a claim;
  - conciliation and review officer* means a person to whom a claim is assigned under regulation 11;
  - conciliation process* means the procedures under Part 3 Division 2 for settling a claim by agreement;
  - guidelines* means guidelines issued under regulation 4;

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***nominated officer*** means an officer of a public sector body nominated by the employing authority of the public sector body to act on its behalf for the purposes of these regulations;

***public sector standard*** does not include a public sector standard established in respect of substandard performance or disciplinary matters;

***reviewable decision*** means a decision made by a public sector body as the result of the completion of a process to which a public sector standard applies;

***review process*** means the procedures under Part 3 Division 3 for reviewing a claim;

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

- (2) A reference in these regulations to a period of days does not include a day that is a Saturday, Sunday or public holiday.

**4. Guidelines**

- (1) The Commissioner may from time to time issue guidelines for the purposes of these regulations.
- (2) The guidelines are not to be inconsistent with the Act or these regulations.

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## **Part 2 — Claims for relief for breaches of public sector standards**

### **5. Public sector bodies to give notice of certain reviewable decisions**

- (1) If a public sector body makes a reviewable decision as the result of the completion of a process to which a public sector standard applies that is established in respect of —
- (a) the recruitment, selection and appointment of employees; or
  - (b) the resolution of employees' grievances,
- the public sector body is to give written notice that complies with subregulation (3) to each person to whom subregulation (2) applies.
- (2) This subregulation applies —
- (a) for a public sector standard referred to in subregulation (1)(a) — to each person who is authorised to make a claim by regulation 6(3); or
  - (b) for a public sector standard referred to in subregulation (1)(b), to —
    - (i) the person whose grievance resulted in the making of the reviewable decision; and
    - (ii) each person (if any) who was the subject of the grievance.
- (3) Notice complies with this subregulation if it states —
- (a) that the person may make a claim under these regulations in relation to the reviewable decision;
  - (b) how the claim may be made;
  - (c) the date no later than which the claim may be lodged with the public sector body, in accordance with regulation 7(1); and

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- (d) anything specified in the guidelines for the purposes of this subregulation.

**6. Making claims for relief for breaches of public sector standards**

- (1) Subject to subregulations (3) and (4), if —
  - (a) a person considers that, in making a reviewable decision or otherwise, a public sector body has breached a public sector standard; and
  - (b) the person is adversely affected by the breach,the person may make a claim for relief to the public sector body.
- (2) The claim is to be in writing, setting out the grounds on which it is claimed that the public sector standard has been breached.
- (3) A claim may be made in respect of a breach of a public sector standard established in respect of the recruitment, selection and appointment of employees only by a person who has applied unsuccessfully to the public sector body concerned —
  - (a) to be appointed to fill a vacancy, otherwise than from an appointment pool, for a period of 6 months or more, or for a period of less than 6 months if the vacancy was advertised on the basis that —
    - (i) the period of the appointment could later be extended to 6 months or more; or
    - (ii) the person appointed could later become a permanent officer;
  - or
  - (b) to be selected to form part of an appointment pool.
- (4) A claim may be made otherwise than in respect of a reviewable decision only if, on the application of the person proposing to make the claim, the Commissioner —
  - (a) is satisfied that there are reasonable grounds for making the claim; and

- (b) gives the person written approval to do so within a specified period.
- (5) The Commissioner is to give a copy of an approval under subregulation (4) to the public sector body.

**7. Lodging claims with public sector bodies**

- (1) Subject to subregulation (2), a claim made in respect of a reviewable decision is to be lodged with the public sector body within the prescribed lodgement period.
- (2) If the Commissioner is satisfied that there are reasonable grounds for the late lodgement of a claim, the Commissioner may, on the application of the person proposing to make the claim, give the person written approval to lodge the claim after the prescribed lodgement period within the period specified in the approval.
- (3) The Commissioner is to give a copy of an approval under subregulation (2) to the public sector body.
- (4) If a person is given approval by the Commissioner under regulation 6(4)(b) to make a claim otherwise than in respect of a reviewable decision, the claim is to be lodged with the public sector body within the period specified in the approval.
- (5) In this regulation —

***prescribed lodgement period*** means —

- (a) for a public sector standard established in respect of the recruitment, selection and appointment of employees

~~or~~ — the period of —

(i) 10 days after the claimant was given notice under regulation 5(1); or

(ii) if the relevant public sector body is authorised by the Commissioner under regulation 8A, 4 days after the claimant was given that notice;

or

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- (ba) for a public sector standard established in respect of the resolution of employees' grievances — 10 days after the claimant was given notice under regulation 5(1); or
- (b) for any other public sector standard — 10 days after the claimant first became aware of the reviewable decision or 30 days after the reviewable decision was made, whichever period expires first.

[Regulation 7 amended in Gazette 28 Oct 2008 p. 4727-8.]

**8A. Commissioner may authorise reduced prescribed lodgement period for lodging certain claims**

- (1) The Commissioner may give a written authorisation to a public sector body for the purposes of paragraph (a)(ii) of the definition of *prescribed lodgement period* in regulation 7(5) if the Commissioner —
  - (a) has reached agreement with the public sector body as to the conditions of the authorisation; and
  - (b) is satisfied the public sector body will comply with those conditions.
- (2) The Commissioner may at any time, in writing, revoke an authorisation given under subregulation (1).

[Regulation 8A inserted in Gazette 28 Oct 2008 p. 4728.]

**8. Effect of making claims on proposed appointments and transfers**

- (1) If —
    - (a) a public sector body proposes —
      - (i) to appoint a person to fill a vacancy, otherwise than from an appointment pool; or
      - (ii) to transfer an employee;
- and



- (b) a claim is lodged with the public sector body in respect of a reviewable decision that relates to the proposed appointment or transfer,

the public sector body cannot make the appointment or give effect to the transfer unless subregulation (2) or (3) applies.

- (2) This subregulation applies if —
  - (a) the claim is settled by agreement through the conciliation process;
  - (b) the claim is the subject of notice given by the Commissioner under regulation 21;
  - (c) the claim is withdrawn under regulation 23(1); or
  - (d) the claim lapses under regulation 24(3).
- (3) This subregulation applies if —
  - (a) the public sector body makes a written submission to the Commissioner that sets out the reasons why the public sector body should make the proposed appointment, or give effect to the proposed transfer, despite the claim having been made; and
  - (b) the Commissioner gives the public sector body written approval to make the appointment or give effect to the transfer.

**9. Effect of making claims on proposed selections to appointment pools**

- (1) If —
  - (a) a public sector body proposes to select persons to form an appointment pool; and
  - (b) a claim is lodged with the public sector body in respect of a reviewable decision that relates to any of the proposed selections,

the public sector body —

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- (c) may make the selections despite the claim having been made; but
  - (d) may make an appointment from the appointment pool to fill a vacancy only if regulation 8(2) or subregulation (2) or (3) applies.
- (2) This subregulation applies if the public sector body has another vacancy to fill from the appointment pool to which the claimant could be appointed if the claim were to be successful.
- (3) This subregulation applies if —
  - (a) the public sector body makes a written submission to the Commissioner that sets out the reasons why the public sector body should make an appointment from the appointment pool despite the claim having been made; and
  - (b) the Commissioner gives the public sector body written approval to make the appointment.

## **Part 3 — Procedures for dealing with claims for relief**

### **Division 1 — General**

#### **10. Public sector bodies to send claims for relief to Commissioner**

If a claim is lodged with a public sector body, the public sector body —

- (a) is to send to the Commissioner as soon as is practicable but in any event within 15 days after the claim was lodged —
  - (i) the claim;
  - (ii) the name and the telephone number or other contact details of the claimant and the nominated officer; and
  - (iii) any document that the public sector body considers relevant to the claim or that is specified in the guidelines for the purposes of this regulation;

and

- (b) is to give written notice to the claimant that the claim has been sent to the Commissioner.

#### **11. Assignment of claims for relief to conciliation and review officers**

- (1) When a claim is sent to the Commissioner, the Commissioner is to assign the claim to a person appointed under section 97(1)(b) of the Act.
- (2) The Commissioner may assign a claim to a conciliation and review officer for the purposes of —
  - (a) the conciliation process and the review process;
  - (b) the conciliation process or the review process; or

- (c) any part of the conciliation process or any part of the review process.
- (3) The Commissioner may at any time withdraw a claim from a conciliation and review officer and assign it to another person appointed under section 97(1)(b) of the Act.
- (4) The Commissioner is to give written notice to the claimant and the public sector body of the assignment of the claim to a conciliation and review officer, including in the notice the name of the officer.

**12. Conciliation and review officers may seek information and documents**

- (1) For the purposes of preparing for or carrying out the conciliation process or review process, a conciliation and review officer may ask the claimant or the public sector body to provide any information or document in the possession or control of the claimant or public sector body that the officer reasonably considers relevant to the process.
- (2) The claimant or the public sector body is to comply with a request under subregulation (1).
- (3) The conciliation and review officer may make a copy of any document, or a record of any information, provided under subregulation (1).
- (4) Subregulation (1) does not limit the information or documents that the conciliation and review officer may obtain and have regard to for the purposes of preparing for or carrying out the conciliation process or review process.

**13. Commissioner may perform functions of conciliation and review officer**

The Commissioner may perform all or any of the functions of a conciliation and review officer under these regulations in respect of a claim.

## **Division 2 — Conciliation**

### **14. Conciliation of claims**

A conciliation and review officer, having regard to the guidelines, is to invite and encourage the claimant and the public sector body to attempt to settle by agreement a claim assigned to the officer under regulation 11.

### **15. Conciliation may be repeated**

If a claim is not settled under regulation 14, the conciliation and review officer may, at any time before the Commissioner has given notice to them under regulation 21, invite and encourage the claimant and the public sector body to attempt to settle the claim by agreement.

### **16. Settlement of claims by agreement**

- (1) If a claim is settled by agreement under this Division, the conciliation and review officer is to set out the terms of the agreement in writing.
- (2) The written agreement is to be signed by the conciliation and review officer, the claimant and the nominated officer.
- (3) The conciliation and review officer is to give a copy of the signed agreement to the claimant, the nominated officer and the Commissioner.
- (4) If a claim is settled by agreement under this Division, no further action is to be taken under these regulations in relation to the claim.
- (5) If a claim is not settled by agreement under this Division, the conciliation and review officer is to notify the Commissioner accordingly.

### **Division 3 — Review**

#### **17. Review to be carried out if claim not settled by agreement**

If a claim is not settled by agreement under Division 2, the conciliation and review officer is to carry out a review of the claim.

#### **18. Review procedures**

- (1) The conciliation and review officer, having regard to the guidelines, is to carry out a review of a claim by —
  - (a) giving the claimant and the public sector body the opportunity to make any submissions, in writing or otherwise, in support of or in response to the claim;
  - (b) interviewing any person who the officer considers may have information relevant to the claim; and
  - (c) considering the information and documents provided by the claimant or the public sector body under regulation 12 and, subject to subregulation (2), any other information or document obtained by the officer that the officer considers relevant to the claim.
- (2) In carrying out the review, the conciliation and review officer is not to have regard to anything said by, or any document provided by, the claimant or the public sector body —
  - (a) that was said or provided for the purposes of attempting to settle the claim by agreement under Division 2; and
  - (b) that the conciliation and review officer considers was said or provided confidentially for those purposes.

#### **19. Conciliation and review officer to report to Commissioner**

As soon as is practicable after completing the review of a claim, the conciliation and review officer is to give to the Commissioner a written report in the form specified in the guidelines that —

- (a) sets out the facts and circumstances that gave rise to the claim and explains the relevance of those facts and circumstances to the public sector standard to which the claim relates;
- (b) describes the relief, if any, proposed by the claimant or the public sector body in relation to the claim; and
- (c) if the officer considers that the claimant or public sector body may have failed to comply with any of these regulations — sets out the facts and circumstances that gave rise to that opinion.

#### **Division 4 — Determinations by Commissioner**

##### **20. Commissioner to make determination**

- (1) When the Commissioner is given a report under regulation 19 resulting from the review of a claim, the Commissioner is to consider —
  - (a) the claim, the report and any documents provided under these regulations that relate to the claim, other than a document considered confidential by the conciliation and review officer under regulation 18(2); and
  - (b) any other information or document that the Commissioner obtains and considers relevant to the claim.
- (2) On the basis of the material considered under subregulation (1) the Commissioner is to determine —
  - (a) that the public sector body has breached a public sector standard and, if so, whether to recommend that relief or no relief be given by the public sector body to the claimant; or
  - (b) that the public sector body has not breached a public sector standard and the claim is to be dismissed.

**21. Commissioner to notify claimant and public sector body of determination**

- (1) The Commissioner is to give written notice to the claimant and the public sector body of —
  - (a) the Commissioner's determination under regulation 20(2) including, if applicable, the Commissioner's recommendation —
    - (i) that the claimant be given the relief as specified in the notice; or
    - (ii) that no relief be given to the claimant;
  - and
  - (b) the reasons for the determination.
- (2) The Commissioner cannot recommend that the relief to be given by the public sector body is the appointment of the claimant or another person.

**22. Public sector body to notify Commissioner and claimant of intended response**

- (1) Within 10 days after a public sector body is given notice under regulation 21 of relief that the Commissioner recommends be given to the claimant, the public sector body is to give written notice to the Commissioner and the claimant of its intention —
  - (a) to give to the claimant the recommended relief;
  - (b) to give to the claimant any other relief as specified in the notice given by the public sector body; or
  - (c) not to give any relief to the claimant.
- (2) If subregulation (1)(b) or (c) applies, the public sector body is to include in the notice the reasons for that intention.
- (3) The public sector body is to give written notice to the Commissioner within 10 days after the claimant is given relief, specifying the relief that was given.



### **Division 5 — Withdrawn and lapsed claims**

#### **23. Withdrawn claims**

- (1) A claimant may at any time withdraw the claim by giving written notice of the withdrawal to the Commissioner or the public sector body with which the claim was lodged.
- (2) If a public sector body is given notice under subregulation (1), the public sector body is to give written notice to the Commissioner of the withdrawal of the claim.
- (3) If the Commissioner is given notice under subregulation (1), the Commissioner is to give written notice to the public sector body of the withdrawal of the claim.

#### **24. Lapsed claims**

- (1) If the Commissioner considers that a claimant, having been requested to do so by a conciliation and review officer, has failed to participate appropriately in the conciliation process or review process, the Commissioner may give the claimant a written notice under subregulation (2).
- (2) A notice under this subregulation is to inform the claimant that, unless within 5 days after the notice is given the claimant gives the Commissioner a written undertaking to participate appropriately in the conciliation process or review process (as the case requires), the claim will lapse at the end of that period.
- (3) If the claimant does not give the Commissioner the undertaking within the period referred to in subregulation (2), the claim lapses at the end of that period.
- (4) The Commissioner is to give written notice that a claim has lapsed to the claimant and the public sector body.

#### **25. No further action to be taken for withdrawn or lapsed claims**

- (1) If a claim —

- (a) is withdrawn under regulation 23(1); or
- (b) lapses under regulation 24(3),

no further action is to be taken under these regulations in relation to the claim.

### **Division 6 — Miscellaneous**

#### **26. Suspension of conciliation process or review process**

If —

- (a) the Commissioner considers that matters that are the subject of the performance of any of the Commissioner's monitoring compliance functions under section 21 of the Act consist of or include matters in relation to which a claim has been made; and
- (b) the conciliation process or review process is taking place in relation to the claim,

the Commissioner may suspend the conciliation process or review process for any period the Commissioner thinks fit.

#### **27. Representation during conciliation process or review process**

- (1) A claimant is not entitled to be represented by another person during the conciliation process or review process unless the conciliation and review officer otherwise decides on the ground that the process cannot proceed effectively without the claimant being represented.
- (2) A public sector body is not entitled to be represented by a person other than a nominated officer during the conciliation process or review process unless the conciliation and review officer otherwise decides on the ground that the process cannot proceed effectively without the public sector body being represented by a person other than a nominated officer.

- (3) A claimant is entitled to be accompanied by a support person of his or her own choosing during the conciliation process or review process unless the conciliation and review officer otherwise decides on the ground that the process cannot proceed effectively with the claimant being accompanied by the support person.
- (4) A nominated officer is entitled to be accompanied by another person, who may be able to assist the conciliation process or review process, during that process unless the conciliation and review officer otherwise decides on the ground that the process cannot proceed effectively with the nominated officer being accompanied by the other person.

## **Part 4 — General**

**28. Information about public sector standards and regulations to be made available to employees**

The employing authority of a public sector body is to take reasonable steps to ensure that information regarding the operation and effect of —

- (a) the public sector standards; and
- (b) these regulations,

is made available to the employees of the public sector body.

**29. Terms and conditions of appointment of conciliation and review officers**

The remuneration and the terms and conditions of appointment of a conciliation and review officer who is not an employee are as determined from time to time by the Commissioner.

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

If the Commissioner determines that a public sector body —

- (a) has not given a claimant the relief recommended by the Commissioner under regulation 21 or any other relief the Commissioner considers appropriate; or
- (b) has not complied with any of these regulations,

the Commissioner —

- (c) may give a written report setting out the facts and circumstances that gave rise to that determination to —
  - (i) the employing authority of the public sector body; and
  - (ii) the Minister responsible for the public sector body;

and

- (d) may cause a copy of the report to be laid before each House of Parliament.

## **Part 5 — Repeal and transitional**

### **31. Repeal**

The *Public Sector Management (Examination and Review Procedures) Regulations 2001* are repealed.

### **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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### Notes

- <sup>1</sup> This is a compilation of the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*. The following table contains information about those regulations.

#### Compilation table

Citation	Gazettal	Commencement
<i>Public Sector Management (Breaches of Public Sector Standards) Regulations 2005</i>	15 Jul 2005 p. 3325-49	1 Sep 2005 (see r. 2)
<a href="#"><u><i>Public Sector Management (Breaches of Public Sector Standards) Amendment Regulations 2008</i></u></a>	<a href="#"><u>28 Oct 2008</u></a> <a href="#"><u>p. 4727-8</u></a>	<a href="#"><u>r. 1 and 2: 28 Oct 2008</u></a> <a href="#"><u>(see r. 2(a));</u></a> <a href="#"><u>Regulations other than r. 1 and 2:</u></a> <a href="#"><u>1 Nov 2008 (see r. 2(b))</u></a>