

Western Australia

Public Sector Management Act 1994

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

As at 21 Feb 2011

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

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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 —

acting movement means the temporary movement of an employee from an office, post or position in a public sector body to another office, post or position in the same body with an equivalent or higher level of classification;

appointment pool means —

(a) a number of persons selected by the employing authority of a public sector body as suitable to be considered for appointment to fill a future vacancy or future vacancies of a particular class in that public sector body; or

(b) a shared appointment pool;

claim means a claim for relief under regulation 6;

claimant means a person who makes a claim;

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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;

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;

notifiable employment decision means a reviewable decision in respect of —

- (a) the appointment of a person to fill a vacancy, otherwise than from an appointment pool or by way of acting movement or transfer —
 - (i) for a period of more than 6 months; or
 - (ii) for a period of 6 months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than 6 months or the person appointed could later become a permanent officer;

or

- (b) the appointment of a person to fill a temporary vacancy, by way of acting movement, if the vacancy was advertised on the basis that the person appointed could later become a permanent officer;

or

- (c) the selection of a person to form part of an appointment pool;

public sector employment standard means the Commissioner's instructions issued under section 21(1)(a)(i) or (ii) of the Act establishing public sector standards in respect of recruitment, selection, appointment, transfer, secondment and temporary deployment (acting) of employees;

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 the employing authority of 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;

shared appointment pool means a number of persons selected by employing authorities of public sector bodies as suitable to be considered for appointment to fill a vacancy or future vacancy of a particular class in those public sector bodies;

transfer means the permanent movement of an employee from an office, post or position in a public sector body to another office, post or position with the same level of classification in a public sector body;

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.

[Regulation 3 amended in Gazette 11 Feb 2011 p. 493-6.]

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.

5A. Shared appointment pools

- (1) If a shared appointment pool is established for 2 or more public sector bodies, the employing authorities of the public sector bodies must designate in writing one of the public sector bodies, and its employing authority, as the body and employing authority responsible for compliance with regulation 5(3A) and

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for dealing with any claim made under these regulations in relation to the shared appointment pool.

- (2) A notice given under regulation 5(3A) in respect of a reviewable decision in relation to a shared appointment pool must specify the public sector body and employing authority responsible for dealing with any claim in relation to the reviewable decision.

[Regulation 5A inserted in Gazette 11 Feb 2011 p. 495.]

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

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

- (1) If an employing authority makes a reviewable decision as the result of the completion of a process to which a public sector standard that is established in respect of the resolution of employees' grievances applies, the employing authority must give written notice that complies with subregulation (3) to —
 - (a) the person whose grievance resulted in the making of the reviewable decision; and
 - (b) each person (if any) who was the subject of the grievance.
- (2) If an employing authority makes a notifiable employment decision in respect of an appointment to fill a vacancy as the result of the completion of a process to which a public sector employment standard applies, the employing authority must give written notice that complies with subregulation (3) to any person who applied unsuccessfully to be appointed to fill the vacancy.
- (3A) If an employing authority makes a notifiable employment decision in respect of selection for inclusion in an appointment pool as the result of the completion of a process to which a public sector employment standard applies, the employing authority must give written notice that complies with subregulation (3) to any person who applied unsuccessfully to be selected to form part of the appointment pool.
- (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;

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- (c) the date no later than which the claim may be lodged with the public sector body, in accordance with regulation 7(1); and
- (d) anything specified in the guidelines for the purposes of this subregulation.

[Regulation 5 amended in Gazette 11 Feb 2011 p. 495-6.]

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 or an employing authority of 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) Only the following persons may make a claim in respect of a breach of a public sector employment standard —
 - (a) a person who has applied unsuccessfully to be appointed to fill a vacancy, otherwise than from an appointment pool or by way of acting movement or transfer —
 - (i) for a period of more than 6 months; or
 - (ii) for a period of 6 months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than 6 months or more or the person appointed could later become a permanent officer,and claims there has been a breach of the standard in relation to the process of appointment;

- (b) a person who has applied unsuccessfully to be appointed to fill a temporary vacancy, by way of acting movement —
 - (i) for a period of more than 6 months; or
 - (ii) for a period of 6 months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than 6 months or more or the person appointed could later become a permanent officer,and claims there has been a breach of the standard in relation to the process of appointment;
 - (c) a person who has applied unsuccessfully to be selected to form part of an appointment pool, and claims there has been a breach of the standard in relation to the process of selection;
 - (d) a person who has applied unsuccessfully to be appointed to fill a vacancy by way of transfer, or is being transferred, and claims there has been a breach of the standard in relation to the process of transfer.
- (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.

[Regulation 6 amended in Gazette 11 Feb 2011 p. 496-7.]

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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 notifiable employment decision — such period, being a period of not less than 4 days after the claimant was given notice under regulation 5(2) or (3A), as is specified in the notice;
 - (b) for a reviewable decision referred to in regulation 5(1) — 10 days after the claimant was given notice under that subregulation;
 - (c) for any other reviewable decision — 10 days after the claimant first became aware of the reviewable decision or 30 days after the reviewable decision was made, which period expires first.

*[Regulation 7 amended in Gazette 28 Oct 2008 p. 4727-8;
11 Feb 2011 p. 497.]*

[8A.] *Deleted in Gazette 11 Feb 2011 p. 497.]*

8. Effect of making claims on proposed appointments and transfers

- (1) If —
- (a) an employing authority of a public sector body makes —
 - (i) a notifiable employment decision in relation to the appointment of a person to fill a vacancy; or
 - (ii) a reviewable decision 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 employing authority 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 employing authority of the public sector body makes a written submission to the Commissioner that sets out the reasons why the employing authority should make the proposed appointment, or give effect to the proposed transfer, despite the claim having been made; and
 - (b) the Commissioner gives the employing authority written approval to make the appointment or give effect to the transfer.

[Regulation 8 amended in Gazette 11 Feb 2011 p. 497-8.]

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

- (1) If —
- (a) the employing authority of 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 employing authority —
- (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 employing authority of the public sector body makes a written submission to the Commissioner that sets out the reasons why the employing authority should make an appointment from the appointment pool despite the claim having been made; and
 - (b) the Commissioner gives the employing authority written approval to make the appointment.

[Regulation 9 amended in Gazette 11 Feb 2011 p. 498.]

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 —

- (aa) is to make reasonable attempts to resolve the claim with the claimant before the claim must be sent to the Commissioner under paragraph (a); and
 - (a) if the claim is not resolved within 15 days after it is lodged, is to send to the Commissioner —
 - (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.

[Regulation 10 amended in Gazette 11 Feb 2011 p. 499.]

11A. Commissioner may decide not to deal with a claim

- (1) The Commissioner may, at any time after receiving a claim, decide not to deal with the claim, or to stop dealing with the claim, because —
 - (a) the claim does not relate to a matter the Commissioner has power to deal with; or

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- (b) in the opinion of the Commissioner, the claim is vexatious, frivolous or lacking in substance or does not warrant further action; or
 - (c) the subject matter of the claim is being dealt with, or has already been dealt with, adequately by the Commissioner or another entity; or
 - (d) the claim is solely about the competitive merit of the claimant.
- (2) If the Commissioner decides not to deal with the claim, or to stop dealing with the claim, the Commissioner must inform the person who made the claim, in writing, of the decision and the reason for the decision.

[Regulation 11A inserted in Gazette 11 Feb 2011 p. 499.]

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 employing authority of the relevant 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 employing authority 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.

[Regulation 12 amended in Gazette 11 Feb 2011 p. 499-500.]

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 employing authority of the relevant public sector body to attempt to settle by agreement a claim assigned to the officer under regulation 11.

[Regulation 14 amended in Gazette 11 Feb 2011 p. 500.]

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 employing authority of the relevant public sector body to attempt to settle the claim by agreement.

[Regulation 15 amended in Gazette 11 Feb 2011 p. 500.]

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 employing authority of the relevant 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 employing authority 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 employing authority —
 - (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.

[Regulation 18 amended in Gazette 11 Feb 2011 p. 500.]

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;

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Division 4 Determinations by Commissioner

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- (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 or its employing authority may have failed to comply with any of these regulations — sets out the facts and circumstances that gave rise to that opinion.

[Regulation 19 amended in Gazette 11 Feb 2011 p. 500.]

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 or its employing authority 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 and its employing authority have not breached a public sector standard and the claim is to be dismissed.

[Regulation 20 amended in Gazette 11 Feb 2011 p. 500-1.]

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 employing authority of 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; or
 - (b) to give to the claimant any other relief as specified in the notice given by the employing authority of the public sector body; or
 - (c) not to give any relief to the claimant.
- (2) If subregulation (1)(b) or (c) applies, the employing authority is to include in the notice the reasons for that intention.

- (3) The employing authority is to give written notice to the Commissioner within 10 days after the claimant is given relief, specifying the relief that was given.

[Regulation 22 amended in Gazette 11 Feb 2011 p. 501.]

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 employing authority of 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.

[Regulation 23 amended in Gazette 11 Feb 2011 p. 501.]

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

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that the process cannot proceed effectively without the claimant being represented.

- (2) A public sector body or employing authority 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 or employing authority 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.

[Regulation 27 amended in Gazette 11 Feb 2011 p. 501.]

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

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

Part 5 — Transitional matters

[Heading inserted in Gazette 11 Feb 2011 p. 501.]

31. Transitional

(1) In this regulation —

commencement day means the day on which the *Public Sector Management (Breaches of Public Sector Standards) Amendment Regulations 2011* come into operation;

former regulations means these regulations as in force immediately before commencement day.

(2) If —

(a) a claim has been lodged under Part 2 before commencement day; and

(b) immediately before commencement day, the claim has not been completely dealt with under these regulations or withdrawn by the claimant,

then the former regulations, and the Commissioner's instructions as in force before the commencement day continue to have effect for the purposes of dealing with the claim.

[Regulation 31 inserted in Gazette 11 Feb 2011 p. 501-2.]

[32. Deleted in Gazette 11 Feb 2011 p. 501.]

Notes

¹ 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)
<i>Public Sector Management (Breaches of Public Sector Standards) Amendment Regulations 2008</i>	28 Oct 2008 p. 4727-8	r. 1 and 2: 28 Oct 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Nov 2008 (see r. 2(b))
<i>Public Sector Management (Breaches of Public Sector Standards) Amendment Regulations 2011</i>	11 Feb 2011 p. 493-502	r. 1 and 2: 11 Feb 2011 (see r. 2(a)) Regulations other than r. 1 and 2: 21 Feb 2011 (see r. 2(b))

Defined Terms

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

The list is not part of the law.]

Defined Term	Provision(s)
acting movement.....	3(1)
appointment pool.....	3(1)
claim.....	3(1)
claimant.....	3(1)
commencement day.....	31(1)
conciliation and review officer.....	3(1)
conciliation process.....	3(1)
former regulations.....	31(1)
guidelines.....	3(1)
nominated officer.....	3(1)
notifiable employment decision.....	3(1)
prescribed lodgement period.....	7(5), 7(5)
public sector employment standard.....	3(1)
public sector standard.....	3(1)
review process.....	3(1)
reviewable decision.....	3(1)
shared appointment pool.....	3(1)
transfer.....	3(1)
vacancy.....	3(1)