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## PUBLIC SECTOR MANAGEMENT

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PS301

PUBLIC SECTOR MANAGEMENT ACT 1994

### PUBLIC SECTOR MANAGEMENT (REVIEW PROCEDURES) AMENDMENT REGULATIONS 1997

Made by the Governor in Executive Council.

#### Citation

1. These regulations may be cited as the *Public Sector Management (Review Procedures) Amendment Regulations 1997*.

#### Principal regulations

2. In these regulations the *Public Sector Management (Review Procedures) Regulations 1995*\* are referred to as the principal regulations.

[\* *Published in Gazette 24 November 1995, pp. 5475-88.*  
For amendments to 27 November 1997 see 1996 Index to Legislation of Western Australia, Table 4, p. 222.]

#### Regulation 3 amended

3. Regulation 3 of the principal regulations is amended by inserting before the definition of "day" the following definition —

“

“**compliance requirement**”, in relation to a public sector standard, means a matter that is specified in the standard as a compliance requirement of that standard;

”.

#### Regulation 4 repealed

4. Regulation 4 of the principal regulations is repealed.

#### Regulation 5 amended

5. Regulation 5 of the principal regulations is amended by deleting the passage from and including “appointment —” to the end of the regulation and substituting the following —

“ appointment, is an employee or is employed outside the Public Sector. ”.

#### Part 3, Division 1 heading, amended

6. Part 3 of the principal regulations is amended in the heading to Division 1 by deleting “*Applications for review*” and substituting the following —

“ *Claims of breach of compliance requirements* ”.

**Regulation 8 amended**

7. (1) Regulation 8 (1) of the principal regulations is amended by deleting “be a breach of a public sector standard, may apply to” and substituting the following —

“  
 be, or to have been materially affected by, a breach of a compliance requirement of a public sector standard, may lodge a claim with  
 ”.

(2) Regulation 8 (2), (3) and (4) of the principal regulations are repealed and the following subregulations are substituted —

“  
 (2) A claim lodged under subregulation (1) shall be in writing, setting out the grounds on which the claimant considers that the compliance requirement of the public sector standard has been breached and any other information that the claimant considers relevant to the review.

(3) Subject to subregulation (4) and regulation 9, a claim under this regulation shall be lodged within 7 days after the decision was made or action was taken, as the case may be, that the claimant considers to be, or to have been materially affected by, a breach of a compliance requirement of a public sector standard.

(4) An employing authority may accept a claim lodged after the expiry of the 7 days referred to in subregulation (3) if the authority considers that, in all the circumstances, it is just and reasonable to do so.  
 ”.

**Regulation 9 amended**

8. (1) Regulation 9 (1) of the principal regulations is amended —

(a) by deleting “An application” and substituting the following —

“ A claim ”;

(b) in paragraph (b), by inserting after “organization breached” the following —

“ a compliance requirement of ”;

(c) by deleting “shall be made” and substituting the following —

“ shall be lodged ”; and

(d) by deleting paragraph (cc) and substituting the following paragraph —

“  
 (cc) that these regulations provide for a claim to be lodged for a review on the ground referred to in paragraph (b).  
 ”.

(2) After regulation 9 (2) of the principal regulations the following subregulation is inserted —

“  
 (3) An employing authority cannot accept a claim to which this regulation applies if it is lodged after the expiry of the 7 days referred to in subregulation (1).  
 ”.

### Regulations 10 and 11 repealed and regulations substituted

9. Regulations 10 and 11 of the principal regulations are repealed and the following regulations are substituted —

“

#### Certain decisions and actions not subject to review

10. A decision made or action taken in relation to an appointment to or within the Public Sector —

- (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,

cannot be reviewed under these regulations.

#### Confirmation of appointment of successful applicants

11. (1) If —

- (a) an unsuccessful applicant for a vacancy in a department or organization lodges a claim under regulation 8 for a review on the ground referred to in regulation 9 (1) (b); and
- (b) the claim is not rejected under regulation 14 (1),

the appointment of the successful applicant for the vacancy cannot be confirmed until the relevant employing authority has considered the written report given to the authority under regulation 15.

(2) The appointment of the successful applicant for a vacancy in a department or organization shall be taken to have been confirmed if there is no claim of the kind referred to in subregulation (1) (a) lodged within the 7 days referred to in regulation 9 (1).

”.

### Regulation 13 amended

10. (1) Regulation 13 (1) of the principal regulations is repealed and the following subregulation is substituted —

“

(1) Once a claim for a review has been lodged under regulation 8 with an employing authority, the authority —

- (a) within 7 days after the expiry of the 7 days referred to in regulation 8 (3) or 9 (1), as the case requires; or
- (b) if the claim was accepted under regulation 8 (4), within 7 days after it was so accepted,

shall request the Commissioner to select a reviewer to conduct the review.

”.

(2) Regulation 13 (2) of the principal regulations is amended by deleting “If the Commissioner receives a request under subregulation (1) (b),” and substituting the following —

“ On receiving a request under subregulation (1), ”.

(3) Regulation 13 (3) of the principal regulations is amended —

- (a) by deleting “(1) or”; and
- (b) in paragraph (a), by deleting “application;” and substituting the following —

“ claim; ”.

**Regulation 14 amended**

11. (1) Regulation 14 (1) of the principal regulations is amended —
- (a) by deleting “application” in the 4 places where it occurs and substituting in each place the following —  
“ claim ”; and
  - (b) in paragraph (a), by inserting after “employing authority” the following —  
“ and the Commissioner ”.
- (2) Regulation 14 (3) of the principal regulations is amended —
- (a) by deleting “application” in the 4 places where it occurs and substituting in each place the following —  
“ claim ”; and
  - (b) in paragraphs (b) and (c), by deleting “applicant” in the 2 places where it occurs and substituting in each place the following —  
“ claimant ”.

**Regulation 15 repealed and a regulation substituted**

12. Regulation 15 of the principal regulations is repealed and the following regulation is substituted —

“

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

15. (1) When a review is completed, the reviewer shall give to —
- (a) the employing authority; and
  - (b) the Commissioner,
- a written report in relation to the matters referred to in the claim.
- (2) The written report shall include the findings made by the reviewer as to —
- (a) whether or not a compliance requirement of a public sector standard has been breached; and
  - (b) if there is a finding that a compliance requirement has been breached, whether or not that breach materially affected the outcome of the process to which the relevant public sector standard applied at the time the breach occurred.
- (3) The written report may include recommendations by the reviewer as to any action the reviewer considers appropriate for the employing authority to take in response to the findings made by the reviewer.

”.

**Regulation 16 amended**

13. (1) Regulation 16 (1) of the principal regulations is amended —
- (a) by inserting after “in particular” the following —  
“ the findings and ”; and

- (b) in paragraph (b), by deleting "shall give to the applicant" and substituting the following —

"

within 10 days after receiving the report, shall give to the claimant

".

- (2) Regulation 16 (2) of the principal regulations is amended —

- (a) by inserting after "authority breached" the following —

" a compliance requirement of "; and

- (b) by deleting "applicant" and substituting the following —

" claimant ".

### Regulation 17 amended

14. Regulation 17 of the principal regulations is amended —

- (a) by deleting "within a reasonable period"; and

- (b) by deleting "Commissioner may give to the Minister responsible for the authority a written report in relation to that failure." and substituting the following —

"

Commissioner —

- (a) may give to the Minister responsible for the authority a written report in relation to that failure; and
- (b) may cause a copy of the written report to be laid before each House of Parliament.

".

### Regulation 18 amended

15. Regulation 18 of the principal regulations is amended by deleting "applicant" and substituting the following —

" claimant ".

### Regulation 19 amended

16. (1) Regulation 19 (1) of the principal regulations is repealed and the following subregulation is substituted —

"

- (1) A claimant may at any time withdraw a claim lodged under regulation 8 by giving written notification to the employing authority with which the claim was lodged.

".

- (2) Regulation 19 (2) of the principal regulations is amended by deleting "application" in the 2 places where it occurs and substituting in each place the following —

" claim ".

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.