

Western Australia

**Public Sector Management (Review Procedures)
Regulations 1995**

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Public Sector Management (Review Procedures) Regulations 1995

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NOTES

Western Australia

PUBLIC SECTOR MANAGEMENT ACT 1994

**Public Sector Management (Review Procedures)
Regulations 1995**

Made by the Deputy of the Governor in Executive Council.

[Printer's Correction — see Gazette 5 December 1995 p.5592.]

Part 1 — Preliminary

1. Citation

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

2. Commencement

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

3. Interpretation

In these regulations —

“**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;

“**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.

[Regulation 3 amended in Gazette 2 January 1998 p.14.]

Part 2 — Reviewers

[4. Repealed in Gazette 2 January 1998 p.14.]

5. Reviewer may be appointed whether or not employed in the Public Sector or nominated

The Commissioner may appoint a person as a reviewer whether or not the person, at the time of his or her appointment, is an employee or is employed outside the Public Sector.

[Regulation 5 amended in Gazette 2 January 1998 p.14.]

6. Appointment of reviewer may be revoked except while review is being conducted

- (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.

7. Terms and conditions of employment of reviewer

- (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 — Claims of breach of compliance requirements

[Heading amended in Gazette 2 January 1998 p.14.]

8. Applications for review of breach of public sector standards

- (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 compliance requirement of a public sector standard, may lodge a claim with the employing authority of the department or organization to have the decision or action reviewed by a reviewer.
- (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 15 days after the decision was made or action was taken, as the case may be, that the claimant considers to be 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 15 days referred to in subregulation (3) if the authority considers that, in all the circumstances, it is just and reasonable to do so.

*[Regulation 8 amended in Gazette 2 January 1998 p.15;
1 September 1998 p.4830.]*

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

- (1) A claim 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 compliance requirement of a public sector standard established in respect of the recruitment, selection or appointment of employees,

shall be lodged 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 these regulations provide for a claim to be lodged for a review on the ground referred to in paragraph (b).
- (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.
- (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).

[Regulation 9 amended in Gazette 2 January 1998 p.15.]

10. Certain decisions and actions not subject to review

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.

[Regulation 10 inserted in Gazette 2 January 1998 p.16.]

11. Confirmation of appointment of successful applicants

- (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 11 inserted in Gazette 2 January 1998 p.16.]

12. No review permissible of respective merits of applicants for vacancy

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

13. Employing authority to select reviewer from reviewers nominated by Commissioner

- (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 —
 - (i) the 15 days referred to in regulation 8(3); or
 - (ii) the 7 days referred to in regulation 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) On receiving a request under subregulation (1), 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 (2) —
- (a) the claim; and
 - (b) any other documents that the authority considers relevant to the review.

[Regulation 13 amended in Gazette 2 January 1998 p.16; 1 September 1998 pp.4830-1.]

14. Review procedure

- (1) The reviewer shall consider the claim and any other documents given to the reviewer under regulation 13 (3) and —

- (a) shall reject the claim if the reviewer considers the claim —
 - (i) to be vexatious, trivial or without substance; or
 - (ii) otherwise not to warrant any further action, and shall inform the employing authority and the Commissioner accordingly; or
 - (b) shall proceed with a review of the matters referred to in the claim 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 claim 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 claim;
 - (b) interview the claimant or any other person considered by the reviewer to have information relevant to the matters referred to in the claim, either separately or together, by telephone or in person;
 - (c) seek documents in the possession of, or written information from, the claimant 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 claim.

[Regulation 14 amended in Gazette 2 January 1998 p.17.]

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

- (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 15 inserted in Gazette 2 January 1998 p.17.]

16. Employing authority may take any appropriate action

- (1) Having considered the report given to the employing authority under regulation 15, and in particular the findings and 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) within 10 days after receiving the report, shall give to the claimant 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 compliance requirement of a public sector standard, the authority shall give to the Commissioner a copy of the notification given to the claimant under subregulation (1) (b).

[Regulation 16 amended in Gazette 2 January 1998 pp.17-18.]

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

If the Commissioner considers that an employing authority has failed to take action in accordance with a recommendation in a report given to the authority under regulation 15, the 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 17 amended in Gazette 2 January 1998 p.18.]

18. Representation

Neither the claimant 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.

[Regulation 18 amended in Gazette 2 January 1998 p.18.]

19. Withdrawal of application

- (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) If notification is given to an employing authority under subregulation (1) after the claim has been given to a reviewer

under regulation 13 (3), the authority shall inform the reviewer of the withdrawal of the claim and the reviewer shall then stop dealing with it.

[Regulation 19 amended in Gazette 2 January 1998 p.18.]

Division 3 — Effect of section 24 investigation on review

20. Effect of section 24 investigation on review

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. Repealed in Gazette 10 May 1996 p.2007.]

Notes

- ^{1.} This is a compilation of the *Public Sector Management (Review Procedures) Regulations 1995* and includes the amendments referred to in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Public Sector Management (Review Procedures) Regulations 1995</i>	24 Nov 1995 pp.5475-83	1 Jan 1996 (see regulation 2 and <i>Gazette</i> 24 Nov 1995)
(Printers Correction)	5 Dec 1995 p.5592	5 Dec 1995
<i>Public Sector Management (Review Procedures) Amendment Regulations 1996</i>	10 May 1996 p.2007	10 May 1996
<i>Public Sector Management (Review Procedures) Amendment Regulations 1997</i>	2 Jan 1998 pp.14-18	2 Jan 1997
<i>Public Sector Management (Review Procedures) Amendment Regulations 1998</i>	1 Sep 1998 pp.4830-31	1 Sep 1998