

# Breach of Standard claims

## Claimant guide

### What is a breach of Standard claim?

A breach of Standard claim allows you to seek relief if you believe a decision by a public sector agency has breached a public sector standard in human resource management and you have been adversely affected by that breach.

The Public Sector Commissioner establishes the public sector standards (the Standards) and agencies must comply with them when undertaking certain human resource processes.

The *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* (the Regulations) govern the process for how claims are lodged and managed.

### How do you lodge a claim?

#### Speak to the agency first

Ask the agency for information about how and why the decision was made. This information may assist you to understand the process used and the reasons why the agency made its decision.

#### Decide if you wish to make a claim

Once a final decision is made on a process to which a public sector standard applies, you may lodge a claim if you consider that:

- the agency has breached that Standard
- you have been adversely affected by the breach.

There are some situations under the Regulations where you cannot lodge a claim. You should check whether you are eligible to lodge a claim with the agency that made the decision.

## The Standards

Breach of Standard claims can be made about the following Standards:

- Employment
- Performance Management
- Grievance Resolution
- Redeployment
- Termination.

## How and when to lodge a claim

**You must lodge a claim in writing with the agency that made the decision.** Your claim needs to include:

- why you believe there has been a breach of the Standard
- how you have been adversely affected by the breach.

**The Commission's Breach of Standard claim form may assist you to lodge your breach of Standard claim with the agency.**

## You must lodge a claim within the prescribed lodgement period

- The Regulations prescribe the lodgement periods for breach of Standard claims.
- The lodgement period varies depending on the process undertaken.
- For some decisions relating to the Employment Standard, the Regulations require you to be provided with notification of the decision, and to have a minimum of four working days to lodge a claim.
- The Regulations also require you to be provided notification for decisions relating to the Grievance Resolution Standard, and to have 10 working days' notice to lodge a claim.
- For other processes, including transfers, you have 10 working days from when you become aware of the decision or 30 working days after the decision was made, whichever occurs first. For more information about lodgement periods contact the agency where the breach is alleged to have occurred.

## How can my claim be finalised?

- You reach a conciliated agreement.
- The Commissioner declines to deal with your claim.
- You withdraw your claim.

- The Commissioner finds no breach and your claim is dismissed.
- The Commissioner finds a breach.
- Your claim lapses because the Commissioner considers you are not participating (before this decision you will be informed that your claim may lapse and you will be given five days to respond).

## What does the agency do?

When you lodge your claim, the agency will make a reasonable attempt to resolve the claim with you. The agency may contact you to explain its decision and try to resolve your concerns. If you consider this explanation or action resolves your claim, you can withdraw your claim by writing to the agency.

## Agency refers your claim to the Public Sector Commission

If your claim is not resolved within 15 working days after lodgement, the agency must forward your claim to the Public Sector Commission.

## What does the Public Sector Commission do?

The Public Sector Commission will check if your claim is within jurisdiction.

The Regulations provide for the Commissioner to decline to deal with a claim in certain circumstances, including if it is considered vexatious, lacking in substance or if it is only about your competitive merit as an applicant.

If your claim is accepted it will be allocated to a Commission employee.

## Initial contact

The Commission employee will contact you and the agency to discuss your claim and determine how to proceed.

The Regulations provide for claims to be conciliated or reviewed. Conciliation is optional and both parties must agree to participate for it to proceed.

## Conciliation

Conciliation is a process where both parties (an agency representative and you, as the claimant) are encouraged to discuss the claim and reach agreement on how to resolve it. If this happens you will both sign an agreement and the claim is concluded.

If conciliation is not possible, or fails to reach an agreement, your claim will proceed to review and the Commissioner will make a determination.

## Review

The Commission employee will review the facts and circumstances of your claim as they relate to the Standard and provide a report to the Commissioner. The review process may include:

- requesting and considering information and documents from you, the agency or any other relevant source
- interviewing you and other relevant people.

## Commissioner's determination

The Commissioner will make a determination based on the review report and any other relevant information that:

- no breach is found and the claim is dismissed, or
- there has been a breach of the Standard.

The Commissioner may also decline to deal with your claim.

The Commissioner will inform both you and the agency, in writing, of the determination of your claim and reasons for that determination. The Commissioner will also write to you if the Commissioner declines to deal with your claim.

## Commissioner recommends relief

Where a breach is found, the Commissioner may recommend or direct relief to be provided by the agency. Relief, if any, will vary depending on the circumstances. Examples may include:

- recommencing a process from the start or from the point where the breach occurred
- changes to the agency's policies or practices.

The Commissioner cannot recommend that you are a better person for a job than another applicant and that you should be appointed to a position. The Commissioner may, however, direct that a specified person is not to be appointed.

## More information

Visit the Public Sector Commission's website at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au) or contact the Commission on 6552 8888 or 1800 676 607 (toll free).

**Commission staff cannot provide you with an opinion about whether your claim is likely to succeed. Only the Commissioner can make this determination.**