

Claimant's Guide - Breach of Standard Claims

What is a breach claim?

Breach claims allow you to seek relief if you believe a decision by a Public Sector agency has breached a Public Sector Standard and you have been adversely affected by the breach.

The Public Sector Commissioner sets the Standards and Public Sector agencies must comply with them.

The Regulations that govern the process for making a breach claim are the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*.

How do you lodge a claim?

Deciding to 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 can make a claim

Once a final decision is made you can lodge a claim if you consider that :

- the agency has breached a Public Sector Standard, and
- you have been adversely affected by the breach.

There are some situations 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 claims can be made about the following Standards:

- Employment Standard
- 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. It must include:

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

To assist with the lodgement of your claim you may wish to use the PSC's Template Lodgement Form.

You must lodge a claim by the required timeframe

- The *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005* prescribe the lodgement periods for claims.
- The lodgement period varies depending on the activity or process undertaken.
- For some decisions relating to the Employment Standard you may be provided with a minimum of 4 working days 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.

How can my claim be finalised?

- You withdraw your claim
- You reach a conciliated agreement
- The Commissioner dismisses or declines to deal with your claim
- The Commissioner finds a breach, or
- Your claim lapses because the Commissioner considers you are not participating (before this decision you will be informed that your claim may lapse and given five days to respond)

What does the agency do?

When you lodge your claim, the agency may contact you to explain their decision or to try to resolve your concerns. If you consider the explanation or action resolves your claim, you can withdraw your claim by writing to the agency.

Agency refers your claim to PSC

If your claim is not resolved within 15 working days after lodgement the agency must forward your claim to PSC.

What does PSC do?

PSC 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 merit as an applicant.

If your claim is accepted it will be allocated to a PSC Consultant.

Initial contact

The PSC Consultant or Conciliation and Review Officer appointed by the Commissioner (CRO) will contact you and the agency to discuss the issues of the claim and determine how to proceed.

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

Conciliation

Where a claim is to be conciliated PSC will generally appoint an external conciliator to undertake this process.

Conciliation is a process where the parties 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 a review and a determination will be made by the Commissioner.

Review

The PSC Consultant or the CRO will review the facts and circumstances of your claim as they relate to the Standard and provide a report to the Commissioner. The review may include:

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

Commissioner's determination

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

- the claim is dismissed or
- there has been a breach of the Standard.

The Commissioner may also make a decision to 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 action

Where a breach is found, the Commissioner may recommend action to be taken by the agency to remedy the breach. This will vary depending on the circumstances. Examples may include:

- recommencing a process from the start or from the point where the flaw occurred, or
- 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.

More information:

You can visit our website at www.publicsector.wa.gov.au or contact PSC on 9219 6433 or toll free on 1800 676 607. It is important to understand that PSC staff cannot provide you with an opinion about whether your claim is likely to succeed. Only the Commissioner can make a determination at the end of the breach claim process.