Contents

Breach of Standard claims – An overview ................................................................. 5
Informing employees .......................................................................................... 14
Lodging a claim .................................................................................................. 19
Processing and referral ...................................................................................... 21
Conciliation ......................................................................................................... 25
Review and report ............................................................................................... 31
Determination and relief .................................................................................... 34
Breach claim materials ....................................................................................... 37
  Breach of Standard claims—Claimant guide
  Conciliation of breach of Standard claims—Claimant guide
  Review of breach of Standard claims—Claimant guide
  Breach of Standard claim form
  Claimant checklist for lodging a breach of Standard claim
  Withdrawal of breach of Standard claim form
Template agency forms and letters ..................................................................... 57
  Notification letter relating to processes to fill a vacancy
  Notification letter for grievances
  Letter advising the claimant that the claim has been sent to the
    Public Sector Commissioner
  Agency referral of breach of Standard claim to the Public Sector Commission
Legislative framework

The Public Sector Management Act 1994 (PSM Act) establishes the role of the Public Sector Commissioner. The Commissioner’s functions include:

• establishing public sector standards in human resource management (the Standards)
• administering and monitoring compliance with the Public Sector Management (Breach of Public Sector Standards) Regulations 2005 (the Regulations) to provide relief for a breach of the Standards.

The Standards and Regulations form the legislative framework for breach of Standard claims.

An agency guide

This guide provides information to assist agencies to deal with breach of Standard claims in accordance with the Regulations, and work towards a constructive resolution of claims where possible.

This guide also contains:

• information sheets (breach claim process, conciliation and review) for claimants
• a template lodgement form and checklist for claimants
• the Standards
• the Regulations
• template notification letters for agencies
• template forms and a checklist to assist agencies to refer claims to the Commission.
### Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency</td>
<td>The public sector body or employing authority as referred to in the Regulations</td>
</tr>
<tr>
<td>Breach claim</td>
<td>A claim of a breach of Standard made in accordance with the Regulations</td>
</tr>
<tr>
<td>Commission</td>
<td>Public Sector Commission</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Public Sector Commissioner</td>
</tr>
<tr>
<td>Conciliation and Review Officer (CRO)</td>
<td>A person appointed by the Commissioner to conciliate or review a breach claim. This role can be undertaken by a Commission employee</td>
</tr>
<tr>
<td>PSM Act</td>
<td><em>Public Sector Management Act 1994</em></td>
</tr>
<tr>
<td>Standards</td>
<td>The public sector standards in human resource management established by the Commissioner under the provisions of the PSM Act</td>
</tr>
<tr>
<td>Regulations</td>
<td><em>Public Sector Management (Breaches of Public Sector Standards) Regulations 2005</em></td>
</tr>
</tbody>
</table>

### The public sector standards in human resource management

Public sector agencies must comply with the Standards when they make human resource decisions. Currently there are six Standards:

- **Employment** (applies when filling a vacancy by way of recruitment, selection and appointment, secondment, transfer and temporary deployment (acting))
- **Performance Management**
- **Grievance Resolution**
- **Redeployment**
- **Termination**
- **Discipline**.

Under the Regulations, breach of Standard claims can only be made for decisions relating to a Standard other than the Discipline Standard, because other legislation applies.
The Standards are based on principles rather than rules. This allows public sector agencies to design human resource practices that are consistent with the relevant Standard and suit their operational requirements.

A copy of the Standards is available on the Commission’s website at www.publicsector.wa.gov.au

Regulations governing breach of Standard claims

The Regulations came into effect on 1 September 2005 and provide a legislative base for the handling of a breach of Standard claim. The Regulations were amended in February 2011 to facilitate changes to the Standards and the release of Commissioner’s Instruction No. 2 – Filling a public sector vacancy. The Regulations were further amended in March 2014 to reflect changes to the regulatory role of the Commissioner.

The Regulations provide for:

• people to lodge a breach of Standard claim if they believe a Standard has been breached and they have been adversely affected by that breach

• the impartial handling of the claim, resolution where possible and, where resolution does not occur, an independent determination by the Commissioner on whether there has been a breach of a Standard

• the Commissioner to recommend, and in some circumstances direct, what relief, if any, is to be provided when a breach of a Standard is determined.

A copy of the Regulations is available on the State Law Publisher’s website at www.slp.wa.gov.au

Agencies covered by the Regulations

All Western Australian public sector agencies are covered by the Regulations governing breach of Standard claims, except for those agencies named in Schedule 1 of the PSM Act. These organisations are not covered by the Standards or the Code of Ethics. Breach of Standard claims cannot be made about the decisions of Schedule 1 agencies.

Underlying principles of the Regulations

The Regulations are designed to be practical and flexible. They allow for cooperation, in the sense that parties can actively engage in the process when the claim is lodged in the agency, have any issues conciliated or where required, have a claim reviewed by the Commission.
The key underlying principles are to provide:

**Balance**
A balance between the agency’s need to manage human resource processes in the context of their operational requirements and the need for people to seek relief where human resource processes covered by the Standards do not comply with the Standards.

**Clarification of the issues**
Claimants and agencies have the opportunity to clarify the issues related to the claim after the claim is forwarded to the Commissioner.

**Choices for both parties**
When a claim is lodged, the agency must make reasonable attempts to resolve the claim. A claimant may consider that an explanation or other action resolves their claim and may withdraw their claim in writing.

**Opportunity for resolution**
If the claimant and agency agree to participate in conciliation, an impartial person will undertake the conciliation process. This may be a Commission employee or an external Conciliation and Review Officer (CRO) appointed by the Commissioner. The person undertaking conciliation works with the parties to resolve the claim. Conciliation can facilitate a better understanding of the claim by both parties and a fair and prompt resolution.

**Procedural fairness**
If conciliation is not an option, or an agreement is not reached during conciliation, the claim is reviewed. The review may be undertaken by a Commission employee or an external CRO may be appointed. Both parties have an opportunity during the review process to provide information relevant to the claim.

**Impartial and open decisions**
The Commissioner makes an independent determination on whether there has been a breach of a Standard and notifies both parties, giving reasons for the decision. This approach helps both parties to understand the decision.

**An independent view of the relief that should be provided**
If there has been a breach of a Standard, the Commissioner may recommend relief, or may direct that relief, or no relief, be provided by the agency to the claimant. This approach ensures both the agency and the claimant have someone independent to make the determination about the appropriate relief.
Breach of Standard claims

A breach of Standard claim allows a person to seek relief if they believe a decision by an agency has breached a Standard and they have been adversely affected by that breach. A breach of Standard claim can be made once an agency has completed a process and made a ‘reviewable decision’ to which a Standard applies.

<table>
<thead>
<tr>
<th>An overview of the breach of Standard claim process</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Informing employees</strong></td>
<td>The agency must take reasonable steps to inform employees about the Standards and Regulations. Agencies are also to notify relevant persons for some employment decisions and completed grievance processes, in accordance with the Regulations.</td>
</tr>
<tr>
<td><strong>Lodging a claim</strong></td>
<td>A person may lodge a breach of Standard claim by writing to the agency concerned, setting out the reasons why they consider the Standard has been breached and how they have been adversely affected by that breach (see template ‘Form for breach claim lodgement’). Timeframes apply. The Commissioner may approve the lodgement of a claim outside these timeframes where the Commissioner is satisfied there are reasonable grounds for making a claim.</td>
</tr>
<tr>
<td><strong>Processing and referral</strong></td>
<td>The agency must make reasonable attempts to resolve the claim when it is lodged. If a written withdrawal from the claimant is not received within 15 working days, the agency must forward the claim to the Commissioner.</td>
</tr>
<tr>
<td><strong>Declining claims</strong></td>
<td>The Regulations allow the Commissioner to decline to deal with claims for reasons including: the claim is vexatious, frivolous or lacks substance; the claim relates to matters with which the Commissioner cannot deal; or where the claim is solely about competitive merit.</td>
</tr>
<tr>
<td><strong>Conciliation and review</strong></td>
<td>If the claim has been accepted and both parties agree, the claim is conciliated to encourage a prompt and mutually agreeable resolution. If conciliation is not possible, the claim is reviewed and a report provided to the Commissioner. Further attempts to conciliate may be made at any time (including during the review phase) until the Commissioner makes a determination.</td>
</tr>
</tbody>
</table>
**An overview of the breach of Standard claim process**

| **Determination** | The Commissioner determines whether there has been a breach of the Standard. The Commissioner advises the agency and the claimant of the determination and gives reasons for that determination. If the Commissioner determines that the agency has breached the Standard the Commissioner may recommend relief (if any), or may direct that relief or no relief be given by the agency to the claimant. The Commissioner cannot recommend or direct that the relief to be given by the agency is the appointment of the claimant or another person, but may direct that a specified person is not to be appointed. |
| **Relief** | Within 10 working days of the Commissioner’s determination and/or relief recommendations, the agency advises the Commissioner and the claimant of its proposed action. The agency also advises the Commissioner 10 working days after it has implemented relief. Where the agency does not follow the recommendation within the period specified in the notice, or proposes action the Commissioner does not consider appropriate, the Commissioner may direct the agency to give the claimant relief specified in the direction. |
| **Reporting** | Under the Regulations, the Commissioner may report to the relevant Minister or to Parliament if the Commissioner determines an agency has not given the claimant the directed relief and/or the agency has not complied with any of the Regulations. |
Possible outcomes of breach of Standard claims

Claims are finalised when one of the following occurs:

- the claimant withdraws their claim in writing with the agency or the Commissioner
- the Commissioner declines to deal with a claim or decides to stop dealing with a claim
- the Commissioner determines a claim is lapsed. This occurs where the Commissioner considers that the claimant is not participating in the process
- both the claimant and the nominated officer from the agency sign a conciliation agreement
- the claim is reviewed and the Commissioner determines no breach has occurred
- the Commissioner determines that a breach has occurred and recommends or directs that relief, or no relief, is to be provided.

Process for withdrawing claims

A claimant may withdraw a claim by giving written notice to the agency with which the claim was lodged, or the Commissioner. This may happen at any time before the Commissioner makes the final determination.

If an agency receives a withdrawal after a claim has been referred to the Commissioner, the agency will need to notify the Commissioner in writing that the claim has been withdrawn. If the Commissioner receives a withdrawal from a claimant then the Commissioner will provide written notice to the agency, advising the claimant has withdrawn their claim.

The breach of Standard claim is concluded when the Commissioner receives notice of the withdrawal.

Process for declining claims

If the Commissioner decides not to deal with a claim, the Commissioner will advise the claimant and the agency where the claim was lodged in writing of the decision not to deal with the claim and the reasons for this.

Process for laping claims

In some circumstances, the Commissioner may form the view that the claimant is not participating in the process. This may occur if they are not contactable or not responding to requests for information by the Commission employee.

If this happens, the Commissioner will write to the claimant giving them five working days to respond. If there is no response the Commissioner will advise the claimant and the agency that the claim has lapsed and the breach of Standard claim is concluded.
Tips for reducing breach of Standard claims

<table>
<thead>
<tr>
<th>Clearly communicate policies and practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agencies should take steps to communicate to employees, and in the case of employment decisions, to applicants, the policies and practices that apply to the decision making process. If there are unavoidable delays or changes to the process, agencies should inform relevant parties.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Document decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agencies should ensure clear and concise records are made about the process undertaken and reasons for decisions made. Records made should allow an independent person to understand:</td>
</tr>
<tr>
<td>• how and why a decision was made</td>
</tr>
<tr>
<td>• what management strategies were taken to effectively manage any conflicts of interest</td>
</tr>
<tr>
<td>• whether the requirements of the relevant Standard have been met</td>
</tr>
<tr>
<td>• reasons for delays or deviation from usual practices, where applicable.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Give reasons for decisions to affected people</th>
</tr>
</thead>
<tbody>
<tr>
<td>When agencies make final decisions relating to a Standard, they should inform the people affected by the decision of the reasons why.</td>
</tr>
<tr>
<td>Agencies should provide the name and contact details of a suitable person who can explain the process and the decision. This person should be reasonably available during any specified breach period to provide an explanation or feedback, if sought.</td>
</tr>
</tbody>
</table>
Tips for reducing breach of the Employment Standard claims

Provide quality feedback for selection decisions

If applicants understand the reasons behind an agency’s decision and believe the process has been reasonable and fair, they may be less likely to lodge a breach of Standard claim.

Agencies may reduce their number of breach claims by:

- ensuring the person providing feedback is available during the specified time period and understands the process used to make the decision
- providing honest, objective and constructive comments about an applicant’s assessment
- providing information that may assist an applicant to understand their strengths and areas for further development against the position’s requirements.

Tips for reducing breach of the Grievance Resolution Standard claims

Inform people about grievance decisions

Failing to keep people informed about the progress of their grievance process and its outcome can result in an increased likelihood of receiving breach of Standard claims. It is important that agencies:

- keep the parties informed as grievances move through various stages of the process
- inform the parties of any delays and the reasons for those delays
- advise the parties when the grievance process has been completed, the outcome of the process (even if the decision is to take no action) and the reasons for that decision.
Informing employees

The Regulations require agencies to take reasonable steps to ensure information regarding the Standards and Regulations is available to employees.

This section
This section provides information about:

• informing employees about the Standards and Regulations
• notifying relevant people when a decision is made about employment processes and grievances.

Tips for informing employees

It is up to the agency to decide how to make information available to employees about the Standards and Regulations. Some examples are outlined below.

• Placing information on the agency’s intranet.
• Providing a link from the agency’s intranet to the Commission’s website at www.publicsector.wa.gov.au
• Providing a link from the agency’s intranet to the Regulations on the State Law Publisher’s website at www.slp.wa.gov.au
• Including information in induction programs and training sessions for management and staff.
• Including information in policy documents that are accessible to employees.
• Circulating the Commission’s claimant guide to employees and job applicants and placing the guides in areas accessible to employees, for example, lunchrooms and reception areas. The guides can be downloaded from the Commission’s website.
Requirements to notify employees of certain decisions

Employment Standard
The Regulations establish when notification must be provided for decisions relating to the Employment Standard.

Notifiable employment decisions include:

- appointments to fill a vacancy of more than six months
- appointments to fill a vacancy of six months or less if the vacancy was advertised on the basis that the period of the appointment could later be extended to more than six months or made permanent
- selection to form part of an appointment pool.

While an employee may be able to lodge a breach of Standard claim about other decisions that relate to the Employment Standard, they are not ‘notifiable’. Notifiable employment decisions do not include transfers. Acting appointments are not notifiable unless the vacancy was advertised on the basis that the person appointed could later become permanent. See the table on pages 16 and 17 of this guide for information about when notification is required for decisions relating to the Employment Standard.

Grievance Resolution Standard
Notification must be provided to employees affected by decisions arising from a completed grievance process. This includes where an agency decides that no action will be taken.

People to be notified include the employee who made the grievance and any employee who was the subject of the grievance.

> Where an agency has procedures for moving from an informal to a formal grievance process, the reviewable decision to which the Standard applies is the decision that ends the formal grievance process.

Other Standards
There is no requirement to notify employees about decisions covered by the other Standards.

However, as discussed above, the Regulations require reasonable steps are taken to inform employees of the Standards and the operation and effect of the Regulations. It is suggested that agencies communicate the reasons for these decisions to the relevant parties. This may assist the affected person(s) to understand the process undertaken and how the agency made the decision. It may also reduce the number of breach of Standard claims being made.
<table>
<thead>
<tr>
<th>Human Resource Transactions: The Employment Standard applies to all of the following transactions</th>
<th>What advertising can be undertaken?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A vacancy is advertised on the basis it is for more than six months or for six months or less if there is the possibility of an extension or permanency. The purpose of advertising is to recruit to the vacancy.</td>
<td>General or targeted advertising</td>
</tr>
<tr>
<td>A vacancy is advertised on the basis it is for six months or less with no possibility of extension. The purpose of advertising is to recruit to the vacancy.</td>
<td>General or targeted advertising</td>
</tr>
<tr>
<td>An expression of interest is circulated for an acting opportunity for six months or less, with no possibility of an extension or permanency. The purpose of advertising is to provide existing employees with an internal acting opportunity.</td>
<td>Expression of interest (internal)</td>
</tr>
<tr>
<td>An expression of interest is circulated for an acting opportunity for more than six months, with no possibility of permanency. The purpose of advertising is to provide existing employees with an internal acting opportunity.</td>
<td>Expression of interest (internal)</td>
</tr>
<tr>
<td>Quarantined advertising is an invitation for permanent employees to apply for particular vacancies at their substantive level. This is used to minimise the potential for displacement of existing permanent Public Sector employees which may result from a restructure or amalgamation.</td>
<td>Internal An invitation for existing permanent employees to apply at level</td>
</tr>
<tr>
<td>A vacancy is not advertised and is filled by an individual assessment of merit in accordance with Part 4 Commissioner’s Instruction No. 2 - Filling a public sector vacancy. Applies where one person only is assessed and appointed to a vacancy.</td>
<td>Not applicable</td>
</tr>
<tr>
<td>A transfer occurs for a permanent employee at level, with no right of return.</td>
<td>No advertising required</td>
</tr>
<tr>
<td>A secondment or acting opportunity is advertised on the basis it could later become permanent.</td>
<td>General or targeted advertising</td>
</tr>
<tr>
<td>A fixed term contract opportunity is advertised on the basis it could later become permanent.</td>
<td>General or targeted advertising For the permanent appointment of a fixed term contract employee to a public service vacancy (employed under Part 3 of the PSM Act) the vacancy must have been advertised on Jobs WA (s.64.4 of the Act).</td>
</tr>
<tr>
<td>Do breach claim rights apply?</td>
<td>Is notification of breach claim rights required?</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Yes</td>
<td>Notification is provided to unsuccessful applicants</td>
</tr>
<tr>
<td>No</td>
<td>Not applicable</td>
</tr>
<tr>
<td>No</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>No</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Only where the employee has had a transfer request declined, or has been told they will be transferred at the initiative of the agency.</td>
<td>No</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes. Notification is provided to unsuccessful applicants.</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes. Notification is provided to unsuccessful applicants.</td>
</tr>
<tr>
<td>Checklist of information to be included when notifying people of certain decisions</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>When providing notification for an employment decision (under the Employment Standard) or a reviewable decision (under the Grievance Resolution Standard), the following information should be included:</td>
<td></td>
</tr>
<tr>
<td>☐ a person may lodge a claim if they believe the agency has breached a Standard and they have been adversely affected by that breach</td>
<td></td>
</tr>
<tr>
<td>☐ the claim should be made in writing and outline how the Standard has been breached and how they have been adversely affected by the breach</td>
<td></td>
</tr>
<tr>
<td>☐ the claimant should include relevant information or documents to support their claim</td>
<td></td>
</tr>
<tr>
<td>☐ where in the agency the claim is to be lodged (eg. HR)</td>
<td></td>
</tr>
<tr>
<td>☐ who in the agency they should contact if they wish to seek further information about the process undertaken or the breach claim process</td>
<td></td>
</tr>
<tr>
<td>☐ the date by which a claim is to be lodged with the agency (this depends on the process conducted). This should be a minimum of four* or 10 working days after the date the claimant could reasonably be expected to have received the notification.</td>
<td></td>
</tr>
</tbody>
</table>

*Please note:
For notifiable employment decisions under the Employment Standard a minimum of four working days is required. The agency may consider more than four working days when setting the lodgement period.
For grievances, the prescribed lodgement period is 10 working days.
The agency may choose to provide the claimant with the template claim form in the ‘Breach claim materials’ section of this guide.

Agencies should consider reasonable postal delivery times when setting a lodgement date for breach of Standard claims.
Decisions made by agencies that complete a process to which a Standard applies are ‘reviewable decisions’ for the purposes of the Regulations. They may enable a person or employee to lodge a breach of Standard claim against the process used by an agency to make that decision.

This section
This section provides information about:

• reviewable decisions
• key aspects of claim lodgement, including eligibility and prescribed lodgement timeframes
• the Commissioner’s discretion to approve the lodgement of claims after the prescribed lodgement period or before a reviewable decision is made.

Eligibility to lodge a claim
When a reviewable decision is made, a person may lodge a claim if they believe the agency has breached the Standard and they have been adversely affected by that breach.

Limits on eligibility to lodge a claim
There are some limitations on the right to lodge a breach of Standard claim.

For some employment decisions, a person must have been an unsuccessful applicant to lodge a claim.

In the following situations, a person is not eligible to lodge a claim.

• Claims cannot be lodged for appointments to fill vacancies of six months or less, unless the advertisement indicated there was a possibility of permanency or an extension beyond six months.
• An unsuccessful applicant can lodge a breach claim about the process to select people to form part of an appointment pool. However, a successful applicant to an appointment pool cannot lodge a claim about decisions to appoint people to fill a vacancy from the pool.
• The breach of Standard claim process does not apply to the Discipline Standard because other legislation applies.

• Employees who are registrable employees or registered as redeployees under the Public Sector Management (Redeployment and Redundancy) Regulations 2014 cannot lodge claims against the Redeployment Standard. The Commissioner’s Instruction No.11 - Redeployment Standard applies to employing authorities and employees under the PSM Act to the extent to which they are not dealt with by operation of part 6 Redeployment and Redundancy Regulations 2014.

• The Redeployment Standard effectively applies only to the movement of an employee, together with the movement of his or her office, post or position within departments and organisations. In such circumstances an employee may lodge a claim against the Redeployment Standard.

Prescribed timeframes for lodgement

The Regulations prescribe timeframes for lodging a claim.

| Decisions requiring notification under the Employment Standard | The date given in the notification will be a minimum of four working days. The agency may provide a longer lodgement period. |
| Decisions requiring notification under the Grievance Resolution Standard | The date given in the notification will be 10 working days after it is reasonable to expect the notification would be received. |
| All other reviewable decisions to which Standards apply | 10 working days after a person becomes aware of the reviewable decision, or 30 working days after the decision was made, whichever period expires first. |

Commissioner’s discretion to approve late or early claims

The Commissioner can approve the lodgement of claims after the prescribed lodgement period or before a reviewable decision is made.

The person who is seeking to lodge the claim must make an application to the Commissioner.

Approval is at the Commissioner’s discretion and will depend on the Commissioner being satisfied there are reasonable grounds for making the claim. Generally, the Commissioner will provide the agency with an opportunity to comment before giving approval.

If approval is given to lodge a late or early claim, the Commissioner will provide approval to lodge a claim within a specified period and will give a copy of this approval to the agency.
When an agency receives a claim it should check whether the person is eligible to lodge the claim, has included all the required information and has lodged the claim in the required timeframe.

This section
This section provides information about:

• key actions and options for agencies when a claim is lodged
• the impact of claims on human resource transactions
• attempting a resolution
• referring the claim to the Commission, including information to include when forwarding
• the Commission’s assessment of the claim and appointment of a Commission employee (Conciliation and Review Officer) by the Commissioner.
Receiving a claim

Once an agency receives a claim it should check to see whether:

• **the person is eligible to lodge a claim**
  if there are any doubts about eligibility, the claim should be referred to the Commission for assessment

• **the required information has been included**
  the agency may seek further information from the claimant if necessary

• **the claim has been lodged**
  within the required timeframe.

Actions delayed by a breach claim

**Effect of claims on transfer decisions**

Once a breach of Standard claim has been lodged against the Employment Standard in relation to a transfer, the transfer cannot proceed until the claim has been finalised.

**Effect of claims on appointments**

Under the Regulations, some notifiable employment decisions cannot proceed until any breach of Standard claims are finalised. The table on pages 16 and 17 of this guide provides further details of the processes covered by the Employment Standard where actions cannot proceed until the claim is finalised.

**Effect of claims on appointments from an appointment pool**

The agency may only appoint people from the pool, provided sufficient vacancies are available to allow people who have made a claim to have access to relief if their claim is upheld.

For appointment pools, retaining some appropriate vacancies will allow relief for a claimant if it is required but will still allow the agency to use the pool for operational effectiveness.

However, given the Commissioner can direct that a person not be appointed it is suggested agencies consult with the Commission employee managing the relevant claim before proceeding to select from the appointment pool.
Actions that can proceed despite the lodgement of a claim

For other Standards, the agency may choose to proceed with the relevant actions despite the lodgement of a breach of Standard claim.

Approval for appointment or transfer to proceed during a claim

The Commissioner may give written approval to the agency to appoint or transfer despite the claim having been made. This approval is at the Commissioner’s discretion.

If the agency is seeking to proceed with an appointment or transfer, a written submission must be made to the Commissioner that sets out the reasons why the employing authority should make the proposed appointment or give effect to the proposed transfer.

Options for addressing a breach claim

When a breach of Standard claim is lodged, an agency:

• should endeavour to resolve the claim with the claimant by providing an explanation of why and how the decision was made or proposing action to resolve the matter
• must forward the claim to the Commission if it is not resolved (withdrawn in writing by the claimant) within 15 working days.

Annual reporting data to be maintained

If the claimant considers the claim is resolved, they can withdraw their claim in writing to the agency where lodged. Claims withdrawn within 15 working days after lodgement do not need to be referred to the Commission. However, records of all claims, including those withdrawn, need to be made to assist the agency’s annual reporting requirements to the Commission.

If the claim is not withdrawn in writing within 15 working days after lodgement, the claim must be forwarded to the Commission.

Referring a claim to the Commission and informing the claimant

If the agency does not resolve the claim it must be forwarded to the Commission no later than 15 working days after the claim was lodged.

Once the claim is forwarded to the Commission the agency must write to the claimant informing them the claim has been sent.
**Checklist of information to be forwarded to the Commission with the claim**

Agencies may use the ‘Referral of breach of Standard claim form’ in the template section of this guide to assist them to refer claims to the Commission. When referring a claim to the Commission, the agency should provide:

- the notification letter to the claimant (if applicable)
- the claim and any documentation provided by the claimant
- the date the claim was lodged
- the contact details of the claimant
- the name and contact details of the person who is to act on behalf of the agency (the nominated officer)
- an outline of the agency’s view of the claim and any attempts at resolution
- any information or document the agency considers relevant to the claim.

**Initial action by the Commission**

**Assessment of the claim**

When the claim is referred to the Commission it will be assessed to ensure it is within jurisdiction and the reviewable decision is covered by one of the Standards.

The claim will also be assessed to establish its basis and whether it is a claim the Commissioner will accept. In certain circumstances the Commissioner can decline to deal with a claim, including where the claim:

- does not relate to a matter the Commissioner has the power to deal with
- is considered vexatious, frivolous or to lack substance
- is solely about the competitive merit of the claimant, or
- the subject matter of the claim is being dealt with, or has already been dealt with adequately by the Commissioner or another entity.

If the Commissioner decides not to deal with the claim, or to stop dealing with the claim, the Commissioner will inform the person in writing of the decision and the reason for the decision.

**Options for dealing with the claim**

The Regulations provide for claims to be dealt with through conciliation or review.

If the claimant and the agency agree to participate in conciliation, the Commission employee will attempt to conciliate the claim. Both parties must agree to participate for conciliation to occur.

Where either party does not wish to participate in conciliation, or conciliation has failed to resolve the claim, the claim will be reviewed.
Conciliation is a process where an impartial Commission employee, or an external Conciliation and Review Officer (CRO) appointed by the Commissioner, encourages the nominated officer and claimant to discuss the claim with a view to resolving it. Conciliation assists both parties to identify the parts of the claim that are in dispute and any possible areas of agreement.

This section
This section provides information about:

- the role of the parties including the:
  - Commission employee or Conciliation and Review Officer
  - nominated officer from the agency
  - claimant
  - support person for the claimant
  - person who can assist the nominated officer with the conciliation process.
- the conciliation process.
Obtaining agreement to conciliate

When referring a claim to the Commission the agency may indicate whether they are willing to participate in conciliation.

If the agency is willing to participate, the Commission employee managing the claim will discuss the option of conciliation with the claimant. If both parties agree, conciliation will be arranged.

If an initial attempt to conciliate is not successful, further attempts to conciliate may occur at any time prior to the Commissioner’s final determination of the claim.

Conciliation will only proceed where both parties agree.

The benefits of conciliation

With the assistance of an impartial person, conciliation can provide the opportunity for:

• frank and open discussions which may lead to an early resolution of the claim
• both parties to gain an understanding about each other’s perspective on the claim
• an agreement to be reached that is acceptable to both parties
• preserving / improving the relationship between the parties, particularly if there is an ongoing employment relationship.

If conciliation does not result in agreement, the claim proceeds to review.
Roles of the parties in conciliation

The conciliation process involves the:

• Commission employee or Conciliation and Review Officer
• nominated officer acting on behalf of the agency
• claimant
• support person for the claimant
• person who can assist the nominated officer with the conciliation process.

It is generally in the interests of both the agency and claimant to attempt to resolve the claim by conciliation.

Commission employee (Conciliation and Review Officer)

Commission employees are impartial and do not act on behalf of any party. In conciliation, the Commission employee’s role is to:

• assist the claimant and nominated officer identify the matters of the claim as they relate to the Standard involved
• provide independent advice on the application of the Standards and Regulations
• encourage the parties to reach an agreement.

If the Commission employee believes one party is not participating in the process, or agreement is unlikely to be reached within a reasonable timeframe, they may recommend to the Commissioner that conciliation is discontinued and the claim is reviewed.

Nominated officer and the claimant

To assist the resolution of the claim, the nominated officer and claimant should:

• be available for conciliation
• listen to each other and talk about the claim
• keep an open mind and be prepared to consider a range of options that may resolve the claim.

Representation

Neither party is entitled to be represented (by a lawyer or advocate) unless the CRO or Commission employee decides the process cannot proceed effectively without representation.
Support persons
During conciliation, claimants are entitled to be accompanied by a support person of their choosing (for example, a family member, friend, union officer or delegate or colleague), unless the Commission employee decides otherwise. This may be on the grounds that the process cannot proceed effectively with the person being accompanied by the support person.

The role of the claimant’s support person is only to support the claimant. They do not act on behalf of a claimant by putting forward their point of view or any counter arguments, nor do they act as a witness to events surrounding the claim. However, they may assist the claimant to clarify matters or may prompt the claimant to ask questions.

The nominated officer is also entitled to be accompanied by another person who can provide relevant information if needed, unless the Commission employee decides otherwise. This may be on the grounds that the process cannot proceed effectively with the nominated officer being accompanied by the other person. While this person may provide information to assist the nominated officer during conciliation, only the nominated officer is entitled to act for the agency.

The Commission employee should be given the names of any support persons or persons assisting the nominated officer before the conciliation process starts.

<table>
<thead>
<tr>
<th>Checklist: Preparing for conciliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agencies can prepare for conciliation by:</td>
</tr>
<tr>
<td>☐ allocating a nominated officer who has the authority to make decisions during the conciliation process about how the claim may be resolved</td>
</tr>
<tr>
<td>☐ allocating a nominated officer who understands and is able to talk about the claim, and will genuinely consider options for agreement</td>
</tr>
<tr>
<td>☐ ensuring the nominated officer is prepared for the conciliation process by having a copy of the claim and other relevant documents and information they may wish to refer to</td>
</tr>
<tr>
<td>☐ identifying if the nominated officer needs to be accompanied by another officer who can assist in the conciliation process.</td>
</tr>
</tbody>
</table>
The conciliation process

**Invitation to participate in conciliation**
If both parties agree to conciliate the Commission employee will:

- discuss the most appropriate way to conduct conciliation
- arrange where and when conciliation will take place
- clarify any particular requirements that the nominated officer or claimant may have, such as communication aids or access requirements
- advise both parties of the conciliation arrangements.

**Requests for information**
Prior to conciliation, the Commission employee may seek information about the claim and request relevant documents.

This may include:

- contacting the claimant to clarify the claim as it relates to the Standard. Any changes to the claim as a result of this clarification may be referred to the agency for their information prior to conciliation
- seeking clarification of any information provided by the agency
- obtaining any documentation from the claimant or the agency considered relevant. The agency and claimant must comply with any request for documentation.

**Conducting conciliation**
The conciliation process may involve a meeting between the Commission employee, the claimant, the nominated officer, another officer and a support person.

Conciliation may be conducted in a number of ways, including:

- face-to-face with all parties involved
- by teleconference or videoconference
- having one-to-one meetings or telephone conversations with the claimant/support person and nominated officer/offer assisting separately.
Discussion and agreement
A Commission employee may encourage open and frank discussion by:
• asking the claimant to talk about their claim
• asking the nominated officer to respond to the claim
• reminding parties that anything that is confidential in conciliation cannot be later used in a review process
• encouraging discussion about what the claimant and the nominated officer believe would resolve the claim and facilitating an agreement where possible.

Documenting a conciliated agreement
If agreement is reached through conciliation, the Commission employee will:
• set out the terms of the agreement in writing
• arrange for both parties and the Commission employee to sign the agreement
• give a copy of the agreement to the nominated officer, the claimant and the Commissioner.

A signed agreement concludes the claim.

Proceeding to review
Where either the claimant or nominated officer from the agency does not agree to conciliation, or the conciliation process does not lead to an agreement, the claim will proceed to review.
In a review, the Commission employee identifies the facts and circumstances that gave rise to the claim as they relate to the relevant Standard. They may consider any relevant documentation and, where necessary, interview people who they consider have information relevant to the claim.

Following the review the Commission employee prepares a report. The Commissioner considers this report and any other documents or information the Commissioner obtains and considers relevant.

This section
This section provides information about:

- the review process and what may be required
- the role of a Commission employee.
Proceeding to review

Claims can proceed to review when:

• one or both parties do not agree to conciliate
• agreement is not reached at conciliation
• one or both parties are not fully participating in conciliation
• the Commission employee considers an agreement by conciliation is unlikely to be reached within a reasonable timeframe.

Clarifying the claim

Reviews of breach of Standard claims are undertaken by a Commission employee or an external Conciliation and Review Officer (CRO) appointed by the Commissioner.

If the review is undertaken by an external CRO the Commissioner will determine the remuneration and terms and conditions of appointment.

The Commission employee will contact the claimant to clarify the claim as it relates to the relevant Standard.

Agency and claimant given opportunity to respond to claim

The agency and claimant will be given the opportunity to make any submissions to the Commission employee in writing or otherwise in support of or in response to the claim.

Information provided in conciliation not used in a review

Any information or documents obtained during conciliation are considered confidential because they were provided for the purpose of achieving an agreement. They will not be used during the review. For example, agency admissions of concern about a process or suggested wording of an apology provided during conciliation cannot be used as evidence in the review.
Conducting the review

The Commission employee will gather the relevant facts and circumstances and provide a report to the Commissioner.

The Commission employee cannot make a finding about whether there has been a breach of a Standard. This determination is reserved for the Commissioner.

The review process includes:

• requesting the claimant and the agency to provide information relevant to the claim
• interviewing any person the Commission employee considers may have information relevant to the claim
• considering information and documents provided by the claimant or the employing authority and any other information and documents that the Commission employee considers relevant to the claim
• preparing a report setting out the facts and circumstances that gave rise to the claim and explaining their relevance to the Standard. This report is considered by the Commissioner when making a determination.

Tips for preparing for review interviews

Agencies can assist with the review process by ensuring nominated officers and employees being interviewed:

• are available to discuss the claim with the Commission employee
• bring copies of any relevant documents to refer to during the interview.

Report to the Commissioner

When the Commission employee completes the review, they provide a report to the Commissioner. This report:

• contains the facts and circumstances that gave rise to the claim
• explains the relevance of those facts and circumstances to the Standard to which the claim relates
• outlines suggestions for relief proposed by the parties, if any, for consideration by the Commissioner if a breach is found
• states whether or not the claimant and the agency have complied with the Regulations and the facts and circumstances that gave rise to that opinion.

Only the Commissioner can determine whether a Standard has been breached.
The Commissioner determines whether or not a Standard has been breached by considering the facts and circumstances in the report and any other information or document that the Commissioner obtains and considers relevant to the claim.

If a breach is found the Commissioner recommends relief, if any, and in some instances directs the relief to be provided by the agency to the claimant.

This section
This section provides information about:

- the Commissioner’s role to determine a breach and to recommend and direct relief
- an agency’s role once a determination is made
- the Commissioner’s reporting role.

Possible determinations by the Commissioner
Considering all the facts and circumstances, the Commissioner may determine that:

- **a claim is dismissed.**
  Where no breach is determined, the Commissioner writes to the claimant and the agency informing them the claim is dismissed and giving reasons for the determination. The Commissioner may choose to raise areas for practice improvement with the agency, where no breach is determined. This finalises the claim.

- **a breach has occurred.**
  If the Commissioner determines there has been a breach of the Standard, the Commissioner writes to the claimant and the agency advising of the breach and giving reasons for that determination. The Commissioner will also recommend or direct what relief, if any, is to be provided to the claimant.
Relief

The relief, either recommended or directed by the Commissioner, will vary depending on the circumstances. Relief may include:

- recommencing a process either from the start or from the point where the breach occurred
- changes to the agency’s policies or practices to minimise breaches of the Standard in the future.

If the Commissioner directs relief, the Commissioner will specify the period by which this relief is to be provided.

The Commissioner cannot recommend or direct that the claimant be appointed to a position as relief for a breach determination. The Commissioner may, however, direct that a specified person is not to be appointed.

Agency response to Commissioner’s recommendations

The agency must consider the Commissioner’s recommendation for relief and provide a response to the Commissioner within 10 working days of receiving that recommendation.

The response from the agency must provide one of the following outcomes:

- the agency intends to give the recommended relief to the claimant
- the agency intends to give the claimant alternative relief. The response to the Commissioner must specify what that relief will be and give reasons for providing the alternative relief
- the agency does not intend to give any relief and the reasons why they do not intend to give relief.

Agency informs Commissioner when relief is implemented

Once the employing authority has implemented relief they must inform the Commissioner within 10 working days that the relief has been given to claimant.

Employing authority must inform the Commissioner within 10 working days of implementation of relief.
Response to Commissioner’s direction

The Commissioner may direct relief be provided if the agency does not follow a recommendation within the specified period, or if the agency proposes relief the Commissioner does not consider appropriate.

Reporting to relevant Minister or Parliament

Under the Regulations, the Commissioner may report the following to the relevant Minister or Parliament:

- if an agency does not give the relief directed by the Commissioner
- if an agency has not complied with any of the Regulations.

Agency records and annual reporting to the Commission

Agencies should maintain appropriate records of breach claims lodged with the agency. These include claims that are subsequently withdrawn in writing within the 15 working days after lodgement, so they were not referred to the Commission. The Commission will report on any claims that it has received that are subsequently withdrawn.

Agencies are to maintain records for annual reporting.
This section contains copies of the following materials to assist claimants.

• **Breach of Standard claims—Claimant guide**
  This provides information about the Standards covered by the breach claim process and how a claim may be made, as well as general information about how a claim can be managed.

• **Conciliation of breach of Standard claims—Claimant guide**
  This provides information about conciliation and what a claimant may expect to occur in the conciliation process.

• **Review of breach of Standard claims—Claimant guide**
  This provides information about the review process and what the claimant may expect to occur if a review is undertaken.

• **Breach of Standard claim form**
  Assists claimants to set out their claim. Under the principles of the Standard. Lodged under the *Public Sector Management (Breach of Public Sector Standards) Regulations 2005*.

• **Claimant checklist for lodging a breach of Standard claim**
  This provides claimants with information about what to include in their claim.

• **Withdrawal of breach of Standard claim form**
  Assists claimants to withdraw their claim in accordance with Regulations.
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 8885 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.*
Conciliation of breach of Standard claims
Claimant guide

What is conciliation?

Conciliation is one option for resolving a breach of Standard claim. It is conducted by an impartial conciliation and review officer (CRO), appointed by the Public Sector Commissioner. Usually, this will be a Commission employee.

The Commission employee will assist you and the agency to discuss your views about the claim and reach agreement on how to resolve your claim. A confidential outcome is generally a key point in any conciliation agreement.

Benefits of conciliation

- Both parties can discuss your claim to achieve a better understanding about the claim and the views of the other party. You and an agency representative can discuss each of your views.
- An agreement can be reached that is acceptable to both you and the agency.
- The claim can be finalised quickly and good working relationships can be maintained.

When does conciliation happen?

When your claim has been referred to the Commission you and the agency will be contacted to discuss the options for resolving your claim, including if you and the agency are interested in participating in conciliation.

If you or the agency do not agree to conciliate or the claim cannot be resolved by conciliation, the claim will proceed to review.

Further attempts to conciliate may occur at any time during the breach claim process prior to the Commissioner’s final determination.
People involved in conciliation

The people who are involved are:

- a Commission employee
- yourself
- your support person such as a family member, friend, colleague, or union official (if you wish to have one)
- the nominated officer for the agency
- another person from the agency who can provide relevant information (if the nominated officer wishes to bring them).

If you wish to have a support person you should give their name to the Commission employee conciliating your claim before the process begins.

Before conciliation

Once your claim is received a Commission employee will make contact with you and the agency to:

- ask you and the agency whether you are prepared to try and reach an agreement by conciliation. Conciliation does not proceed unless both parties agree to it
- clarify the claim
- obtain any relevant documents from you or the agency.

Review of your claim

If no agreement is reached in a reasonable timeframe, the claim proceeds to review. A review involves a Commission employee reviewing the facts and circumstances of your claim as they relate to the Standard and providing a report to the Commissioner.

Withdrawal of your claim

You may withdraw your claim at any time if you consider you have been provided with a satisfactory explanation or you no longer wish to pursue your claim. You can withdraw by writing directly to the Commissioner.
How is conciliation conducted?

After the Commission employee discusses the claim with you and the nominated officer for the agency, a decision will be made as to how conciliation will be conducted. This may include:

- a meeting between you, the nominated officer and the Commission employee
- a videoconference
- a teleconference
- having one to one meetings or telephone conversations with you and the nominated officer separately.

Preparing for conciliation

You can prepare for conciliation by:

- making sure you and your support person (if you wish to have one) are available
- thinking about realistic options for resolving your claim before you arrive at conciliation
- bringing your claim and other relevant documents you may need to refer to.

Responsibilities during conciliation

The Commission employee will:

- assist you and the nominated officer to identify the issues of the claim, as they relate to the Standard involved
- provide independent advice on the application of the Standards and the Regulations
- assist you and the agency reach an agreement.

If agreement is unlikely to be reached within a reasonable timeframe, the claim may proceed to a review.

You and the nominated officer need to:

- listen to each other
- talk about the claim
- consider options about what may resolve the claim
- keep an open mind about alternatives that might be suggested for agreement.
Support persons

You are entitled to be accompanied by a support person unless the Commission employee otherwise decides that the process cannot proceed effectively with you being accompanied by the support person.

Your support person does not act on your behalf as an advocate or a witness.

What are the possible outcomes of conciliation?

The outcomes of conciliation may be:

• Agreement is reached, documented and signed by both parties. A copy is given to you, the agency and the Commissioner. This finalises your claim.

• No agreement is reached in a reasonable timeframe and a review is conducted.

Examples of agreed action

• The agency recommences the process from the start or from a certain part in the process that both parties agree on

• The agency changes its policies and practices

• An agency agrees to other actions

• No further action is required.

The agency may not necessarily acknowledge that a breach has occurred but may be willing to resolve the claim if you both can reach agreement. A conciliated agreement will not be recorded as a breach as only the Commissioner can determine a breach has occurred.

The agreement may also involve you agreeing to certain actions.

More information

Visit the Commission’s website at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au) or contact the Commission on 6552 8885 or toll free 1800 676 607.

**Commission 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.**
Review of breach of Standard claims
Claimant guide

What is a review?

A review is part of the process for resolving a breach of Standard claim.

It may be undertaken by a Commission employee or a conciliation and review officer (CRO) appointed by the Public Sector Commissioner. Reviews are usually undertaken by a Commission employee.

This person will:

• review the facts and circumstances of your breach claim, as they relate to the Standard
• provide a report to the Commissioner.

Timing of reviews

A review occurs when either you or the agency does not agree to participate in conciliation, or where no agreement is reached during conciliation.

How is a review conducted?

The Commission employee will:

• invite you and the agency to provide information relevant to your claim
• consider information and documents provided by you, the agency and any other source, including any information provided prior to conciliation, and
• prepare a report setting out the facts and circumstances that gave rise to the claim, and explain their relevance to the Standard to assist the Commissioner to make a determination.

Only the Commissioner can determine if a Standard has been breached.
People involved in the review

- Commission employee
- you
- if requested, your support person. This may be a family member, friend, colleague or union official
- the agency’s nominated officer
- the agency’s nominated officer is also entitled to be accompanied by another person who may be able to assist the review process
- any people who have information relevant to the claim. The Commission employee may interview any person who they consider may have information relevant to the claim and you may be asked for the names of relevant people.

The support person’s role does not include advocating on your behalf or being a witness.

If you wish to have a support person, you should give their name to the Commission employee prior to any meetings or interviews.

Information used in a review

Information used in a review may be obtained from:

- you or the agency. The Commission employee will request any information or document they consider relevant
- interviews with you or any other people the Commission employee considers relevant to the claim.

In carrying out a review the Commission employee is not to have regard for information or documents discussed or provided for the purposes of attempting to settle the claim by conciliation, or that the Commission employee considers was said or provided confidentially for those purposes.
How do you prepare for a review?
When preparing for a review you should:

• make yourself available to discuss your claim
• consider who can provide relevant information about your claim if you are asked about it
• if you are interviewed, have with you a copy of your claim and any other documents you may wish to refer to
• make sure your support person is available to support you in any interview arranged.

What happens after the review is completed?
A Commission employee will provide the Commissioner with a report about the facts and circumstances of your claim as they relate to the Standard.

The report may also include information about the relief that you or the agency proposes, should a breach be found.

Commissioner’s determination
The Commissioner will:

• consider the information in the report and any other material relevant to the claim
• determine whether or not there has been a breach of the Standard.

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

If a breach is determined, the Commissioner recommends or directs what relief, if any, is to be provided by the agency.

If an agency does not implement the directed relief the Commissioner may report this to the relevant Minister or Parliament.
Examples of relief

The recommended or directed relief, if any, will vary depending on the circumstances. Examples may include:

- recommencing a process either from the start or from the point where the breach occurred
- the agency’s policies, processes or procedures be changed.

Please note: 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.

Advising you of the decision

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 should the Commissioner decline to deal with your claim.

If a breach is found, the Commissioner will advise you of what relief, if any, the agency was recommended or directed to take.

If relief is recommended or directed, the agency has 10 working days to notify you and the Commissioner about what action it intends to take. If the agency decides to take action other than that recommended or directed by the Commissioner, it must notify both you and the Commissioner.

Conciliation or withdrawal of your claim

Further attempts to conciliate may occur at any time prior to the Commissioner’s final determination if the Commission employee considers resolution may be possible.

You may withdraw your claim at any time if you consider you have been provided with a satisfactory explanation or you no longer wish to pursue it. You can withdraw by writing directly to the Commissioner or the agency.

More information

Visit the Commission’s website at www.publicsector.wa.gov.au or contact the Commission on 6552 8885 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.
Breach of Standard claim form

Lodged under the *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*

<table>
<thead>
<tr>
<th>Name of agency (please note claims are lodged with the agency in the first instance)</th>
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</thead>
</table>
| **Claimant name:**  
(in full - please print) |
| **Claimant address:**  
(please print) |
| **Claimant phone:**  
(daytime contact number/s) |
| **Relevant Standard:**  
(which Standard the claim is about) |
| If the claim relates to the *Employment Standard*, please list the position for which you applied. |

Attach any relevant documents to support your claim that the Standard has been breached. Please provide enough detail to support your claim that the Standard has been breached. For more information about each Standard’s principles please refer to the Public Sector Commission’s website www.publicsector.com.au. Please include any suggestions as to what you consider would resolve your claim.
Please note: Breach of Standard claims are lodged with the agency where the breach is alleged to have occurred. Once your claim is lodged with the agency they have 15 working days to try and resolve the claim with you. If you believe the agency has resolved your claim, you need to advise the agency in writing that you are withdrawing your claim.

If you do not withdraw your claim, the agency will forward it to the Public Sector Commission no later than 15 working days from when you lodged it.

For further information, please contact the agency’s nominated contact person (in the notification letter) or view the breach claim materials on the Public Sector Commission’s website at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)

Signature: _____________________________ Date: ___/___/______

Please outline how you have been adversely affected by the alleged breach of the Standard...
### Claimant checklist for lodging a breach of Standard claim

This checklist may assist you when lodging a claim against the public sector standards in human resource management.

| ☐ | I am making my claim in response to a decision arising from the completion of a process covered by one of the public sector standards in human resource management (this excludes the Discipline Standard). |
| ☐ | I have identified the Standard that I believe has been breached and provided sufficient detail about why I believe the Standard has not been complied with. I have also provided details about how the breach has adversely affected me. [To assist you to prepare your claim see the template form at www.publicsector.wa.gov.au] |
| ☐ | I have included the actions (if any) that I would consider to resolve the claim. [You may choose to indicate in your claim what you would like to happen as a result of lodging your claim, or if the Commissioner determines a breach has occurred. **Please note:** The Commissioner cannot recommend or direct that a claimant is appointed to a position.] |
| ☐ | I have signed and dated my claim. |
| ☐ | I have included my contact details in my claim. |
| ☐ | I am lodging my claim with the agency concerned, within the prescribed lodgement period for the relevant Standard.  
In the case of a notifiable employment decision* or a grievance, the date by which you are to lodge your claim will be stated in the notification letter sent by the agency to you.  
For ‘non-notifiable’ decisions, the lodgement period is 10 working days from when you first became aware of the decision or 30 working days after a decision was made, whatever is earlier.  
The Commissioner may approve the lodgement of a late claim or a claim before a final decision has been made by the agency. If you want this to occur you must write to the Commissioner, seeking approval to do so. Approval is at the Commissioner’s discretion and will depend on the Commissioner being satisfied there are reasonable grounds for making the claim.  
*Four days is the minimum prescribed lodgement period for notifiable decisions made under the Employment Standard. An agency may provide a longer lodgement period. |
| ☐ | I am allowing for a reasonable amount of time for my claim to be received by the agency. |

**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 8885 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.**
Withdrawal of breach of Standard claim

Lodged under the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005

<table>
<thead>
<tr>
<th>Withdrawal of claim (claimant to complete)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of claimant</td>
</tr>
<tr>
<td>Agency</td>
</tr>
<tr>
<td>Standard</td>
</tr>
<tr>
<td>Date of claim</td>
</tr>
</tbody>
</table>

I hereby withdraw the above breach claim

Signature:____________________ Date:____/___/_____

<table>
<thead>
<tr>
<th>Agency notification to PSC (agency to complete)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date withdrawn</td>
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<tr>
<td>Signature</td>
</tr>
<tr>
<td>Title</td>
</tr>
<tr>
<td>☐ by fax</td>
</tr>
<tr>
<td>☐ by letter</td>
</tr>
<tr>
<td>Date sent to PSC</td>
</tr>
<tr>
<td><em><strong>/</strong></em>/______</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Sector Commission (PSC to complete)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date withdrawal received</td>
</tr>
<tr>
<td>Claim file number</td>
</tr>
</tbody>
</table>

__________________________________________ Date:_____________

Signature of Commission employee:
Template agency forms and letters

This section contains copies of the following templates to assist agencies.

- Notification letter relating to processes to fill a vacancy
- Notification letter for grievances
- Letter advising the claimant that the claim has been sent to the Public Sector Commissioner
- Referral of breach of Standard claim
- Agency documents checklist
Dear [INSERT NAME]

RE:

Thank you for your application for the [INSERT POSITION NAME AND NUMBER] with the [INSERT AGENCY NAME]. The selection process has now been completed, and unfortunately you were not the selected applicant on this occasion.

If you would like to obtain feedback about your application or the selection process, please contact [INSERT NAME OF CONTACT PERSON] on [INSERT PHONE/EMAIL].

The [INSERT NAME OF AGENCY] is required to comply with the Employment Standard when filling vacancies. The Public Sector Management (Breaches of Public Sector Standards) Regulations 2005 allow you to lodge a breach of standards claim if you consider the Employment Standard has been breached and you have been adversely affected by the breach. If your breach of standard claim is not resolved it will be forwarded to the Public Sector Commission. Please note the breach process considers compliance with the Standard. It is not a reassessment of your competitive merit.

Please find attached a copy of the Employment Standard and a guide to the breach claim process. Further information about lodgment of a claim can be obtained from [INSERT CONTACT PERSON/AREA FROM THE AGENCY].

If you wish to lodge a breach claim you need to:

- outline reasons why you consider the Employment Standard has been breached. (See template Breach of Standard claim form).
- explain how this breach has adversely affected you
- include copies of relevant documents you have to support your claim.

You must forward your claim to [INSERT NAME/RELEVANT BRANCH] on or before [MUST BE A MINIMUM OF FOUR DAYS AFTER THE CLAIMANT WILL RECEIVE THIS NOTICE].

Yours sincerely

[DELEGATED AUTHORITY]
Dear [NAME]

GRIEVANCE - [INSERT AGENCY REFERENCE NAME/NUMBER]

I refer to the above grievance relating to [INSERT BRIEF DESCRIPTION OF GRIEVANCE SUBJECT MATTER].

The grievance process has now been finalised and [INSERT DECISION AND ANY PROPOSED ACTION HERE]

Grievance processes used by [INSERT NAME OF AGENCY] need to comply with the Grievance Resolution Standard. The Public Sector Management (Breaches of Public Sector Standards) Regulations 2005 allow you to lodge a breach of standard claim if you consider the Grievance Resolution Standard has been breached and you have been adversely affected by the breach.

Please find attached a copy of the Grievance Resolution Standard [ATTACH A COPY OF THE STANDARD] and a guide to the breach claim process [ATTACH GUIDE]. You can obtain further information about lodging a claim from [INSERT CONTACT PERSON/AREA FROM THE AGENCY].

If you lodge a breach of Standard claim and it is not resolved within 15 working days, it will be forwarded the Public Sector Commission. Please note the breach of Standard claim process considers [INSERT AGENCY NAME]’s compliance with the Standard and does not judge the merits of the grievance. It is also not a reassessment of the grievance matters.

If you wish to lodge a claim you need to:

- outline reasons why you consider the Grievance Resolution Standard has been breached
- explain how this breach has adversely affected you
- include copies of relevant documents you have to support your claim.

You must forward your claim to [INSERT NAME/RELEVANT BRANCH] on or before [INSERT DATE – 10 WORKING DAYS AFTER THE CLAIMANT WILL RECEIVE THIS NOTICE].

Yours sincerely

[DELEGATED AUTHORITY]
Dear [NAME OF CLAIMANT]

BREACH OF STANDARD CLAIM LODGED—[INSERT RELEVANT STANDARD]

I wish to advise that the breach of Standard claim you lodged with this agency on [INSERT DATE CLAIM LODGED] has been sent to the Public Sector Commissioner, in accordance with regulation 10 of the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005.

The Commissioner’s office will contact you about your claim.

Yours sincerely

[INSERT NAME]
## Agency referral of breach of Standard claim to the Public Sector Commission

| **Claimant** |  |
| **Agency** |  |
| **Relevant Standard** |  |
| **Date claim lodged** |  |

| The person is eligible to lodge a claim | ☐ Yes | ☐ No |
| The claim was made within the prescribed lodgement period | ☐ Yes | ☐ No |
| 4 day breach period | ☐ Yes | ☐ No |
| Notification letter to claimant for date of reviewable decision attached, if applicable | ☐ Yes | ☐ No |
| Agency documents checklist completed | ☐ Yes | ☐ No |

### Claimant's contact details

| Home address |  |
| Home phone |  |
| Work phone |  |
| Mobile |  |
| Email (if applicable) |  |

### Agency's nominated officer

| Name |  |
| Title |  |
| Work phone |  |
| Work mobile |  |
| Email |  |

### Agency's human resource officer

| Name |  |
| Title |  |
| Work phone |  |
| Work mobile |  |
| Email |  |

## Public Sector Commission (Office use only)

| Date claim received | Claim file number |
| Outcome | Date finalised |
Names of relevant officers involved in the process (e.g. panel members)

<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Title</td>
</tr>
<tr>
<td>Work phone</td>
<td>Work phone</td>
</tr>
<tr>
<td>Work mobile</td>
<td>Work mobile</td>
</tr>
<tr>
<td>Email</td>
<td>Email</td>
</tr>
</tbody>
</table>

Is the agency willing to participate in conciliation? □ Yes □ No

Agency action and documents

Outline any action taken to resolve the claim with the claimant. For example, any explanation provided to the claimant or proposed resolution that was discussed with the claimant. Please note under regulation 10 (aa) of the Public Sector Management (Breach of Public Sector Standards) Regulations 2005 the agency is to make reasonable attempts to resolve the claim with the claimant prior to the claim being sent to the Commission.
Outline the agency’s position on the claim. For example, does the agency consider that the process used has complied with the principles of the relevant Standard, or has the agency identified any areas of concern or possible areas for practice improvement?

Please list any documentation supplied to the claimant as part of resolving the claim. Attach it to this form.

Please refer to the Agency document checklist to ensure you have provided the required documentation to the Commission.

*The Public Sector Commission is currently trialling the Breach of Standard Claim Template which has been developed as a helpful tool for human resource practitioners when working through a breach of Standard claim. A sample template, supporting fact sheet and template ready for your use are attached on pages five, six and seven of this referral form. You are encouraged to complete and submit the template when forwarding the breach of Standard claim to the Public Sector Commissioner. Feedback on the template may be provided to the consultant who is assigned as the case manager for the breach of Standard claim.*
Agency documents checklist

This checklist provides agencies with a guide to all the relevant documents that should be included when forwarding a breach of Standard claim to the Public Sector Commission. This will assist the Commission and the agency to process claims in a timely manner.

### Employment Standard

- ☐ The completed Commission’s ‘Agency referral of breach of Standard claim’ form. This includes the agency’s position on the claim and an outline of any resolution attempted or feedback provided to the claimant
- ☐ The claim
- ☐ For transfer, acting and secondment, documents relating to the decision making process, including for transfer an outline as to how any employee interests identified by the employee were considered
- ☐ If the claim relates to a recruitment process, a copy of the selection report (including appendices, referee reports and panel member working notes if available)
- ☐ Any letters, documents or emails relevant to the claim, including, if relevant, the claimant’s notification letter (not all Employment Standard decisions are notifiable)
- ☐ Claimant’s job application
- ☐ A copy of the role description form and advertisement for the position
- ☐ Copies of relevant agency policies and procedures

### Grievance Standard

- ☐ The completed Commission’s ‘Agency referral of breach of Standard claim’ form. This includes the agency’s position on the claim and an outline of any resolution attempted or feedback provided to the claimant
- ☐ The claim
- ☐ Copy of the original grievance from the claimant to the agency
- ☐ The agency’s letter to the claimant outlining their response to the grievance
- ☐ Copy of the agency’s grievance report/investigation
- ☐ Any letters, documents or emails relevant to the claim, including the claimant’s notification letter
- ☐ Copies of relevant agency policies and procedures

### Performance Management Standard, Termination Standard, Redeployment Standard

- ☐ The completed Commission’s ‘Agency referral of breach of Standard claim’ form. This includes the agency’s position on the claim and an outline of any resolution attempted or feedback provided to the claimant
- ☐ The claim
- ☐ Any letters, documents or emails relevant to the claim
- ☐ Copies of relevant agency policies and procedures, includes templates used by the agency

If you would like further assistance please call the Commission’s Avisory Line on 6552 8885 or 1800 676 607.
**Breach of Standard Claim Assessment Template**

Name of claimant: __________________________ HR Process: __________________________ Date received: __________________________

Standard (please circle): Employment, Performance Management, Grievance Resolution, Redeployment, Termination

<table>
<thead>
<tr>
<th>Claimant Concerns</th>
<th>Relevant Principle of the Standard</th>
<th>Information considered in assessment</th>
<th>Agency Assessment</th>
<th>Process met the Standard</th>
<th>Process partially met the Standard</th>
<th>Process did not meet the Standard</th>
<th>Appropriate Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Smith claims that the panel chair was biased toward the successful applicant because they have worked together before.</td>
<td>Equity Principle</td>
<td>Interview with panel chair and members. Review of selection documentation.</td>
<td>The panel chair declared his knowledge of the applicant from his previous workplace (2 years ago). This was recorded in the selection report and discussed with the other members of the panel. The two other panel members did not know the successful applicant, and the panel assessment report shows that the panel chair rated the applicant less favourably at short listing and after interview. In this case it was evident that the perceived conflict was declared and could therefore be managed by the panel. There is no information to indicate that any bias occurred in this process.</td>
<td>X</td>
<td></td>
<td></td>
<td>No further action undertaken</td>
</tr>
</tbody>
</table>

Link to the [Public Sector Management (Breaches of the Public Sector Standards) Regulations 2005](https://www.legislation.gov.uk/uksi/2005/1269/contents/made)

Comments | Assessment highlights that process undertaken was within the minimum requirements of the Employment Standard.
Overview

This document has been developed as a supporting document to assist human resource practitioners in using the breach of standard claim assessment template. The breach of standard claim template is not mandatory, however, may be a helpful tool for practitioners when working through breach of standard claims. The template may also assist an agency when providing a response to the Public Sector Commission on the claim should it not be withdrawn.

Using this assessment template

Claimant concerns

Review the breach of standard claim to identify the issues raised in the claim. Document each of the issues raised in the template.

Relevant principle of Standard

Identify which principle of the relevant Standard relates to each of the claimant’s issues. For example, if it is a recruitment process does an issue relate to the Equity or Transparency Principle under the Employment Standard. Note the principle in the corresponding box adjacent to the claimant issues column. You may wish to group issues related to the one principle of the Standard in the same row of the template.

Information considered

Include all information that you have considered as part of your review, for example selection report, interviews with the claimant, discussions with the panel chair.

Agency assessment

Provide an overview of the assessment undertaken to review the claim and a view on whether the process met the minimum requirements of the Standard (see template for example).
Self-assessment checklist
Evaluating the process undertaken, make a self-assessment as to whether the process met, partially met or did not meet the minimum requirements of the Standard. If part of the process partially met or did not meet the minimum requirements of the Standard, if appropriate, this may be an opportunity to recommence part of the process again.

Appropriate action taken
If part of the process is recommenced, outline the appropriate action that was undertaken.

Comments
The comments box may be used to provide further information which may be beneficial to the Public Sector Commission should the breach of standard claim be forwarded for review.

If you require further assistance with the application of this document, please contact the Public Sector Commission Advisory Line on (08) 6552 8885.
**Breach of Standard Claim Assessment Template**

Name of claimant: ___________________________ HR Process: ___________________________ Date received: ___________________________

___________________________ Standard (please circle): Employment, Performance Management, Grievance Resolution,

<table>
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</table>

Link to the *Public Sector Management (Breaches of the Public Sector Standards) Regulations 2005*

Comments