

Review of Action Guide Public Service

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1. Overview

In accordance with regulation 6 of the *Public Administration (Review of Actions) Regulations 2015* (Vic) (the Regulations) the Secretary has approved the process set out in this guide for a public service employee to seek initial review of an action taken within the Department that relates to their employment.

An 'eligible employee' is a person employed pursuant to Part 3 of the *Public Administration Act 2004* (Vic) (the Act).

Once an initial review of action has been conducted, recommendations arising out of the review are provided to the Secretary or their delegate to decide whether or not to adopt the recommendations pursuant to section 65 of the Act.

2. Initial review of action

An eligible employee may have an action taken within the Department that relates to their employment reviewed in accordance with section 64 of the Act and regulation 6 of the Regulations where they consider that action to be:

- unfair; or
- inconsistent with:
 - the Act, which among other things, includes the public sector employment principles set out below:
 - employment decisions are based on merit; and
 - public sector employees are treated fairly and reasonably; and
 - equal employment opportunity is provided; and
 - human rights as set out in the Charter of Human Rights and Responsibilities are upheld; and
 - public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment; and
 - the development of a career in the public service is fostered; or
 - any standards issued by the Victorian Public Sector Commissioner under section 62 of the Act.

An **action** includes a **decision**. It also includes a refusal or failure to take an action or make a decision.

The process to be followed for an initial review of action pursuant to this guide will depend on the action or inaction which is the subject of the grievance.

An employee must first raise their workplace concerns with their immediate manager or, if this is not appropriate, with the Manager, Policy and Employee Relations, VPS or the Senior Chairperson, Merit Protection Boards (MPB) or their delegate.

INITIAL REVIEW OF ACTION IN RELATION TO A SELECTION DECISION (SELECTION GRIEVANCE)

A selection decision is an action or decision (including a refusal or failure to take an action or make a decision) that relates to the proposed appointment, transfer or promotion to a public service position in the Department.

An eligible employee is only entitled to have an initial review of an action in relation to selection on the ground of a significant deficiency in the selection process. An ongoing teaching service employee is to be treated as an employee of the public service for the purpose of lodging a review of action in relation to a selection decision.

An employee is eligible to lodge an application for a review of a selection decision if the employee seeking review is:

- an employee at the time of lodging the grievance;
- eligible and qualified to apply for the position; and
- an applicant for the position (or would have been if the position was advertised in accordance with Departmental policies).

A public service employee from another Victorian Public Service Department or Agency will be eligible to lodge an application for a review of a selection decision.

INITIAL REVIEW OF ALL OTHER ACTIONS (PERSONAL GRIEVANCE)

A personal grievance may arise from an action or decision relating to employment that does not relate to a selection decision.

Examples of an action or decision that could give rise to a personal grievance and be subject to an initial review of action include:

- victimisation;
- bullying;
- discrimination;
- harassment (including sexual harassment);
- a breach of Departmental guidelines, policies or procedures; and
- decisions contrary to the *Code of Conduct for Victorian Public Sector Employees*.

An employee is eligible to lodge an application for an initial review of action in connection with a personal grievance if they were a public service employee employed by the Department at the time that the action was taken.

It is generally expected that an employee will have attempted to resolve a personal grievance at the local level prior to requesting an initial review of action. Nothing prevents an employee from pursuing a grievance with an external body including a court or tribunal.

3. Completing & lodging an application for initial review of action

Parties are encouraged to make reasonable attempts to resolve workplace concerns locally and informally before applying more formal local or external processes.

To request an initial review of action, an applicant (or their agent) must submit an application. Application forms are available from the [Merit Protection Boards](#) website.

An application must be made in writing and specify:

- the action or decision to which the application relates;
- in the case of a selection grievance, the position title, reference number, classification and work location of the position that is the subject of the selection decision;
- the name and title of the decision maker or person who authorised, took or made the action or decision;
- the basis of the employee's complaint against the action or decision;
- the remedy sought, if any;
- the date on which the action or decision was taken or made; and
- the date of the notification of the action or decision, or, if the employee was not notified, the date on which the employee first became aware of the action or decision.

Completed applications must be lodged for a personal grievance within **28 calendar days** and for a selection grievance within **seven calendar days** of whichever of the following occurs last:

- the date the employee was notified of the action or decision that is the subject of review; or
- if the employee was not notified of the action or decision, the day on which the employee became aware of the action or decision.

If the review of action concerns a misconduct or unsatisfactory work performance, the employee must wait until the outcome is finalised before applying for an initial review of action.

If an applicant lodges a late application, the applicant must provide a written explanation as to why they consider the circumstances justify acceptance. This may include but is not limited to, the seriousness of the matter, unavoidable delays in the decision-making process or the unavailability of any of the parties.

The lodging of a grievance application does not have any impact on the ongoing obligations and responsibilities of the employee in relation to their employment.

When the application is received, a written acknowledgement will be provided.

The Senior Chairperson, Merit Protection Boards may accept or reject an application for an initial review of action.

Where an application is accepted, the Senior Chairperson will notify all parties and provide an explanation of the review of action process.

An employee may contact the Merit Protection Boards for assistance if necessary, for example, in relation to the submission of late applications. Contact details are available at the [Merit Protection Boards](#) website.

4. Refusal of applications

The Senior Chairperson may refuse to conduct a review if they:

- are not satisfied that they have the jurisdiction to review the application under the Act or Regulations;
- consider the application to be frivolous, vexatious or lacking in substance;
- consider that the applicant does not have sufficient personal interest; or
- consider that the matter is, or could more appropriately be, the subject of a proceeding in any court or tribunal initiated by the applicant, including a proceeding initiated under Division 2 of Part 8 of the *Equal Opportunity Act 2010*.

An application for review that is lodged outside the timeframes specified by this Review of Action Guide (see page 3) will not be accepted unless the Senior Chairperson is satisfied that the circumstances justify acceptance of a late application.

5. Mediation of a personal grievance

Parties are encouraged to take part in mediation as part of a local resolution process, where relevant.

The Senior Chairperson may consider it appropriate at any stage of the review process in relation to a personal grievance to request that the parties participate in mediation or alternative dispute resolution process. The Senior Chairperson may determine any requirements or conditions appropriate for the conduct of the mediation or conciliation (e.g. timing, location and relevant procedures).

If a more formal process is warranted, the matter may be referred to the Senior Chairperson to commence a review of action.

6. Commencement of initial review of action

Where an application is accepted, the Senior Chairperson must ensure that the initial review of action takes place:

- with respect to a personal grievance, within 30 calendar days after receiving the application; and
- with respect to a selection grievance, within 10 business days after receiving the application, unless the circumstances justify commencing the review after that time, provided that the review commences within 30 calendar days.

7. Review process principles

It is intended that a review of an action or decision will:

- be undertaken in an independent and objective manner; and
- achieve a fair resolution in all cases.

A review of an action or decision must:

- be conducted as quickly, and with as little formality, as proper consideration of the matter allows; and
- adhere to the rules of natural justice.

The rules of natural justice require that:

- decision makers act fairly and without bias;
- a person should not be a judge in their own cause;
- all persons should be informed of the basis of a decision that affects them;
- a person should be informed of the alleged case against them as soon as is practicable;
- all parties to the matter should have the opportunity to put forward their case; and
- all relevant information provided will be taken into consideration before a decision is made.

The parties must genuinely attempt to resolve the workplace concern and act in good faith including maintaining confidentiality.

8. Notification to action taker (or decision maker)

A copy of the initial review of action application will be provided to the person(s) responsible for the action or decision that is the basis of the review.

The Senior Chairperson or other authorised person may request that the person(s) responsible for the action or decision provide relevant supporting documents. In relation to selection grievances this includes:

- the original applications of the selected applicant and also of the applicant seeking the review;
- the Selection Panel Report;
- referee reports (if any), including prior knowledge used by the selection panel (such reports are not made available to applicants).

The action taker must provide a written response to the initial review of action and any requested documentation within five business days.

The applicant will be provided a copy of the written response and, in the case of a personal grievance, documentation relating to the action.

In the case of a selection grievance, the relevant decision maker will notify the provisionally selected applicant that an application for an initial review of a selection decision has been made in connection with that selection decision. However, the provisionally selected applicant will not participate in the review process.

9. Appointed review body – review of action board

Regulation 6 of the Regulations requires the Secretary to make reasonable enquiries or investigations prior to the making of a determination. For that purpose, a Review of Action Board is appointed by the Secretary to conduct an initial review of action brought by an eligible employee.

The constitution of the Review of Action Board for a particular review of action application will be determined by the Senior Chairperson, Merit Protection Boards (the Senior Chairperson) in accordance with this guide. For the purposes of this guide, the Senior Chairperson is the individual who holds, or is acting in or performing the duties of, the position of Senior Chairperson of the Merit Protection Boards within the meaning of the *Education and Training Reform Act 2006*.

The Senior Chairperson carries out their responsibilities pursuant to this guide in their personal capacity. The functions of the Senior Chairperson include overseeing the administration of the review process, and undertaking all other functions necessary for the fair, efficient, and expeditious conduct of the review process, in accordance with this guide, the Regulations and the Act.

The role of a Review of Action Board includes undertaking all functions requested by the Senior Chairperson and all other functions specified in this guide.

A Review of Action Board will consist of either:

- the Senior Chairperson alone; or
- persons selected by the Senior Chairperson (that may or may not include the Senior Chairperson).

A Review of Action Board will usually consist of:

- the Senior Chairperson (who will normally act as the Review of Action Board chairperson); and
- the Secretary's nominee or a person selected by the Senior Chairperson; and
- a public service employee selected by the Senior Chairperson.

The Review of Action Board appointed will be unconnected with the action or decision, or any investigation concerning the action or decision which commenced prior to the Review of Action Board being appointed.

The procedures for the initial review of action hearings by a Review of Action Board will be determined and published by the Senior Chairperson consistent with this guide and made available on the [Merit Protection Boards](#) website.

10. Hearing date, time and venue

After preliminary consultation with the applicant and the person(s) responsible for the action or decision (the parties), the parties will be notified in writing of the hearing date, time and venue. If unforeseen circumstances arise that reasonably prevent attendance by one of the parties, the affected party must notify the Senior Chairperson at the earliest opportunity, and the Review of Action Board may decide to set a new hearing date and time.

Where a Review of Action Board constituting three persons commences a hearing and a member of that Review of Action Board is unable to continue to participate, the remaining Review of Action Board members may continue to hear and determine the outcome of the review.

11. Representation

An agent, for example a union representative, friend or colleague, may accompany either party at the hearing. The parties may present their own case or be represented by their agent(s). If an agent is to attend, the relevant party should notify the other party and the Senior Chairperson of their agent's name at least **one business day before** the hearing.

Legal representation is permitted only if the Senior Chairperson considers that either party would be at a significant disadvantage in the absence of legal representation.

In the case of an initial review of action relating to a disciplinary matter, parties will usually be permitted to be represented at the hearing by a legal practitioner or by an agent. However, this should be confirmed with the Senior Chairperson prior to the hearing.

12. The outcome

The function of a Review of Action Board is not to make a final determination of a matter. It will formulate a recommendation as to the most appropriate resolution of a grievance. The Senior Chairperson will send the Review of Action Board's recommendation to the Secretary of the Department or their delegate who will make a final decision.

When formulating its recommendation, the Review of Action Board is required to take into account the operational requirements of the Department. If it is expected that a particular recommendation may have a significant impact on the operations of the Department, the Senior Chairperson will consult with the Secretary or their delegate prior to the Review of Action Board providing its final recommendation.

The Review of Action Board's recommendation will usually be notified to the Secretary or their delegate within seven calendar days of the hearing. The recommendation of the Review of Action Board could include one or more of the following:

- to confirm the validity of the action or decision;
- to vary, reverse or revoke the action or decision;
- to request that an action or decision be reconsidered;
- to request that a position be advertised or re-advertised;
- to review or change Departmental policies or processes; or
- that any other action be taken.

The parties will be informed of the recommendation that is to be made on the next business day after it is finalised. A written copy of the Review of Action Board's recommendation will be sent to the parties within seven calendar days of the hearing.

The Secretary or their delegate will usually adopt the recommendation of the Review of Action Board however they are not obliged to do so. When the Secretary or their delegate adopts the recommendation of the Review of Action Board, the decision will be communicated to the Senior Chairperson.

When the Secretary or their delegate decides not to adopt the recommendation of the Review of Action Board, they will advise the Senior Chairperson and the Victorian Public Sector Commissioner, in writing, of the decision and the reasons.

The Department will provide written advice to the Senior Chairperson of the decision usually within seven calendar days of receiving notice of the decision from the Secretary or their delegate.

The Senior Chairperson will distribute the Review of Action Board recommendation and the Secretary's or their delegate's decision to the parties and the Victorian Public Sector Commission.

13. External review

Initial review of action processes, recommendations and decisions may be reviewed by other bodies such as the Victorian Public Sector Commissioner, or the Supreme Court of Victoria, including in the circumstances outlined below.

APPLICATION TO THE VICTORIAN PUBLIC SECTOR COMMISSION FOR REVIEW OF PROCESS OF INITIAL REVIEW

Regulation 7 of the Regulations provides that if an eligible employee considers that the process used for an initial review was unfair or contravened the Act, Regulations or relevant standards, the employee may apply in writing to the Victorian Public Sector Commissioner for a review of the process for the initial review.

The employee must give the Secretary notice of any such application for review within **seven calendar days** from the date of the application.

Applications for review to the Victorian Public Sector Commissioner must be made within **seven calendar days** for a selection grievance and within **28 calendar days** for a personal grievance from the day on which the employee was notified of the decision of the initial review. The Victorian Public Sector Commissioner has discretion to accept an application after this time if they consider that the circumstances justify acceptance.

APPLICATION TO THE VICTORIAN PUBLIC SECTOR COMMISSION FOR REVIEW OF FAILURE TO COMMENCE INITIAL REVIEW

Regulation 8 of the Regulations provides that an eligible employee may apply to the Victorian Public Sector Commissioner for review of a failure to commence an initial review if the initial review has not commenced within 30 calendar days of it being lodged with the Merit Protection Boards. Any application for review under Regulation 8 must be made no later than 70 calendar days after the application for an initial review was lodged with the Merit Protection Boards (unless the Commissioner determines that the circumstances justify acceptance of the application after that time).

APPLICATION TO VICTORIAN PUBLIC SECTOR COMMISSIONER FOR REVIEW WITHOUT AN INITIAL REVIEW

Regulation 9 of the Regulations provides that despite the process established by this guide, an eligible employee may apply to the Victorian Public Sector Commissioner for review of action taken within the Department that relates to the employee's employment if:

- the employee alleges that the action constitutes victimisation or harassment of the employee for having made a previous application to the Victorian Public Sector Commissioner for review; or
- the Secretary is alleged to have personally taken the action or is the primary decision maker.

For further information in relation to applications to the Victorian Public Sector Commissioner, please contact the [Victorian Public Sector Commission](#).

APPLICATION TO THE FAIR WORK COMMISSION

Nothing in these procedures precludes an employee from referring a matter to the Fair Work Commission.

14. Modifications to process

In a particular case, a Review of Actions Board may approve a deviation from the process described in this guide if it is deemed necessary in order to achieve fairness for the applicant or in order to expeditiously or efficiently progress the resolution of an initial review of action, provided that the process remains consistent with the Act and Regulations.

15. Further information

Further information, advice or assistance on any matters related to review of action is available by:

- accessing the A-Z topic list on [HRWeb](#)
- visiting the [Merit Protection Boards](#) website, or
- contacting the [Policy and Employee Relations Branch](#).