

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

Guidance for agencies – July 2025

In this document ‘agencies’ refers to public sector bodies (departments, Senior Executive Service organisations and non-SES organisations as defined in the *Public Sector Management Act 1994*).

1. Why are changes to the regulations being made?

There are 2 purposes for the changes:

- The changes to the regulations reflect changes to the *Industrial Relations Act 1979* that came into effect on 1 July 2025 giving the Western Australian Industrial Relations Commission (WAIRC) jurisdiction over claims alleging breaches of public sector standards relating to transfer, performance management, grievance resolution, redeployment and termination of employment. The Public Sector Commission retains jurisdiction over claims alleging breaches of the Employment Standard excluding claims about transfer.
- The changes to the regulations strengthen the obligations of agencies to support resolution of breach claims.

2. What are the changes to the agency resolution timeframe?

To align with the *Industrial Relations Act 1979*, the timeframe for agencies to attempt to resolve claims changes from 15 business days to 21 calendar days (including weekends and public holidays). In practice this only impacts the timeframe where a public holiday falls during the agency resolution period.

Agencies should consider planning their decisions to minimise claims being resolved during times when there are multiple public holidays, such as Christmas and New Year, as this may make it difficult to meet the 21 calendar day resolution period.

3. What are the changes to agency resolution requirements?

There are strengthened requirements to help agencies and claimants attempt to resolve claims.

Under the regulations agencies **must** make all reasonable efforts to:

- allocate a person (agency employee, employee of another agency or contractor) to deal with the claim who was not involved in the original process that led to the claim
- discuss the claim with the claimant and provide information to support them to understand how the agency will try to resolve their claim including options for resolution
- assess the claim
- discuss the assessment with the claimant as soon as practicable after completing the assessment.

Under the regulations agencies **must** maintain records of attempts made to resolve claims and, if applicable, the reasons they have been unable to meet one or more of the above requirements.

Additionally, if claims are unresolved, agencies **must** notify claimants of the process for referring claims to the WAIRC or Public Sector Commission

Claimants or their unions **may** refer unresolved claims about certain standards – the Employment Standard relating to transfer only, Performance Management Standard, Redeployment Standard, Grievance Resolution Standard and Termination Standard – to the WAIRC.

If claims about recruitment, selection, appointment, acting or secondment (that is, all Employment Standard claims except transfer) are not resolved within 21 days, agencies **must** refer these claims to the Public Sector Commission (this is not new).

4. What is the purpose of changes to agency resolution requirements?

The changes clarify the requirements agencies must meet when attempting to resolve breach of standard claims.

The changes support more proactive and effective resolution of claims by agencies, and ensure agencies are better prepared when unresolved claims are referred to either the WAIRC or Public Sector Commission..

5. Are the new agency resolution requirements a step by step process?

No. The order in which agencies try to meet the requirements can vary depending on the circumstances including if multiple attempts are needed to meet one or more of the requirements.

- Example 1: If an agency has not been successful in contacting a claimant it may need to start assessing a claim before discussing it with the claimant. The agency should continue to attempt to contact the claimant using the contact details provided.
- Example 2: Multiple discussions with a claimant may be needed to resolve a claim. At least an initial discussion on receiving the claim and a later discussion on the agency's assessment and options for resolution are required. Other discussions can occur as needed.

Agencies should plan to include sufficient time for them and claimants to participate effectively in the resolution procedure.

6. What are the changes to claims about transfer?

The WAIRC now has jurisdiction over breach of standards claims relating to transfer which is currently in the Employment Standard.

Agencies consider any claims received under the Employment Standard to determine whether they relate to transfer or recruitment.

While transfer is the permanent movement at level to a position in a public sector agency, a claim involving a person applying to fill a vacancy at the same level in an open recruitment process continues to be under the jurisdiction of the Public Sector Commission.

Claims around transfers arising from redeployment, breach of discipline or substandard performance are not dealt with under the regulations.