



Disciplinary APPEALS

In the Teaching Service

Disciplinary Appeals



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THE DISCIPLINARY APPEALS BOARDS

The Disciplinary Appeals Boards is an independent statutory body established under the *Education and Training Reform Act 2006*.

Its role is to hear and determine appeals in relation to decisions of the Secretary made under section 2.4.59F (Unsatisfactory Performance), section 2.4.61 (Misconduct) or 2.4.61A (Serious Misconduct) of the *Education and Training Reform Act 2006* from employees in the teaching service of the Department of Education and Training (the Department).

Each Disciplinary Appeals Board comprises three people:

- a chairperson (a person admitted to legal practice in Victoria for not less than 5 years)
- an ongoing employee in the teaching service, and
- a person with knowledge of or experience in education, education administration or public sector administration.

Members of a Disciplinary Appeals Board have a duty to act as individuals in an independent and objective manner in their function of attempting to achieve a fair resolution of the appeal. The appeal procedures of a Disciplinary Appeals Board are consistent with the principles of procedural fairness.

Procedural fairness requires that:

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

THE RIGHT TO A HEARING

Members of the teaching service employed in the Department may be eligible to lodge a disciplinary appeal under the provisions of the *Education and Training Reform Act 2006*.

People who are uncertain as to their eligibility are advised to contact the Registrar, Disciplinary Appeals Boards for further information.

WHAT IS A DISCIPLINARY APPEAL?

A disciplinary appeal may be lodged against a determination by the Secretary to take action against an employee under Division 9A (Unsatisfactory

Performance) or Division 10 (Misconduct or Serious Misconduct) of the *Education and Training Reform Act 2006*.

Division 9A (Unsatisfactory Performance)

Sections 2.4.59F(3) sets out the action that may be taken against an employee where the Secretary has determined that there has been unsatisfactory performance by the employee. The definition of unsatisfactory performance is set out in section 2.4.59A of the *Education and Training Reform Act 2006* as follows:

“Unsatisfactory performance” in relation to an employee, means the repeated failure of the employee to discharge his or her duties in the manner expected of the employee at his or her level, in his or her position as evidenced by one or more of the following:

- (a) the negligent, inefficient or incompetent discharge by the employee of his or her duties;
- (b) the failure by the employee
 - (i) to exercise care and diligence in performing his or her duties; or
 - (ii) to perform any of his or her duties;
- (c) the employee engaging in unsatisfactory conduct that impacts on the discharge of his or her duties including, without reasonable excuse:
 - (i) contravening or failing to comply with a lawful direction given to the employee by a person with authority to give the direction; or
 - (ii) being absent from his or her duties without permission.

Division 10 (Misconduct)

Section 2.4.61 sets out the action that may be taken against an employee where the Secretary has determined that there are sufficient grounds for taking such action. The grounds for the Secretary’s actions are set out in Section 2.4.60 of the *Education and Training Reform Act 2006* as follows:

- (1) The Secretary, after investigation, may take action under this Part against an employee who:
 - (a) conducts himself or herself in a disgraceful, improper or unbecoming manner in an official capacity or otherwise; or
 - (b) commits an act of misconduct; or
 - (c) during his or her period of service is convicted or found guilty of a criminal offence punishable by imprisonment or a fine; or
 - (d) is negligent or incompetent in the discharge of his or her duties; or
 - (e) contravenes a provision of this Act or a Ministerial Order made for the purposes of this Chapter; or
 - (f) contravenes a requirement by or under any Act that corporal punishment not be administered to any Government school student; or
 - (g) without reasonable excuse, contravenes or fails to comply with a lawful direction given to the employee by a person with authority to give the direction; or
 - (h) without permission and without reasonable excuse, is absent from his or her duties; or

- (i) is unfit on account of character or conduct to discharge his or her duties.
- (2) In considering the fitness of an employee to discharge his or her duties, consideration may be given to any relevant matters including his or her character and any conduct in which he or she has engaged (whether before or after becoming an employee).

Division 10 (Serious Misconduct)

Section 2.4.61A(1) states the Secretary may terminate the employment of an employee if the Secretary reasonably believes that the employee has engaged in serious misconduct.

WHAT ARE THE GROUNDS FOR LODGING AN APPEAL?

The grounds for lodging an appeal are set out in section 2.4.68 of the *Education and Training Reform Act 2006* and indicate that an employee may appeal to a Disciplinary Appeals Board against a determination of the Secretary to take action against the officer or employee under section 2.4.59F (Unsatisfactory Performance), section 2.4.61 (Misconduct) or section 2.4.61A (Serious Misconduct) of the Act.

LODGING AN APPEAL

Obtain the Notice for Appeal form which is available online <https://www.mpb.vic.gov.au/dab/Pages/default.aspx> or from the Registrar at the Disciplinary Appeals Boards.

Complete the Notice of Appeal setting out the grounds for the appeal, or contact the Registrar at the Disciplinary Appeals Boards for assistance if necessary.

Lodge the Notice of Appeal with the Registrar, Disciplinary Appeals Boards:

- by post or in person at: Level 4, 2 Lonsdale Street, Melbourne, Victoria, 3000.
- email at dab@education.vic.gov.au, or
- by fax on 9032 1709.

The Notice of Appeal must be lodged with the Registrar, Disciplinary Appeals Boards, within fourteen (14) days after the date on which the appellant is given notice in writing of the determination.

A Board may allow an appeal to be made out of time if it considers that special circumstances exist.

APPEAL APPLICATION FORM

The Disciplinary Appeals Boards (DAB) will use the information collected on the Appeal Application Form for the purpose of assessing, managing and responding to an appeal. This includes, however is not limited to, such activities as determining the Board's jurisdiction to hear a matter, scheduling of hearings and preparing a Board for the hearing.

The DAB will use or disclose personal and health information for the purpose for which it was collected such as preparing Board members for a hearing or communicating Board decisions to the appellant and their representative at the hearing (if any); the decision maker and their representative at the hearing (if any); the Secretary of the Department; and the Executive Director, People Division.

Your comment will be sought if your data is to be used for purposes other than addressing the grievance process unless authorised or required by law. Your information is kept secure and confidential and managed in accordance with the Privacy Data Protection Act 2014 and Health Records Act 2001.

For more information regarding how information is handled, refer to the Merit Protection Boards website at <https://www.mpb.vic.gov.au/Pages/Privacy.aspx>.

AFTER AN APPEAL HAS BEEN LODGED

When the appeal has been lodged the Registrar will acknowledge it promptly in writing. It is the intention of the Disciplinary Appeals Boards to deal quickly with all appeals. The appellant and the employer will then be advised in writing of the date, time and venue for a directions hearing, at which the hearing of the case is planned. Parties are advised to arrive for the directions hearing at least 15 minutes before the notified time.

REPRESENTATION

All parties may be represented at the hearing by a legal practitioner or by an agent.

Information Notes for all appellants can be found on the DAB website at: https://www.mpb.vic.gov.au/Documents/DAB_Notes_for_Appellants.doc

FORMAT OF APPEAL HEARINGS

At the directions hearing the conduct of the hearing is planned. The time and place for the hearing is determined and the parties indicate which witnesses will be called.

The proceedings of the directions hearing and the hearing of the appeal will be recorded and transcripts will generally be available at cost. The Board

may decide to adjourn the hearing and seek additional information or to make site inspections.

All proceedings shall be conducted without regard to legal formalities and shall be directed by the best evidence available. However, evidence is taken on oath and witnesses may be cross examined.

The appeal will be conducted as a re-hearing.

THE APPEAL HEARING

On arrival at the DAB office all parties should report to the staff on duty at the reception desk. The staff will assist you if you have any questions prior to the hearing.

Separate waiting areas are provided for both parties.

At the commencement of the hearing the Chairperson will briefly outline the procedures and invite both parties to put any submissions.

The employer's representative will present evidence and examine its witness(es). All witnesses give sworn evidence and are only required to be present at the hearing when giving their evidence.

The appellant or their representative then has the opportunity to cross-examine witness(es). Following this the employer's representative may choose to re-examine the witness(es) to resolve any matters raised through cross examination. Board members may also question the witness(es).

The employer's representative may subsequently re-examine the witness(es) to resolve any matters raised through cross-examination. Board members may also question the witness(es).

When the employer's representative concludes the case for the employer, the appellant or their representative commences their case and follows a similar process.

When all witness(es) have been heard, the Board invites the employer's representative and then the appellant or their representative to make their final submissions before adjourning to consider its decision.

POSSIBLE OUTCOMES

The Board may:

- allow the appeal in whole or in part and vary the decision of the Secretary;
or
- dismiss the appeal.

If an appeal is allowed in respect of an employee whose employment in the teaching service has been terminated, the Board may order that the employee:

- (a) be re-instated in the teaching service; or
- (b) be paid an amount not exceeding the greater of:
 - (i) the remuneration received by the officer or employee during the period of 6 months immediately before the termination; or
 - (ii) the remuneration to which the officer or employee was entitled for the period of 6 months immediately before the termination.

In varying the decision of the Secretary, the Board may impose one or more of the following penalties:

Action against an employee under Division 9A (Unsatisfactory Performance)

- (a) a reprimand;
- (b) a reduction in the employee's classification;
- (c) termination of the employee's employment.

Action against an employee under Division 10 (Misconduct)

- (a) a reprimand;
- (b) a fine not exceeding 50 penalty units;
- (c) a reduction in classification;
- (d) termination of employment.

BOARD'S DECISION

The Board aims to reach its decision within a month of the conclusion of the hearing; this however depends upon the complexity of the appeal. A written copy of the Board's decision is provided to the appellant and their representative at the hearing (if any); the decision maker and their representative at the hearing (if any); the Secretary of the Department; and the Executive Director, People Division.

The parties may seek Judicial Review of this decision from the Supreme Court of Victoria.

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