



Teaching Service GRIEVANCES

In the Department of Education
and Training



Selection or Personal Grievances



The Merit Protection Boards

The Merit Protection Boards (MPB) is an independent statutory body established under the *Education and Training Reform Act 2006 (ETRA 2006)*. The function of the Board is to hear reviews and appeals of decisions made under the *Education and Training Reform Act 2006* and advise the Minister for Education about principles of merit and equity to be applied in the teaching service. Appeals against disciplinary action taken by the Department of Education and Training (the Department) in relation to employees in the teaching service are not heard by the MPB but may be appealable to the Disciplinary Appeals Boards.

Further information is available on the following website: <http://www.mpb.vic.gov.au>

The Right to a Grievance Review

Teachers, principals, assistant principals, casual relief teachers, education support staff and school council employees may be eligible to lodge a grievance (Selection or Personal) in accordance with the provisions of the current applicable Act or Order:

<https://www.education.vic.gov.au/hrweb/employcond/Pages/tso.aspx>

- A personal grievance application must be lodged within 14 days of the action or date of notification of the action whichever occurs last; except where the Senior Chairperson is satisfied there are special circumstances that justify accepting a personal grievance lodged outside this period.
- A selection grievance application must be lodged within 14 days of the date of the announcement of the provisional nomination(s) provided by Recruitment Online.

Personal Grievances:

A personal grievance can arise as a result of any action taken within a Department work location which directly affects the employee and which they consider:

- is in breach of the *Education and Training Reform Act 2006* or the Order;
- infringes the principles of merit and equity, or infringes any personnel policy or guidelines issued by the Secretary; or
- is otherwise unreasonable.

Matters which are excluded from a personal grievance are listed in the Order:

<https://www.education.vic.gov.au/hrweb/employcond/Pages/tso.aspx>

The Merit Protection Boards has heard personal grievances in a range of matters which include:

- leave;
- time fraction changes;
- range reviews;
- translation to ongoing;
- annulment of probation;
- allowances; and
- higher duties assignments.

It is expected that the parties have attempted to resolve the matter at the local level prior to lodging a grievance with the Board.

Selection Grievances:

Ongoing members of the teaching service may seek a review in relation to the transfer or promotion of another **ongoing member** of the teaching service.

To be eligible to lodge a selection grievance a member of the teaching service must:

- have been an applicant for the position;
- be eligible and qualified to apply for the position; and
- have grounds for seeking a review of a selection decision.

Specific grounds for selection grievances are listed in the Order:

<https://www.education.vic.gov.au/hrweb/employcond/Pages/tso.aspx>

NOTE: Where an external applicant is selected for a position or where no appointment has been made there is no right of review to the Merit Protection Boards. Where it appears that there is no appeal to the Merit Protection Boards, applicants are encouraged to contact the Registrar for advice.

Lodging a Grievance:

A grievance must be lodged on the appropriate application form which is available online at:

<https://www.mpb.vic.gov.au/teaching-service/Pages/Teaching-Service-Grievances.aspx>

(or contact the Registrar on 9032 1701 for assistance).

Completed forms can be:

- lodged in person or posted to the Registrar, Merit Protection Boards, Level 4, 2 Lonsdale Street, Melbourne, 3000
- emailed to meritboards@education.vic.gov.au
- lodged online at <https://www.mpb.vic.gov.au/teaching-service/Pages/Teaching-Service-Grievances.aspx>
- faxed to 9032 1709.

Grievance Application Form

The Merit Protection Boards (MPB) will use the information collected on the Grievance Application Form for the purpose of assessing, managing and responding to a grievance. 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 MPB 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 MPB website at <https://www.mpb.vic.gov.au/Pages/Privacy.aspx>.

Personal Grievance applications must specify the:

- action to which the application relates and the date the action was taken;
- date the employee was notified, or first became aware of the action;
- name and title of decision maker or person who authorised or took the action;
- grounds for the employees grievance against the action; and
- outcome sought in relation to the action to be reviewed.

Note: A copy of the decision letter must be attached to your grievance application.

Selection Grievance applications must specify the:

- position title, number, classification and location;
- name of provisional nominee(s) or transferee(s);
- date of notification of the provisional appointment; and
- grounds for the employee's grievance against the action.

Note: A copy of the decision letter must be attached to your grievance application.

What Happens Next

1. The application will be acknowledged via email. Wherever possible all communications, including confirmation of hearing dates will be managed via email.

The Grievance is checked against the requirements within the relevant Order:

<https://www.mpb.vic.gov.au/teaching-service/Pages/Teaching-Service-Grievances.aspx>

- Is it in time?
 - Does the outcome sought relate to the action taken?
 - Does the Merit Protection Boards have jurisdiction to hear the matter?
2. Where the application is accepted, a copy is sent to the person(s) responsible for the decision or action (the decision maker) and a written statement requested within five working days. This statement is sent to the appellant prior to the hearing.
 3. The decision maker may also be required to forward to the Merit Protection Boards additional supporting documentation, particularly in relation to selection grievances. The selection documentation is for the Board's use only and will not be provided to the appellant.
 4. The appellant and the decision maker(s) will be contacted to arrange a suitable date and time for the hearing. Confirmation of the date, time and venue for the hearing will be sent via email.

Preparing for the Hearing

It is advisable that people who will be presenting at a Board hearing prepare notes of the key points of their grievance so that these can be made clearly and succinctly.

Prior to the hearing Board members will have been provided with:

- the grievance application;
- the written statement to the grievance provided by the decision maker; and
- any other relevant documentation.

Any party wishing to present additional material at the hearing can do so only with the permission of the Senior Chairperson. Parties should provide three copies for the Board and one copy for the other party(ies). The provision of sufficient copies is the responsibility of the individual concerned.

Voluminous material may result in the hearing being adjourned and rescheduled to a later date.

Representation at the Hearing

An agent, for example a union representative, friend or colleague, may accompany either party to the hearing. The parties may present their own case or be represented or supported by their agent.

The Senior Chairperson may allow legal representation if:

- it is considered that either party would be at a significant disadvantage in the absence of legal representation; or
- the Senior Chairperson considers there to be exceptional circumstances.

Requests to be legally represented should be made three days before the hearing.

If an agent is to attend, the Registrar should be notified of the agent's name at least one day before the hearing.

The Hearing

A Merit Protection Board comprises a Chairperson, a nominee of the Secretary and a nominee of the Minister. The hearings are not open to the public therefore the attendance of any person not directly related to the grievance requires prior approval by the Senior Chairperson.

The Board members have already read the grievance application and any supporting documents therefore appellants are advised to concentrate on the actions on which the grievance is based.

At the commencement of the hearing the Chairperson will:

- invite the decision maker or agent to speak to their written statement to the appellant's claims; and
- seek clarification of points raised as required by the Board.

Then:

- invite the appellant or agent to present their case, allowing up to 30 minutes; and
- facilitate questions by Board members.

At the conclusion of the appellant's case, the decision maker or agent may respond. When questions from the Board have been answered, the appellant or agent has the opportunity to make a brief final statement.

When the hearing has finished the parties leave. The Board carefully considers all the information relevant to the grievance in making its decision.

Possible Outcomes

Personal Grievances:

Following the hearing the Senior Chairperson may:

- confirm the original decision;
- vary or quash that decision or action; or
- recommend such other action as may be appropriate.

Any determination, order or decision must have regard to the operational requirements of the Department and, if relevant, the educational requirements of the school including the interests and welfare of the students.

Selection Grievances:

Where the Board is satisfied that the grounds for the grievance were not established, it will make an order that the provisional transfer or promotion be confirmed.

Where the Board is satisfied that the grounds for grievance were established, it may make an order requiring the decision maker, the selection panel, principal or school council to reconsider their decision.

If the decision maker subsequently decides to select the same person, the Board is required to further review the provisional transfer or promotion.

The Board may make an order requiring that the vacancy be readvertised where it is satisfied that the same or similar grounds for review continue to apply.

NOTE:

The Board does not have the power to:

- place an appellant into the position over the provisional nominee(s); or
- order the employment of a person into the teaching service.

The Decision

The Board aims to reach a decision on the day of the hearing, or as soon after the hearing as possible and make its recommendation to the Senior Chairperson.

Once the Senior Chairperson has accepted the Board recommendation the Registrar will inform the parties concerned by telephone on the next working day. A written copy of the Senior Chairperson's determination is sent to the appellant and their representative at the

hearing (if any) and the decision maker and their representative at the hearing (if any) within a week of the hearing. A copy is also forwarded to 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.

MERIT PROTECTION BOARDS

Address: Level 4, 2 Lonsdale Street, Melbourne 3000

Phone: 9032 1701

Fax: 9032 1709

Email: meritboards@education.vic.gov.au

Website: www.mpb.vic.gov.au