



Review of ACTION

Personal and Selection Grievances for
Victorian Public Service Employees in the

Department of Education & Training



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Public Service Grievances (Review of Action)

All government departments have a review process to ensure that concerns of employees are dealt with promptly and fairly.

The Merit Protection Boards (MPB) is an independent statutory body established under the *Education and Training Reform Act 2006* (ETRA). Its functions include hearing reviews and appeals of decisions made under the ETRA (except sections 2.4.59F, 2.4.61 and 2.4.61A) and the *Public Administration Act 2004* for Victorian Public Service (VPS) employees who are employed by the Department of Education and Training (the Department).

When a Personal or Selection grievance is lodged the Merit Protection Boards' Senior Chairperson will refer such an application to a VPS Review of Action Board.

The right to a Grievance Review

Victorian Public Service employees (including Executive Officers) who are employed by the Department may lodge an application for Review of Action in accordance with the provisions of the current applicable legislation:

Review of Action (Personal and Selection Grievances):

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

Completed applications must be lodged for a personal grievance within 28 calendar days and for a selection grievance within seven (7) 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.

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 employment, 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 employee is eligible to lodge an application for a review of a selection decision if:

- the person proposed to be appointed to the position in question is an eligible employee*; and

- 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).

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

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.

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.

Personal Grievance:

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

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;
- probation annulment;
- performance outcomes;
- complaints management;
- 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.

Lodging a Review of Action

A Review of Action must be lodged online or in writing on the appropriate application form which is available at <https://www.mpb.vic.gov.au/vps/Pages/Grievances.aspx> (or contact the Registrar on (03) 9032 1701 for assistance).

Completed forms can be:

- lodged in person or posted to the Registrar, Merit Protection Boards, Level 4, Casselden Place, 2 Lonsdale Street, Melbourne 3000,
- scanned and emailed to meritboards@education.vic.gov.au; or
- faxed to 9032 1709.

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.

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 Review of Action. 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; the Executive Director, People Division and the Victorian Public Sector Commission.

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>.

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 specified timeframes (7 calendar days for selection grievances and 28 calendar days for personal grievances) will not be accepted unless the Senior Chairperson is satisfied that the circumstances justify acceptance of a late application.

What Happens Next

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

The Grievance is checked against the requirements within the *Public Administration (Review of Actions) Regulations 2015*:

- 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 response requested within five (5) working days. This response 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. This 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 response 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 not less than 3 days before the hearing.

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

The Hearing

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

The hearings are not open to the public therefore the attendance of any person not directly related to the grievance requires prior approval of 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 response 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

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 Decision

The Board will provide a copy of the written recommendation 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 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.

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.

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