

Review of Actions FAQs



**Victorian
Public Sector
Commission**

In the **Victorian Public Service**, employees may apply to their employer for a review of an action that they consider is unfair or inconsistent with the *Public Administration Act 2004* (**Act**) or the employment standards. The action must relate to their employment such as a personal involvement in a selection, performance management or discipline process. The organisation's review of actions registrar will either:

- **accept** the application and seek to have the matter resolved informally or appoint a reviewer to conduct a review; or
- **decline** the application if
 - the matter is frivolous, vexatious or lacking in substance;
 - the applicant does not have sufficient personal interest;
 - the matter is or could be the subject of a proceeding in any court or tribunal; or
 - the application is late.

Disclaimer: This guide is based on the *Public Administration (Review of Actions) Regulations 2015* (**Regulations**). It provides general tips and does not replace information in any relevant enterprise agreement or organisational policy.

Applying to your employer for a review

1. **Can workplace issues only be resolved using formal processes?**

It is preferable for employees to try to resolve their workplace issues informally in the first instance. This might be through talking about their concerns with the other party, their manager, HR or other nominated contact. This often means that issues are resolved quickly and with minimal disruption or cost.

2. **Is an application form necessary?**

Applications must be made in writing. Organisations may ask employees to complete an application form rather than write a letter because a form helps ensure all relevant information such as the basis of the concern and the remedy sought is included. The registrar can advise employees about the process, the information required and whether a completed application form or a letter is

required.

3. Will employees who apply for a review be treated fairly?

Employees have the right to raise legitimate workplace concerns and to have those concerns addressed. Managers and employees must therefore participate constructively in the review process. This means remaining professional, acting in good faith and continuing to work together productively regardless of the outcome of the review. Any employee who has been victimised or harassed may apply to the Victorian Public Sector Commission (VPSC) for a review of the matter.

4. Can employees delay the completion of a selection process when they apply for a review?

Employees may only apply for a review of a selection process if they were applicants and the process had a significant deficiency. Examples may include situations where:

- ⌚ a panel member has a conflict of interest because of a personal relationship with an applicant;
- ⌚ the panel asks questions that are discriminatory or unrelated to the inherent requirements of the role; or
- ⌚ the panel seeks feedback from a person who is not a nominated referee, without the applicant's consent.

The employer will decide whether the circumstances justify delaying the completion of the selection process until after the review is completed.

5. When can employees apply for a review of a performance management process?

Employees may wish to apply for a review of a performance management process if, for example, the manager has given unfair or insufficient feedback or made unreasonable demands on the employee to improve performance.

6. When can employees apply for a review of a discipline process?

Employees may wish to apply for a review of a discipline process if, for example, the investigation did not consider mitigating circumstances or the outcome is disproportionate to the misconduct.

7. Can an employee apply for a review when a matter has already been investigated?

Reviews do not repeat an investigation. However, an employee may wish to apply for a review of an investigation if the process was unfair or flawed.

8. Can former employees apply for a review?

Only employees may apply for a review of actions. In rare circumstances, such as resignation, an employee may leave an organisation before a review is completed. The employer may choose to complete the review with the former employee's agreement.



9. Can potential employees apply for a review?

External job applicants are potential employees. While these applicants cannot apply for a review of actions, the potential employer may wish to consider whether the issues they have raised about a selection process warrant review under the organisation's complaints policy. Complaints are a source of feedback that can lead to better processes.

Review process

10. What are the deadlines for making an application?

The organisation's policy will specify the deadlines for making an application. The deadline must not be less than seven days after an employee was notified or became aware of a decision relating to a selection process or 28 days for all other matters. However, the employer may accept a late application if considered warranted.

11. Can a registrar seek a manager's response to the issues raised in the application?

The registrar's role is to accept or decline an application. It is not to investigate the matter. However, the registrar may need to clarify facts with the other party including the manager in reaching this decision. Clarifying the facts may result in a matter being resolved between the parties before a formal review is undertaken.

12. What is the appropriate timeline for conducting a review?

While it is preferable for reviews to be completed quickly, sufficient time must be allowed to give all parties a chance to put their case. Reviews vary in complexity, the volume of information to be considered and the number of witnesses to be called. Some reviews may also require more time because of the parties' availability. The registrar will advise parties of the timelines that apply and ensure compliance with the organisation's policies.

13. Does a hearing always need to be held?

Depending on the complexity of the matter, the reviewer may conduct the review on the basis of written submissions alone or also call the parties and any witnesses to attend a hearing. Either way, the reviewer will ensure that each party is aware of the other party's point of view and is given an opportunity to respond. Information is not shared with any other parties. This accords with the principles of natural justice, procedural fairness and confidentiality.

14. Who determines the choice of reviewer?

This is the role of the registrar. The registrar may consider the views of either party

when deciding who to appoint as the reviewer.

15. Is the reviewer always external to the organisation?

The reviewer may be either an employee or a professional contractor. In either case, the reviewer must be skilled in conducting reviews and independent of the matter being considered.

16. Do managers have a conflict of interest by attending the hearing?

Managers attend the hearing to hear and respond to the issues raised. They have an important role to play in resolving any workplace concerns.

17. Who can support an employee at a hearing?

A support person may be a friend, colleague, relative or union representative.

18. Can the support person speak on behalf of the employee?

The role of the support person is to provide moral support at a hearing. Employees may wish instead to have a representative at the hearing who can speak on their behalf. The parties are generally not represented by a legal practitioner unless the reviewer considers that they would otherwise be at a significant disadvantage.

19. Does the reviewer call all nominated witnesses to a hearing?

Reviewers are only required to consider evidence that is relevant to the matter. They will decide how to conduct the hearing and whether to call witnesses. Nonetheless, if either party wants to nominate a witness, they should provide witness statements before the hearing to give the other party time to consider the evidence.

20. Can the reviewer and decision-maker be the same person?

The reviewer and decision-maker must be different people because they have distinct roles. The decision-maker considers the recommendations of the reviewer following a review and determines which will be implemented.

21. Do decision-makers need to justify their decisions?

Decision-makers have to demonstrate procedural fairness which means that they must give reasons for their decision to both parties. They will generally accept the recommendations of a review unless they have valid reasons to do otherwise.

22. Is the other party disciplined if the reviewer finds that their action was unfair?

Each case has to be assessed individually. There may be a number of recommendations to address individual or systemic issues.

Review by the Victorian Public Sector Commission

23. **Can an employee raise their concerns directly to VPSC at any time?**

Employees must first apply for a review in their organisation unless the head of the organisation personally took the action about which a review is sought. Employees may also apply to VPSC if their organisation declined to conduct a review or if the review process was unfair or contravened the Act, Regulations or the employment standards.

24. **Can VPSC consider the merits of the case?**

VPSC can only consider the process followed in the review unless it is reviewing an action taken by the head of the organisation.

