VPS Enterprise Agreement Common Policies

review of actions

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Authority and Application

This policy applies to Victorian Public Service Departments and Administrative Offices (Employers) and their Employees covered by the *Victorian Public Service Enterprise Agreement 2016* (Agreement), *Public Administration Act 2004* and *Public Administration (Review of Actions) Regulations 2015*. The policy does not apply to Courts Services Victoria.

Overview

This policy outlines how Employees may apply to their Employer for an initial review of an employment related action that directly concerns them and that they consider is unfair or inconsistent with the Public Administration Act 2004 or the employment standards.

Relevant provisions

* Clause 12 of the Victorian Public Service Enterprise Agreement 2016;
* Sections 62, 64 and 65 of the Public Administration Act 2004 (Vic) (PA Act);
* Public Administration (Review of Actions) Regulations 2015 (regulations); and
* Standards for Application of the Victorian Public Sector Principles

Guidance

1. Definitions
   1. **Decision Maker** – The Decision Maker is the person with delegated authority to consider the recommendations of the Reviewer following an initial review and to determine which will be implemented.
   2. **Employment related action** – Actions or inactions concerning matters such as appointments or promotions, roster changes, leave applications, progression pay and performance management outcomes, salary and allowance entitlements, job classifications, training and development, higher duties and disciplinary decisions, excluding termination of employment.
   3. **Reviewer** - The Reviewer must be skilled in conducting reviews and independent of the matter being considered. The Reviewer may be an Employee, an independent contractor or a body comprising Employees and/or independent contractors.
   4. **Representative** – A Representative (including a union representative) may speak on the Employee’s behalf at meetings and make submissions. The parties are generally not represented by a legal practitioner unless the Reviewer considers that they would otherwise be at a significant disadvantage.
   5. **Registrar** – The Registrar is the person with delegated authority to accept or decline an Employee’s application for an initial review, and if accepted, to refer the application to a Reviewer and explain the process to all parties.
   6. **Support Person** - A Support Person may be a friend, colleague, relative or union representative who may attend meetings to provide moral support.
2. Principles
   1. The following principles apply to an initial review:
      1. The process is communicated to all Employees including the steps involved and their rights and responsibilities. Appropriate accountability is assigned.
      2. The process must adhere to the rules of natural justice. This means that the parties must have a reasonable opportunity to present their cases and to answer any allegations against them (fair hearing rule). The matter must be decided impartially (bias rule).
      3. The parties must genuinely attempt to resolve the workplace concern and act in good faith including maintaining confidentiality.
      4. Reviews must be conducted as quickly as possible and with as little formality as a proper consideration of the matter allows. A review commences from the time the Registrar accepts the Employee’s application.
      5. The process must encourage the parties to resolve workplace concerns locally and informally before applying more formal local or external processes. The parties may therefore be invited to participate in mediation for example.
      6. The Employee must first raise their workplace concerns with their immediate manager or, if this is not appropriate, with another nominated manager or the Registrar.
      7. The Registrar may accept a late application if justified by the circumstances. These include the seriousness of the matter, unavoidable delays in decision-making processes or the unavailability of any of the parties.
      8. Reviews are based on a consideration of all available relevant facts and evidence.
      9. The review report is provided to both parties in full unless there are valid confidentiality reasons for not doing so. In such cases, the fair hearing rule requires that the essence of the information be provided in a summary report to the parties.
3. Application for an Initial review
   1. Before making an application for an initial review to the Registrar, the Employee should make every reasonable attempt to resolve their concerns with the person involved in the employment related action. For example, an Employee who believes that a selection process was flawed may first discuss their concerns with the selection panel.
   2. The Employee may apply for an initial review within seven days of being notified or becoming aware of a proposed appointment or promotion where the selection process had a significant deficiency. For all other matters the time frame is 28 calendar days.
   3. If the employment related action concerns a misconduct (clause 21.14 of the Agreement) or unsatisfactory work performance process (clause 20.13 of the Agreement), the Employee must wait until the outcome is finalised before applying for an initial review.
   4. The Employee must make their application in writing to the Registrar, specifying the employment related action they are concerned about, when it occurred, the name of the person who took the action, and the remedy they are seeking.
   5. The Registrar may decline an application for an initial review on the basis that:
      1. the matter is frivolous, vexatious or lacking in substance;
      2. the Employee does not have sufficient personal interest in the matter; or
      3. the matter is or could more appropriately be the subject of proceedings in any court or tribunal.
4. Initial review process
   1. If the application is accepted, the Registrar will consider which approach to take:
      1. By agreement, the parties may participate in mediation or other alternative dispute resolution process.
      2. If a more formal process is warranted, the Registrar may refer the matter to a Reviewer after considering the parties’ views on choice of Reviewer.
   2. The Reviewer will determine how an initial review is conducted. The review may be based on written submissions from the parties, possibly supplemented by interviews, or a combination of written and oral submissions at a review hearing.
   3. The Reviewer must allow sufficient time for the parties to review materials or matters raised by the other parties. Where the facts are in dispute, the Reviewer will look for corroborating evidence and make findings based on the balance of probabilities.
   4. The Reviewer will consider all relevant policies, procedures and legal requirements when making their findings and recommendations in a report. The Reviewer will include reasons for their findings and may recommend for example that a decision be reconsidered or that the Employer’s processes be changed. The Decision Maker may accept or reject the recommendations.
   5. The Decision Maker must give written reasons within 28 days to the Victorian Public Sector Commission (VPSC) and the parties for not accepting a recommendation.
   6. The Registrar distributes the Reviewer’s report and the Decision Maker’s decision to the parties.
5. Application to the Victorian Public Sector Commission
   1. Employees may apply to the VPSC for review of an employment related action in four circumstances:
      1. the Employer did not commence an initial review within 30 days of receiving the Employee’s application;
      2. the Employee considers that the Employer’s initial review process was unfair or contravened the Act, regulations or standards;
      3. the Employee alleges that the Employer personally took the action or was the primary decision maker; or
      4. the Employee alleges that they were victimised or harassed for previously applying to the VPSC for a review.
6. Application to the Fair Work Commission
   1. An Employee may refer a matter to the Fair Work Commission, if the matter is within its jurisdiction. If an Employee refers a matter to the Fair Work Commission before the Employer’s initial review is finalised, the Employer will discontinue its review.
7. Interaction of clause 12 of the Agreement (resolution of disputes) with the initial review process
   1. Where the Employee’s dispute relates to the application or interpretation of a clause under the Agreement, a party is entitled at any time to elect to use the dispute resolution procedure under clause 12 of the Agreement.
   2. The initial review is the internal process specified in clause 12.8 of the Agreement.
   3. Matters which may be resolved using clause 12 of the Agreement include any dispute or grievance arising from a clause under the Agreement.
   4. Matters that clause 12 of the Agreement do not apply to include:
      1. a dispute regarding a matter or matters arising in the course of enterprise bargaining; and
      2. a dispute about termination of employment.
   5. There are also limits relating to the scope of dispute resolution in relation to:
      1. clause 20.13 of the Agreement – management of unsatisfactory work performance; and
   6. Clause 21.14 of the Agreement – management of misconduct.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to Employees within their Department or Administrative Office. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so.

Further Information

For further information and advice please contact your Human Resources Unit.

Related policies or documents

Clause 12 of the Agreement Employment Standards

https://www.fwc.gov.au/documents/documents/agreements/fwa/ae418873.pdf

<https://vpsc.vic.gov.au/wp-content/uploads/2017/01/Standards-for-the-Application-of-the-Public-Sector-Employment-Principles-2017.pdf>