

# SPOTLIGHT

## Reportable Conduct – Clarifying boundaries



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In this profile on Reportable Conduct, we examine the jurisdiction and decision-making roles of principals, the Department of Education and Merit Protection Boards.

When issues on the child safe touchstone of Reportable Conduct (RC) arise in education settings, multiple parties, beside the employee in question, are eager to perform their rightful role and achieve a just outcome.

MPB Senior Chairperson Steve Metcalfe acknowledges boundaries and decision-making lines could become blurred, as the Reportable Conduct Scheme (see summary table, page 3) intersected, in part, with the local complaint process in schools.

This has resulted in an increasing number of calls for the Boards to intervene in RC cases over recent time, prompting Mr Metcalfe to address head-on the question: **What exactly is the MPB’s jurisdiction on grievances dealing with RC findings?**

*“It’s a matter of being clear on ‘who does what and when’ and, based on the RC complaints that have found their way to us to date, the MPB has determined the subject to be currently beyond its jurisdiction”* Mr Metcalfe summed up.

### MPB jurisdiction

Mr Metcalfe explained that the MPB’s scope on RC issues was governed by how a *“personal grievance”* was defined in Ministerial Order (MO) 1388.

In order to hear a matter, the MPB must be satisfied a RC grievance meets this definition. *“That is, whether the RC decision or ‘action’ being appealed directly relates to and directly affects the employee in their employment”*, he outlined.

Mr Metcalfe advised that, to date, RC related grievance applications to the MPB have predominantly centred on

decisions taken to substantiate RC findings and refer such findings to an external regulator.

*“These actions alone do not constitute a personal grievance in that they don’t in and of themselves directly affect an employee in their employment. Rather, there needs to be some sort of resultant employment action,”* he clarified.

Examples could include directing an individual to participate in a mentoring program, review a specific policy or guideline or undertake further training.

*“Further, referral of a matter to the current external regulator Commission for Children and Young People (CCYP) is not sufficient – it does not immediately affect a person in their employment for the MPB to consider intervening,”* Mr Metcalfe confirmed.

*“On this basis to date, the MPB has determined it didn’t have jurisdiction to proceed with matters that have been brought forward.”*

#### MO 1388 definition:

**For the MPB to have any jurisdiction, a grievance claim must entail an action or decision satisfying the Ministerial Order’s “personal grievance” definition:**

*‘a grievance of an employee in respect of any action ... taken within a work location which directly relates to that employee and directly affects the employee in their employment ...’*

# MPB News

## Message from the Senior Chairperson



Like schools, term 4 is the busiest time of the year for the Merit Protection Boards as it works alongside education leaders on plans for the new school year ahead.

One key reform the MPB is focused on for 2026 is enhanced analysis of grievance case data, compiled each term, to better understand latest trends and drive improved advice to the education sector.

In particular, this approach will apply a more granular lens to the general data category, presented as *Other*, in the existing quarterly data snapshot (see pages 4 & 5 in this edition).

Initial stages of this deeper data analysis have already provided some revealing early insights. For example, grievances linked to contract renewal, staff in-excess and probation annulment have emerged as rising issues in distillation of recent data in the *Other* segment.

This provides an early pointer to a likely pressure within schools relating to process matters. It also presents an opportunity for the MPB to work in a more helpful way with leaders – assisting them to follow good process and work in hand with Department of Education policy, taking extra care when specific steps are detailed.

Besides our analysis of regular grievance categories such as staff selection, complaints and temporary transfers, from 2026 onwards we are eager to unpack and better understand other challenges arising across the education landscape.

In doing so, we look forward to supporting decision-makers and education staff, in new ways, with more insightful reflections.

For now, enjoy this edition's special offerings where we cast a detailed spotlight on a trio of hot topics: Reportable Conduct Scheme and MPB jurisdiction; staff selection grievances; staff translations (fixed-term to ongoing).

Don't forget, there's one session of the MPB's online, one-hour Merit and Equity Training left for the year (2 December). If you feel it's overdue for you or your staff, it's easy to enrol. See page 10 for details.

Best wishes for a rewarding end to 2025.

**Steve Metcalfe**



*Senior Chairperson*

### We have moved...

Please note, Merit Protections Boards has moved to a new office. We are now located at Level 7, 1 Spring Street, Melbourne. This is a short distance from our previous location at Casselden Place, 2 Lonsdale St. Be assured, all our operations remain the same and we may be contacted in the usual way:

### Getting in touch...

You can get in touch with our office by phone or email. We're happy to hear from principals, school staff, peak body members or other agencies on all matters, serious and small – or even if you have a query you're unsure about.

Contact us anytime:  03 7022 0040  [meritboards@education.vic.gov.au](mailto:meritboards@education.vic.gov.au)

Reportable Conduct –  
Clarifying boundaries ... from page 1.

## Decision-making roles

Mr Metcalfe stressed it was also vital to recognise the different decision-makers in RC processes compared to resolution of local complaint processes in schools.

Local complaints were overseen by the Principal, supported by the Department of Education’s Conduct and Integrity Division (CID), with decisions to substantiate any allegations resting with the Principal, Mr Metcalfe summarised. These utilise the Department’s Managing Conduct and Unsatisfactory Performance in the Teaching Service Guidelines.

Mr Metcalfe reiterated that local complaints processes resulting in employment action (e.g., a direction for an employee to undertake professional development) were grievance matters that can be heard and determined by the Boards.

*“On RC matters, decisions on allegations and findings are the domain of CID officers who have specific delegated powers from the Department Secretary, and also liaise with the CCYP,”* he said.

Mr Metcalfe noted there was intersection between the two processes when decisions from local complaint matters “served as an input” in a wider RC exercise led by CID.

## It’s actions that matter

Reflecting on RC findings in grievances presented to the MPB up to now, Mr Metcalfe affirmed that it had been demonstrated the decisions taken by CID had not met the personal grievance threshold.

*“A Department decision to refer to the regulator, CCYP, is just that and nothing more at that point. It’s what happens with this regulator and beyond that counts,”* Mr Metcalfe indicated.

*“It may be referred on to the Victorian Institute of Teaching or agency that manages Working with Children Checks for their consideration. Only when these bodies take action, such as introducing an employment condition or limitation, is there an impact on employment,”* he said.

Mr Metcalfe advised that, in the case of any such action, these external regulators had their own appeal mechanisms, giving

individuals the right to pursue a grievance at that time. Importantly, the MPB did not have jurisdiction to intervene, he added.

## Reputation risk

Mr Metcalfe confirmed that the same “*jurisdiction test*” applied when it came to individuals claiming they had suffered reputational damage in the workplace as a result of a RC process occurring.

*“Such damage is not an automatic consequence of RC findings and, even if there was evidence to satisfy reputational damage had occurred, it is arguably an indirect affect,”* he clarified.

**A final note:** Although RC findings may be outside the MPB’s scope, Mr Metcalfe suggested there was a key aspect worth remembering. Individuals could consider lodging a grievance claim against a local complaint outcome where it can be demonstrated that such an outcome directly affected an employee in their employment in the hope this may influence the related RC process.

### The Department’s Managing Conduct Guidelines give the following clarity on staff conduct concerns and Reportable Conduct:

*‘Principal/manager determines whether the complaint or concern has substance or not, and decides what action, if any, should be taken. Respondent will receive the outcome in writing, which will be placed on their personnel file.*

*If a Reportable Conduct matter, a separate letter will be provided to the respondent from the Conduct and Integrity Division advising if the conduct also amounts to Reportable Conduct.’*

## REPORTABLE CONDUCT SCHEME – SUMMARY

- A State Government system to improve how organisations, including education settings, respond to allegations of child abuse and child-related misconduct by their workers or volunteers.
- Requires specific organisations to notify the relevant Victorian authority – Commission for Children and Young People (CCYP) – of such allegations and ensures the organisation investigates the claims. The CCYP independently oversees these responses, a power that is to transfer to the expanded Social Services Regulator in early 2026.
- It also facilitates information sharing between the CCYP, organisations, regulators, police, and the Working With Children Check.

### Types of conduct:

Reportable conduct includes sexual offences, sexual misconduct, physical violence, and behaviour causing significant emotional or psychological harm to a child.

### Oversight:

The CCYP oversees how organisations respond to and investigate allegations, ensuring appropriate procedures are followed.

### Investigation:

Organisations are responsible for investigating the allegations and must ensure appropriate action is taken based on the investigation’s findings.

# MPB News

## MPB data: Complaints and transfer cases on rise

The number of grievances relating to complaints process outcomes has increased across education settings over the past quarter, latest data shows.

Merit Protection Boards’ quarterly data also reveals a sizeable jump in the number of range review grievances to arise during term 3 compared to the previous term as well as the number of cases dealt with at the same time last year.

Reflecting on complaints grievances, MPB Registrar Greg Donaghue described the individual matters in dispute as “quite varied in complexity and content”.

“Each case received by the MPB requires significant analysis of the allegations and evidence, and then final consideration based on balance of probabilities,” Mr Donaghue said.

Complaint examples he cited varied from workplace performance, staff behaviour, interactions involving students, and issues arising from school outings.

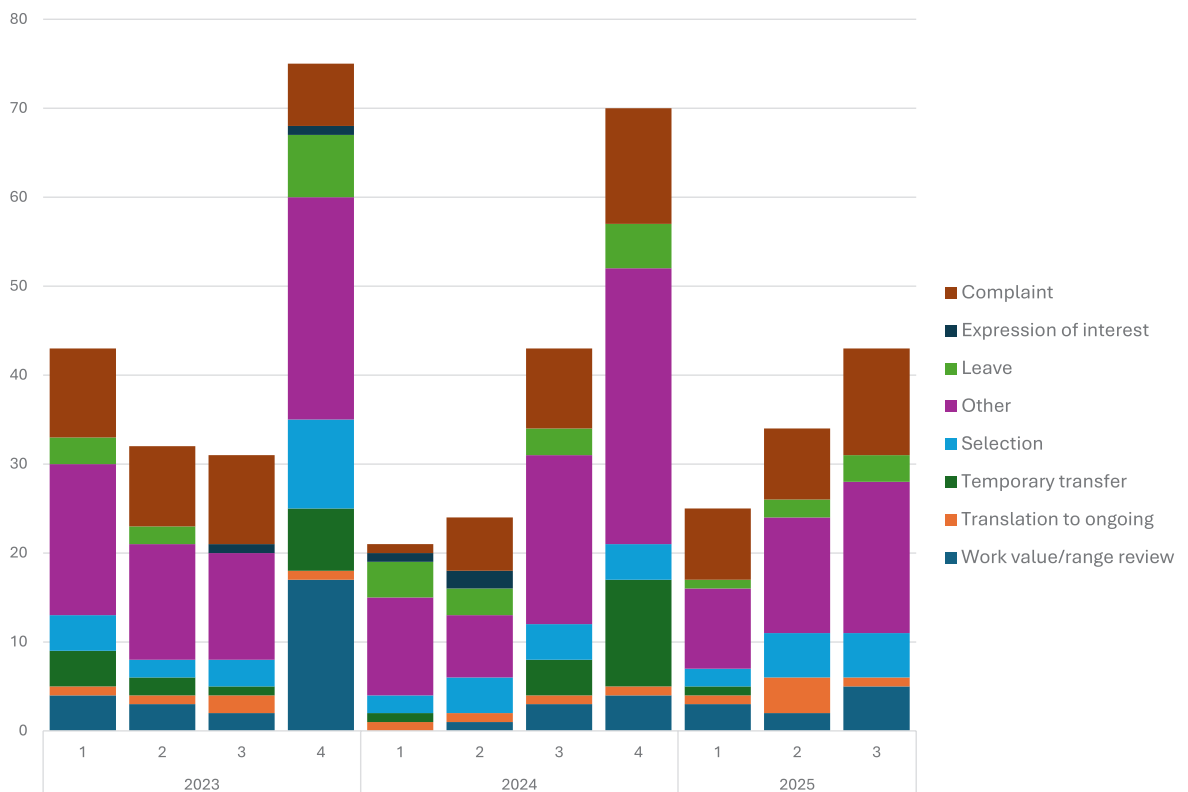
Although latest data showed temporary transfer issues were negligible in term 3 and well down on the same period in 2024, Mr Donaghue observed that the MPB expected the number of such grievances to rise during term 4.

“Understandably, the final term each year is when we receive most of our temporary transfer grievances,” Mr Donaghue revealed.

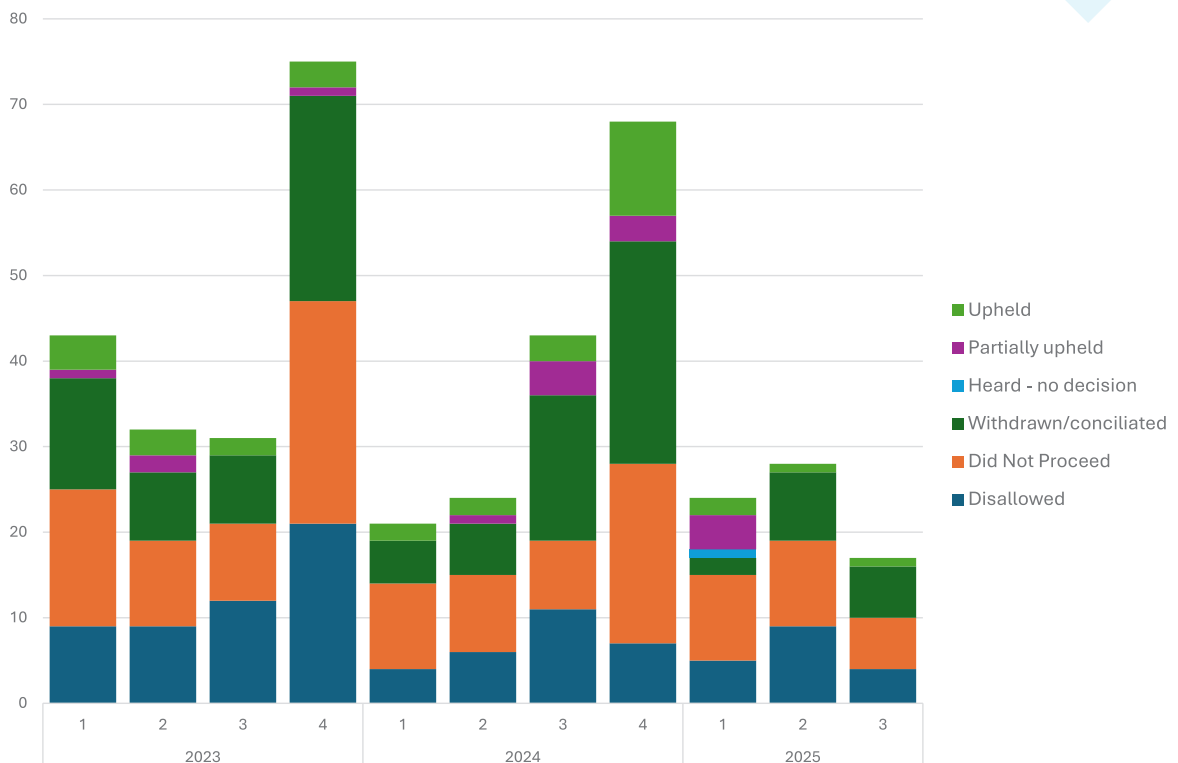
“As staff and school leaders seek to make respective plans for the coming year, grievances sometimes result from different understandings of Departmental policy or disagreements.”

Grievances relating to staff selection remained steady compared to term 2 and slightly up on term 3 last year.

Number of grievance types for teaching service grievances received per quarter



## Outcomes for teaching service grievances per quarter



## The MPB: who are we?

The Merit Protection Boards (MPB) is an independent statutory body, established under the *Education and Training Reform Act 2006*.

It works in conjunction with Victoria's Department of Education, providing an independent mechanism to hear appeals and grievances for department employees, schools, and associated education statutory authorities.

### Appeals and grievances include:

- transfer and promotion
- grievances of a general personal nature (eg: complaints leave requests, translation from fixed term to ongoing employment)
- incapacity

Through a hearing process, the Boards ensure all applicants receive fair and equitable treatment and that the principles of natural justice apply.

The MPB also conducts merit and equity training, and seeks to work productively with key education stakeholders to create better-informed selection processes in education workplaces.



# MPB News

## Selection Grievances: checking for ‘solid grounds’ the key

Feeling aggrieved can be one of the natural responses when a job selection outcome does not fall your way. However, a clear word of caution has been issued, advising potential applicants to carefully consider the appealable grounds prior to hastily lodging an objection with the Merit Protection Boards (MPB).

MPB Senior Chairperson Steve Metcalfe explained a key starting point was understanding the Boards’ jurisdiction and being aware of what matters it could deal with, as set out under legislation.

Effectively, the grounds on which the MPB could consider a selection grievance were limited, Mr Metcalfe outlined, and they were dependent on the vacant position’s classification and the relevant Ministerial Order (MO) that applied.

“For Principal class positions, the specific grievance grounds are detailed in MO 1006, while for Assistant Principal and Teaching Service roles, including specialist positions, MO 1388 sets out the applicable grounds the MPB may consider,” he said. (See table for full list of grounds).

*“Beyond these respective categories, there is one over-arching common ground. This is where an employee may seek MPB review of a selection decision they believe ‘is manifestly inconsistent with the evidence of the nature of the vacant position, the school in which the vacancy occurs, and the qualifications and experience of the applicant lodging the grievance in comparison to the preferred candidate,’”* Mr Metcalfe confirmed.

*“But employees should carefully note that these particular grounds relating to ‘manifestly inconsistent’ are a high threshold. It’s not just a case of stating you’re a better applicant, we look deeper for clear anomalies and evidence highlighting a decision that is obviously inconsistent with the facts,”* he added.

Mr Metcalfe stressed that, in assessing any grievance, it was not the MPB’s role to repeat the selection process and make its own decision.

Instead, the Boards examined the decision taken by a panel, and the basis or evidence behind it, to assess “if it stacks up” in relation to the Ministerial Order requirements, he said.

Mr Metcalfe acknowledged the Department was responsible for setting all recruitment-related policy and processes and these aligned with details specified across MOs. But he reiterated the MPB could only perform the “task of review” based on the scope given to it via the respective Orders.

*“So while we deal with selection grievances, there are only certain grounds set out under the legislation that we can investigate further.”*

Noting several grounds were similar for the Principal class and Teaching Service, Mr Metcalfe highlighted ‘selection panel composition’ as one key difference. *This aspect was not strictly listed as an objectionable factor for principals under MO 1006, if a panel did not address merit and equity training requirements or gender mix,* he said.

Mr Metcalfe advised other examples that were often aired, but are technically outside the MPB’s jurisdiction to make rulings, included:

- Referees of a shortlisted applicant not contacted. (Not covered under MOs).
- Panel biased for assorted reasons. (MPB cannot address bias, only alleged discrimination regarding protected attributes).
- Questions not distributed at same time, if shared before interview.
- Presentation function did not work properly during a virtual interview.

Mr Metcalfe emphasised that if in doubt, potential applicants should contact the MPB office to discuss their concerns, with a view to developing an application which is underpinned by appealable grounds, where appropriate.

## SELECTION GRIEVANCE GROUNDS

Principal Class – Grievance grounds (as per MO 1006, see Schedule 3)	Teaching Service – Grievance grounds (as per MO 1388)
a) <b>Fair &amp; equitable treatment</b> – for all applicants without regard to protected attributes. (Includes: age, disability industrial activity, political/ religious belief, family status, sexual orientation). <i>Full details at paragraph 2 of MO.</i>	a) <b>Fair &amp; equitable treatment</b> – for all applicants without regard to protected attributes. (Includes: age, disability industrial activity, political/ religious belief, family status, sexual orientation). <i>Full details at Part 9 of MO 1388.</i>
b) <b>Assess all applicants against the selection criteria</b> – in context to lead & manage planning, delivery, evaluation & improvement of education of all students. <i>See 5(a).</i>	b) <b>Assess all applicants against the selection criteria</b> – and qualification requirements for the role. <i>See Part 9.</i>
c) <b>Reasons for not shortlisting any applicant for interview</b> – a brief record should be made. <i>See 7(b).</i>	c) <b>Selection panel composition</b> – at least three people, including an employee trained in merit & equity principles, and provision made for gender representation. <i>See Part 9.</i>
d) <b>Interview focus <u>must</u> be the selection criteria</b> – via set of questions. <i>See 8(c).</i>	d) <b>Interviews <u>should</u> focus on the selection criteria.</b> <i>See Part 9.</i>
e) <b>Suitable applicants ranked in order of merit</b> – by selection panel. <i>See 10.</i>	e) <b>Suitable applicants ranked in order of merit</b> – by selection panel. <i>See Part 9.</i>
f) <b>Panel recommendation</b> – it should attempt to reach <u>unanimous</u> agreement or a majority decision, or report that it was unable to recommend. <i>See 11.</i>	f) <b>Panel recommendation</b> – it should attempt to reach agreement or a majority decision, or report that it was unable to recommend or that no applicant was suitable. <i>See Part 9.</i>
g) <b>Panel member is unable to complete procedures.</b> <i>See 12.</i>	g) <b>Written report</b> – by panel summarising the selection process. <i>See Part 9.</i>
h) <b>Written report</b> – by panel when selection process is completed. <i>See 13.</i>	

## ONE COMMON GRIEVANCE GROUND

Any employee may apply to MPB for review of a selection decision where they believe the decision:  
*“is manifestly inconsistent with the evidence of the nature of the vacant position or the school in which the vacancy occurs or of the qualifications and experience of the applicant and the employee provisionally transferred or promoted.”*  
*(See section 2.4.54(2) of ETRA 2006 & Part 9 of MO 1388, which is specific to position classifications)*

# MPB News

## Don't get lost in (staff) translations

Translation of eligible staff from fixed-term to ongoing employment is a laudable concept within the education sector. Understanding how the policy should be applied is key to ensuring the process is run fairly and consistently.

Each year in April, the Department of Education plays a key role helping schools identify any eligible fixed-term employees for a suitable ongoing position that the school would otherwise advertise.

A crucial first step in this exercise is for the school to ascertain if it has a suitable ongoing position available.

However, at times, this process risked being derailed when a school determined it did not have such a position and this decision was unable to be backed up with suitable evidence such as declining enrolments, an excess staff situation or related budget woes, according to Merit Protection Boards (MPB) registrar Greg Donaghue.

*"This is when cases are often appealed and the MPB is obligated to assess if the employer has met the specific requirements, as set down under the VGSA (Victorian Government Schools Agreement 2022), that enable refusal of a staff translation at a given point,"* Mr Donaghue said.

*"The requisite policy threshold entails that the employer has to believe 'an excess staff situation will arise' and also 'has good reason' for believing this,"* he explained.

Mr Donaghue advised that arguments from a principal suggesting a translation approval could reduce their flexibility in managing the school's staffing plan or related operations were "in no way sufficient grounds" to meet the strict VGSA requirement.

**The VGSA states the following, at clause 21(2)(d), regarding staff translation:**

*"when the Employer has good reason to believe that, should a person not be employed fixed term, an excess staff situation will arise, consistent with the workforce plan as determined in accordance with clause 12. This may include predicted enrolment decline determined by the enrolment predictions of the Employer."*



Continued p.9

Don't get lost in (staff) translations ... from page 8.



Equally, the notion of “potential excess staff” was not the test that applied for the employer either, he emphasised.

*“A belief in a possible or potential excess situation isn’t sufficient to indicate a suitable ongoing position doesn’t exist or deny an application for translation,”* Mr Donaghue said.

*“This simply represents concern an excess situation might arise at some point in future. It is not a belief, with good reason, that an excess staff situation ‘will arise,’* he observed.

Urging decision-makers to ensure the basis for their actions directly aligned with policy, Mr Donaghue stressed it should also be readily defensible with supporting evidence and data.

This included details from a school’s multi-year trend analysis showing declining enrolments and a budget deficit outlook, and related staffing profiles. Mr Donaghue added that any other key staffing data or calculations, along with a school’s number of eligible fixed-term staff and advice on any internal processes already conducted, could also provide crucial supporting weight.

Mr Donaghue indicated that, in some appeals, the unknown intentions of staff on long-term leave had been presented as a key reason for not approving a current translation. However, he confirmed the MPB did not accept this premise, given Department leave policy allowed absent staff up to 1 October each year to give notice of their intentions.

*“The Boards acknowledge that this is simply a reality all schools have to accommodate without disadvantaging the entitlements of wider staff, as per employment policy”* he said.

Returning focus to the Translation policy, Mr Donaghue advised there were several scenarios detailed where a change to ongoing employment did not apply. These included where a person was employed for a fixed period to replace someone “absent on leave of 12 months or less”, and “to replace an employee during a parental absence...”

*“Overall, the key is to review the policy and ensure that a suitable ongoing position exists and eligible employees are considered for translation to ongoing, considering the genuine current circumstances of the school,”* Mr Donaghue stressed.

# MPB News

## Merit training ready for the real world

Real scenarios and case studies make the Merit Protection Boards' ongoing merit and equity training program real and applicable, according to its registrar Greg Donaghue.

*"With about 75 per cent of current participants from across education undertaking the training for the first time, we want to ensure they can see how it applies in the real world,"* Mr Donaghue revealed.

*"Rather than it remain some abstract concept, we seek to give participants, and especially those involved in staff selection, skills they can apply back in their workplace, with assurance and a positive approach,"* he said.

Mr Donaghue advised that the training – now streamlined and delivered in a 90-minute session over Webex – sought to remove any mystery as to what personnel felt merit and equity might mean.

The new training now explores concepts of merit, equity and fairness in broad terms before drilling into practical details in six key areas including:

- conflict of interest
- prior knowledge
- comparative assessment of applicants
- documentation of selection process & reporting

Mr Donaghue said the latest training, which helped address a legislative requirement for all selection panels across government education settings, suited individual participants regardless of role or experience.



### MERIT & EQUITY TRAINING DATES FOR TERM 4

Tuesday 2 December 2025

Time: 9.30 - 11am

Delivery: via Webex

To Register: log onto eduPay, click 'MyLearnED' and search for 'Merit'

## Timely reminder on temporary transfers

With recruitment for the next school year hitting top gear during term 4, school leaders are reminded to be aware of latest policy now applying for staff temporary transfers.

The Department of Education's Recruitment in Schools Guidelines provide clear direction on staff release for temporary transfers spanning two school years, according to Merit Protection Boards Senior Chairperson Steve Metcalfe.

If principals could not agree on a release date, then policy now directed that release would be at the start of the new school year, Mr Metcalfe confirmed.

Urging principals to take the lead in negotiating local level solutions, Mr Metcalfe advised that this policy intent would be the MPB's starting base in any grievances that came before it.

*Issues associated with temporary transfers usually spiked during term 4 as workforce recruitment for the coming school year intensified, and this resulted in a jump in grievances, he stated.*

Mr Metcalfe encouraged stakeholders to take time to revisit the Department's latest policy details.



### Recruitment in Schools Guidelines requirements:

Where an ongoing employee successfully applies for an advertised fixed-term position of 12 months or less at another school, the timing of release will be negotiated between the two principals.

Where there is no agreement on the timing, the following will apply:

- release at the commencement of the following year
- where release is in the same year, the base school principal may refuse an employee's release where the principal is unable to replace the employee before release
- where an ongoing employee's temporary transfer is to be extended (by appointment to an advertised vacancy or otherwise) the principal of the school must notify the base school principal by 1 November that the transfer is extended. If this does not occur, the employee will return to the base school unless otherwise agreed by the principals.

For full policy details, see:

<https://www2.education.vic.gov.au/pal/recruitment-schools/policy-and-guidelines/employment-promotion-or-transfer>



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