

BUSY YEAR FOR MPB SO FAR...



Beyond halfway in another school year, the cases and enquiries coming to the Merit Protection Boards (MPB) so far in 2025 reflect a busier time compared to last year.

Again, we're pleased to share this edition of our regular *MPB News* with you, helping keep you informed on latest trends and stakeholder conversations relating to workplace merit, training and grievance matters.

Latest data for 2025, as shown on page 4, reveals that grievances about complaint issues continue to account for a sizable portion of MPB business, following a jump in the number of complaint grievances that made their way before the MPB late in 2024.

Despite such a pattern, the MPB remains acutely aware that below the surface in many issues there are individual stories, layered with a range of emotional experiences.

The MPB seeks to respond to each and every matter with genuine understanding and a readiness to engage in informative, supportive ways.

We understand, well, our central role as an arbiter, but also hope to provide teaching service stakeholders with key advice and a positive outlook on matters so often faced with real concern.

On other hot topics, this latest edition of *MPB News* offers insights on temporary transfers and parental leave, including policy expectations when returning to school. We also take a closer look at Complaint grievances (offering some helpful advice) and reflect on the concept of natural justice.

Enjoy reading on. We hope you might find something useful to your work, worth sharing with colleagues or, perhaps a helpful reflection to consider during timeout on a busy work day.

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MPB News

Message from the Senior Chairperson



Welcome to our second semester edition of *MPB News* for 2025. As our latest data shows, it's been a hectic year so far and, moving into the second half, we face what are invariably our busiest two terms dealing with stakeholder submissions and training.

Through this newsletter, we're keen to alert our teaching service stakeholders to themes and latest issues we are seeing emerge from the business coming to our door.

We are also keen to engage with the sector, providing advice, key data and insights. We hope this results in better operations on the ground, in schools and other daily education settings.

As an independent statutory body sitting adjacent to the Department of Education, our central role is to ensure the principles of merit and equity are applied in the teaching service. This means we're regularly kept busy with reviews and appeals - which are a right for all employees - as well as offering training to create better-informed education workplaces.

Utilising the vehicle of the *MPB News*, we hope to engage with peak bodies, leaders and schools in a more direct and productive way, providing greater assistance and tips to the teaching service.

This edition puts the spotlight on the perennial issue of complaints. We also turn attention to temporary transfers, revealing misconceptions around principal authority and decision-making capacity under latest Department policy.

On another front, our data reveals that selection grievances across the teaching service continue to trend down. We would like to think this is an indication that our revised MPB merit and equity training is making a real difference. Details on upcoming training, which is a 90-minute online session, are in this edition.

If you're due, or overdue, for such training, enrol now. It's easy, but not before you've read the latest offering in this *MPB News*.

Steve Metcalfe

Senior Chairperson

MERIT & EQUITY TRAINING DATES FOR TERM 3

29 July and 3 September 2025

Time: 9.30 - 11am

Delivery: via Webex

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

IN PROFILE: Rohan Jaremenko *Policy Officer, MPB*

As one of the MPB's longest-serving staff, Rohan Jaremenko provides a steady hand and reassuring manner in the public-facing component of his role as Policy Officer.

Rohan has been with the MPB since 2006 and understands well that central to its role is "providing a critical avenue of redress for all Department of Education employees".

In helping deliver this objective, Rohan provides policy advice, support and research to the Senior Chairperson and Boards as they go about administration of their key duties.

At the same time, a good part of his role includes responding directly to external enquiries, mostly from school-based personnel, offering policy and jurisdiction guidance.

Before joining the MPB, Rohan spent about eight years in other roles at the Department's central office working in both Corporate HR and Schools HR.

Rohan enjoys the "real difference" the work of the Boards can make to the working lives of Department staff at all levels.

"We're a small team, but play a vital part in making education workplaces more aware and understanding, and supportive of all," he said.

Rohan's experiences across the Department are complemented by earlier roles working in schools and administration.

Don't be surprised if Rohan takes your call, next time you call 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 is one of seven statutory bodies that work in conjunction with Victoria's Department of Education.

The MPB provides an independent mechanism to hear appeals and grievances for employees of the department, schools, and associated education statutory authorities, ensuring the principles of merit and equity are upheld.

Appeals and grievances include:

- transfer and promotion
- grievances of a general personal nature (eg: complaints, leave requests, transition from fixed term to ongoing employment)
- incapacity
- grievances in relation to police record checks.

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

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

Each board that is convened comprises three members. These are selected by the Senior Chairperson from the following three pools:

- persons who have been nominated by the Minister to be chair
- persons nominated by the Secretary
- teaching service employees nominated by the Minister.

There are about 60 part-time board members across these pools.

Steve Metcalfe is the MPB's current Senior Chairperson. He heads a small, specialised staff team that includes Greg Donaghue as manager & registrar and Shaun Corbidge as assistant registrar.

MPB News

Busy year so far as complaints hold up

The Merit Protections Boards’ (MPB) services continue to be well utilised with total grievance cases in the first half of 2025 up on the same period in the previous year.

Latest data shows a marked increase in complaint grievances across these two periods, according to Boards’ registrar Greg Donaghue. (See graphs).

This led to complaint matters accounting for about a quarter of all cases dealt with by the MPB over the first two terms of this year, Mr Donaghue said.

“It’s certainly been a busy 2025 so far and when complaints are up it can be a sign that stakeholders’ understand their roles and rights,” Mr Donaghue reflected.

“In reality, it most likely reflects busy, time-pressured operations on the ground, but it’s pleasing to note the MPB is able to provide an avenue for clarity for all parties.”

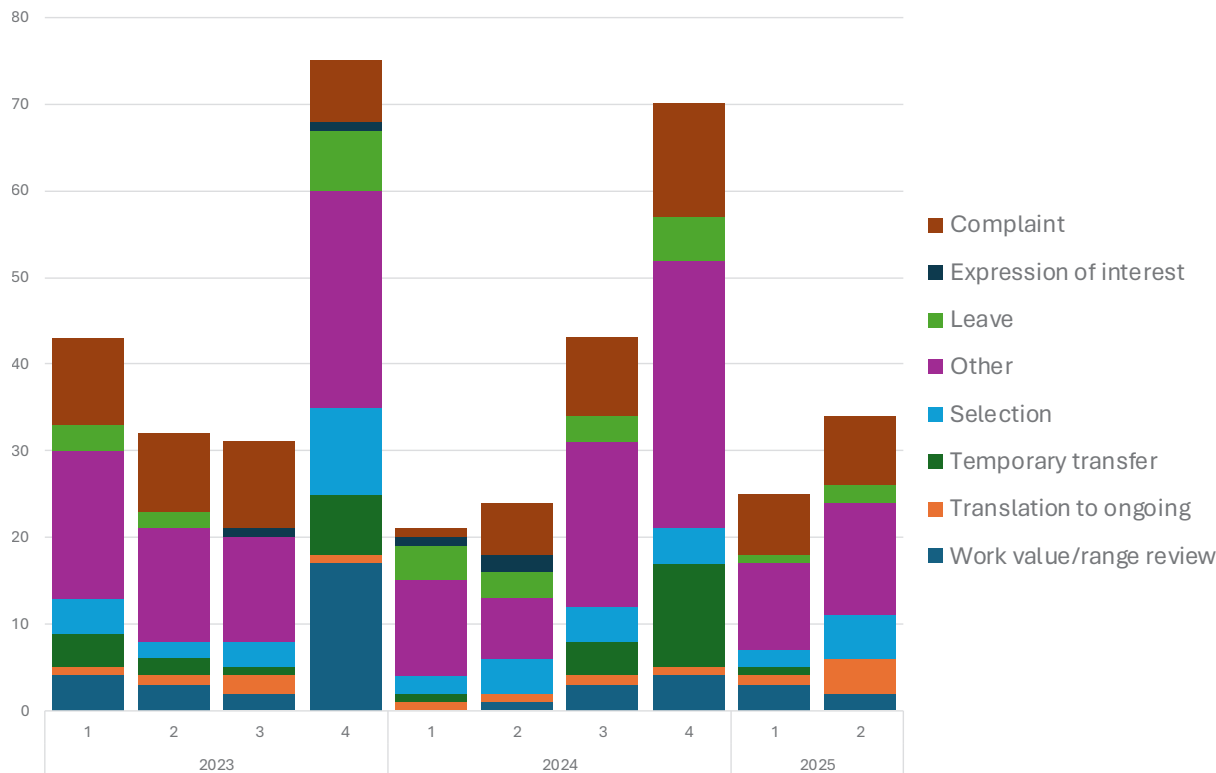
Another trend in the half-year data is a reduction in leave-related grievances, dropping in comparison to the same timeframe last year.

Mr Donaghue explained that latest temporary transfer and selection grievance matters had also reduced, following the number of cases that reached the MPB in term 4, 2024.

“This continues a trend from previous years, confirming that temporary transfer and selection issues peak in term 4 as staff and schools gear up for new roles and changed arrangements in the coming new school year,”

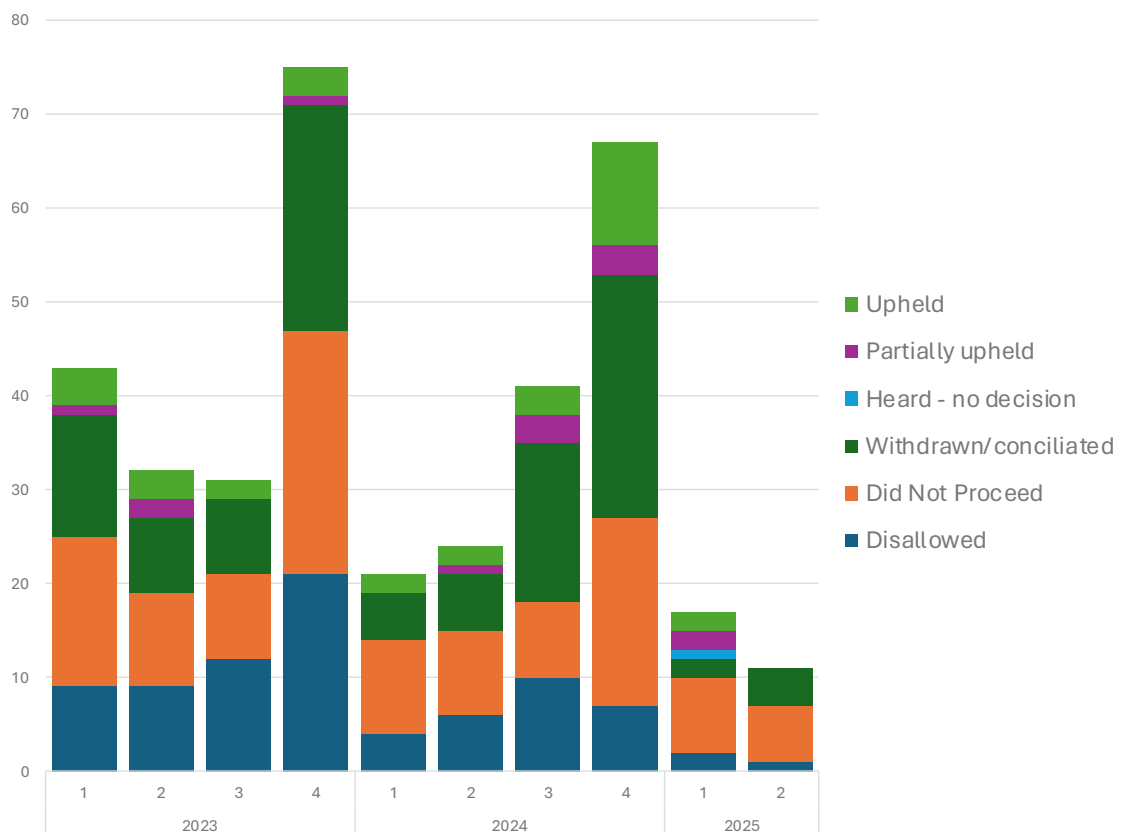
Mr Donaghue advised.

Number of grievance types for teaching service grievances received per quarter





Grievance hearing outcomes and grievances withdrawn/conciliated for teaching service
grievance per quarter



MPB News

Best tools for solid case on complaints

Precise framing of allegations and a sound evidence base are key to good complaints handling across the teaching service, advises the Merit Protection Boards.

Not only do these two factors provide solid ground for leaders, they send a strong signal should a matter invariably find its way before the MPB.

As current caseload data for 2025 shows a clear spike in complaint-related grievances, the MPB has cast a spotlight on themes vital to good practice in complaint cases.

Central among these are careful crafting of allegations and focusing on a good evidence base, paying attention to weight and reliability, according to MPB Senior Chairperson Steve Metcalfe.

The stubbornness of latest complaint numbers, on the back of a rise over the second half of 2024, reflected repeated issues with these key themes Mr Metcalfe revealed.

Other areas that stood out as ongoing hotspots were the role of hearsay evidence and, for appellants, ensuring any decision or action taken directly affected their employment, such that it was “an appealable action” under *Ministerial Order 1388*, Mr Metcalfe said.

“If allegations fail to specify the nature of a complaint including key particulars or, equally, if evidence is not fully captured and capable of review, then decision-makers risk framing rulings on an incomplete picture,” he outlined.

“Our job at the MPB is not to re-make the decision after the principal, but, in the context of our powers, consider if the decision made breached any Order, policy or is unreasonable. In other words, was the decision reached a sensible and justifiable option available,” he said.

Mr Metcalfe highlighted that, when complaints grievances reached the MPB, it carefully considered if processes followed were consistent the Department of Education’s recently updated Guidelines for Managing Conduct and Unsatisfactory Performance in the Teaching Service.

“We first look at allegations, which should ‘establish the precise nature of the complaint’ and they should point an investigation directly to the alleged behaviour or conduct of the employee that would be considered inappropriate or unprofessional,” he said.

“Both of these aspects are vital to helping ensure procedural fairness – an individual who is the subject of the matter needs

to be able to see and understand the details so they can respond properly.” (See Example of precise detailing of an allegation on next page)

Next, came the key theme of evidence, Mr Metcalfe explained, whereby the principal or decision maker had to consider whether the weight and reliability of evidence demonstrated the complaint had been substantiated or not.

He confirmed the standard of proof to be applied by schools in complaints cases was the civil standard ‘on the balance of probabilities’ – that is, it was more likely than not the alleged conduct occurred.

This is an expectation of both the Department’s Guidelines and the MPB. It differs from the ‘beyond reasonable doubt’ standard, which is the criminal burden of proof.

“Such a standard requires the decision-maker to feel an actual persuasion as to the existence of the alleged facts. There must be a reasonable satisfaction a piece of evidence is more likely than not to be true,” he said.

Mr Metcalfe stressed it was vital to obtain and also document eye-witness testimony of any third-party witnesses to a matter, where it existed.

This could include student accounts, but he conceded such an area became more challenging with much younger primary students.

“If there are direct witnesses to a particular incident, the MPB strongly recommends they be interviewed or provide a statement as soon as possible, and records should be made as they can also help with any later review,” Mr Metcalfe said.

“Independent witnesses can assist in clarifying the nature of the alleged matter. For example, if it’s alleged physical contact, such as a claim a teacher hit or pushed a student during class, then several others nearby might be witnesses to the event,” he said.

“With all such evidence, the MPB looks to see if it helps build a picture with consistent themes or not, and may go towards supporting the reasonableness of a decision.”

Best tools for solid case on complaints (cont.)

On the topic of hearsay evidence, Mr Metcalfe advised *“the Board would prefer to see direct testimony if it exists”*.

He indicated the MPB could take into account any hearsay evidence during hearings, but the crucial difference here was the weighting applied.

“The Board is of the view there is significant risk that factors become distorted in relay of hearsay evidence, not necessarily through any malicious intent but through the individual nature of human communication. This is influenced by a raft of factors including the knowledge, disposition, language use, listening skills and individual interpretation,” he said.

“We also look at the absence of evidence where it should have, likely, existed. This could be a group setting or a regular class where it would be reasonable to assume someone else might have noticed or observed something,” he added.

In cases where there were no independent witnesses to provide evidence, Mr Metcalfe pointed out that the Department’s Guidelines advised a principal or decision maker

could make a decision based on the credibility of the parties involved.

For appellants lodging grievance bids, Mr Metcalfe stressed that the Ministerial Order specified a decision or action could only be appealed where it *“directly affects the employee in their employment”*.

Mr Metcalfe encouraged individuals to resist making submissions solely on the basis of claiming the process was flawed or unreasonable. Instead, they should consider if any outcome reached included or directed an action that directly affected them in their work.

“Examples of this could be decisions that include a direction to undertake specific additional training, supervision or mentoring, and recording specific actions on your employment record,” he said.

“These are employment actions and, as such, are appealable actions in the context of the relevant clause in the Ministerial Order.”

For full details on the Department’s Guidelines for complaints against employees, visit:

<https://www2.education.vic.gov.au/pal/complaints-misconduct-and-unsatisfactory-performance/policy-and-guidelines>

EXAMPLE: BEING PRECISE IN SETTING OUT AN ALLEGATION

Focus on including the particulars in the allegation rather than listing statements as fact

PREFERRED APPROACH (PRECISE)

It is alleged you engaged in inappropriate conduct by verbally insulting Ms Wilson in the school carpark after she engaged you in a heated conversation regarding your child’s behaviour at a sporting event.

If helpful, above example could be followed by statement of other key particulars, ie:

- The alleged incident occurred between 3:30 - 3:45pm on Monday 14 February;
- Two other teachers supervising pick-ups observed you in a heated exchange with Ms Wilson after Ms Wilson approached you at the southern edge of the carpark;
- Both teachers observed Ms Wilson make derogatory remarks about your family member, and heard you respond by loudly calling Ms Wilson a “scum” and “lowlife”;
- The language you used was unbecoming of the standards expected at our school. It contrasts with the professional values and expectations for teachers as outlined in clause 11 of Ministerial Order 1388, by which you are expected to be civil, courteous and observe fairness and equity in all official dealing with the public.

NON-PREFERRED APPROACH (LISTS STATEMENTS ONLY)

It is alleged that:

- a) on Monday 14 February you were in the school carpark after school.
- b) you had a conversation with Ms Wilson, who got out of a white car.
- c) Ms Wilson was unhappy about an incident between your children during a sports event the previous weekend.
- d) you used derogatory language to Ms Wilson.
- e) Ms Wilson was very upset by your tone and this is not the first time you have clashed with her.
- f) you should have confined your interaction with Ms Wilson to official school business.

MPB News

Natural justice: a concept that can confuse

When complaints and allegations are laid against staff across education settings, the concept of natural justice often attracts swift mention also.

But what exactly does this legal term mean?

As Merit Protection Boards registrar Greg Donaghue explained, the rule of natural justice requires that a person whose rights or interests may be adversely affected by the exercise of a statutory power be given 'a reasonable opportunity to be heard'.

"It's central to the roles of decision-maker and subject, alike, both as a principle and a function," Mr Donaghue said.

"But, at times, it's misunderstood and taken to mean many other practical things."

In broad terms, a reasonable opportunity to be heard entails a person being afforded two key components:

- prior notice of the substance of matters alleged against them;
- a reasonable opportunity to respond before statutory power is exercised.

(Note: this does not necessarily require an oral hearing)

In the context of a public official's investigative powers, Mr Donaghue noted courts had been careful in relaying what the official must do to comply with the rules of natural justice, ensuring any investigation is not compromised or the statutory function frustrated.

He detailed four elements that needed to be upheld to achieve natural justice: a hearing appropriate to the circumstances; lack of bias; evidence to support a decision; inquiry into matters in dispute.

Importantly, he advised there was **no** universal principle entitling the person being investigated to the following elements:

- receive notice of an investigation, and its subject matter, at the start of the investigation;
- be informed of the identity of a witness providing evidence or information that was adverse to that person;
- attend when a witness provided evidence or information, or cross-examine the witness;
- receive a copy of any document provided by a witness or a transcript of evidence from a witness;
- be informed during the course of an investigation of a public official's preliminary views about the outcome of the investigation.

"Awareness among our education stakeholders that these factors are not obligatory is equally critical, given concerns are sometimes raised in MPB hearings that individuals haven't been afforded natural justice on some of these grounds," Mr Donaghue revealed.

"It's not uncommon for us to hear complaints from appellants, arguing processes had been breached – that they did not receive full records of evidence or documents detailing witness statements," he said.

During an investigation, a public official may also receive information which is confidential in nature or from a confidential source, and disclosure of such information, or the identity of the source, may have prejudicial consequences.

Mr Donaghue indicated that, in such cases, 'a reasonable opportunity to be heard' was often satisfied by providing the person being investigated with the 'substance' of any allegations made against them rather than the complete, primary information.

Case Study: Returning from parental leave part-time

Avoiding pitfalls in requests for flexible return to work.

In this study, we reveal how policy misunderstanding can often add further pressure to the lives of working parents as they seek to re-enter the workforce after the birth of a child.

The birth of a child brings with it waves of joy, dreams and a dedicated focus on the homefront.

When the reality of returning to work muscles its way to centre stage, a few shocks generally appear as willing co-stars.

Central among these is the ease, or not, in being able to secure a flexible return to work on a part-time basis that allows a hopeful, perhaps somewhat stressed, parent to juggle latest home and workplace responsibilities.

This can particularly be the case in busy education settings where the daily school bell stops for no-one, while principals also face constant pressure in juggling staff allocations and timetables.

Evidence from MPB grievances over the past year reveals that among regular challenges teaching service staff encountered, when seeking a part-time return from parental leave, were securing:

- a desired time fraction, or;
- specific work days, especially when scarce childcare demanded so.



MPB News

Case Study: returning from parental leave part-time (cont.)

Despite the urgent, daily realities facing all parties, MPB Senior Chairperson Steve Metcalfe advised the Department's policy intent to provide family-friendly workplaces structures was clear cut.

Building on direction of *Ministerial Order 1388*, the Resumption of Duty section in the Parental Absence – Teaching Service policy states:

'Where an employee has requested to resume from parental absence and their child is under school age, they may request to return to duty following parental absence on a part-time basis to assist the employee in reconciling work and parental responsibilities. A written response to such a request is required no later than 21 days following the date of the request, including the reasons where a request is refused.'

"Not only does this policy lay down explicit expectation to support staff, returning from parental absence, to balance work and family needs, it highlights the principal should give a written response to any staff request in 21 days," Mr Metcalfe stated.

"This latter aspect is sometimes overlooked in schools, particularly where a staff member has provided their request in the days or weeks before starting parental leave," he said.

"However, it remains a critical factor, especially if the request is refused as this should be both documented and defensible, given the broad policy objective conveyed."

On another front, Mr Metcalfe explained that, from several cases that had come before the MPB recently, there appeared to be some confusion in schools over application of the

policy when staff were returning after the birth of a second or subsequent child.

Here, related policy states:

'Where an employee returns to duty on a part-time basis, the employee will revert (unless otherwise agreed with the principal) to the time fraction the employee was working immediately prior to the commencement of the employee's first period of parental absence when the youngest of the employee's children reaches school age.'

Mr Metcalfe confirmed the purpose of the above clause was to protect an employee's substantive time fraction, giving them the right to return to full-time status as they may have been before having children.

However, he indicated, in some matters it had been wrongly inferred that the part-time fraction negotiated for return after a first child also applied in any subsequent returns from parental leave.

"But this is definitely not the case," he stressed.

"Rather, if another period of parental leave occurs, the Ministerial Order and policy suggest any related request to return part-time should be treated as a new application," he said.



Pointing once again to key detail under the policy's Resumption of duty banner, Mr Metcalfe said the policy specified *"any such request will be considered having regard to the employee's circumstances and the operational needs of the school"*.

Further detail on the Parental Absence – Teaching Service Policy is at:

<https://www2.education.vic.gov.au/pal/parental-absence-teaching-service/policy-and-guidelines/resumption-duty>

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

Discretion a matter of timing in Temporary Transfer decisions

Term 4 may be peak season for temporary transfer requests, but principals are being alerted to a crucial policy difference for decisions on certain cases at other times of the year.

The critical aspect of discretion came into the picture for principals in relation to short-term requests occurring in the same school year, highlighted Steve Metcalfe, the Merit Protection Boards' (MPB) Senior Chairperson.

This varied from temporary transfer requests late in the year for the next school year, where the Department of Education's Recruitment in Schools Guidelines stipulate employee release would occur "at the commencement of the following year" if principals could not reach an agreement, Mr Metcalfe explained.

"It's all about timing and, across these two different scenarios that arise in schools, principals can face even greater challenges replacing a staff member at short notice within the same school year," Mr Metcalfe said.

"The element of discretion remains for principals to refuse such a request in this case, if they can demonstrate they have taken reasonable measures in trying to find a suitable replacement," he said.

"Reasonable business grounds still strictly apply under the policy and the MPB would look carefully for these in any appeal. A principal can't simply say 'No' in refusing a request."

Key details in the Recruitment Guidelines

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:

- **where release is required 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**
- Release at the commencement of the following year
- 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 between the two principals.

Mr Metcalfe urged stakeholders and principals to be "critically aware of this key policy difference" on staff temporary transfers, depending on the time of the school year.

He acknowledged that the Department supported temporary transfers and regarded them as a key option for teaching service staff to engage in new opportunities for 12 months or less, gaining professional learning and growth.

But Mr Metcalfe emphasised that the Recruitment Guidelines and MPB, alike, equally recognised principals could face extra

difficulty in identifying ready replacement staff, with little notice, within a school year. This was especially so during times like the present where there was an ongoing teacher shortage, he said.

"The policy makes allowances for such circumstances, arising from outcomes of the 2022 Victorian Government Schools Agreement and, at the same time, it provides clarity on expectations regarding the different types of transfer request," he added.

For full policy detail on temporary transfer of an ongoing employee, see the Recruitment Guidelines at:
<https://www2.education.vic.gov.au/pal/recruitment-schools/policy-and-guidelines/employment-promotion-or-transfer#temporary-transfer-of-an-ongoing-employee>

Did you know...?

A Department employee returning to duty after a parental absence may resume on the first day of any school term if written notice of their intention is given by 1 October in the year preceding the intended return date.

See the **Parental Absence – Teaching Service policy** for full details on returning to work after parental leave (pg 9).



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