

Our Ref: WM/0279/2001
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CIRCULAR TO CHIEF EXECUTIVE OFFICERS

MODES OF EMPLOYMENT POLICY

The Premier has recently announced a framework for the conversion of entry-level contract officers to permanent status and future management of fixed term contracts in the public sector. This is part of the Government's commitment to greater job security and improved entry-level opportunities for employees in the public sector.

Employment policy and guidelines have been revised to assist Agencies select the mode of employment most appropriate for their needs and act in accordance with the Government's labour relations priorities. Appended to the attached policy statement is a contract of employment template outlining key information to be considered when communicating and recording conditions of employment.

All appointments must:

- be in accordance with the Approved Procedures issued by the Public Sector Management Division of the Ministry of the Premier and Cabinet [see <<http://www.mpc.wa.gov.au/>>];
- comply with the Public Sector Standard on Recruitment, Selection and Appointment [see <<http://www.wa.gov.au/opssc/>>]; and
- be for permanent employment unless work is required for a specific task that has a limited duration or for which only short term funding is available.

Please bring this Circular to the attention of all officers who may directly or indirectly be involved in the appointment of employees.

Please contact your DOPLAR adviser should you need further information.

JEFF RADISICH
ACTING CHIEF EXECUTIVE OFFICER

21 May 2001

MODES OF EMPLOYMENT

- Agencies may appoint staff on a full-time, part time or casual basis.
- Commonly used modes of employment are permanent, fixed term contract, apprentice, trainee or casual.
- Agencies should employ staff on the arrangements most appropriate for their particular needs.
- Where fixed term contract employment is offered, the temporary nature of the appointment needs to be clearly specified and no commitment to on-going employment beyond the term of the contract should be implied, except in specific circumstances.

DEFINITIONS

1. Permanent officers are appointed for an indefinite period either full-time or part-time where work is on going.
2. Fixed term contract of service arrangements are used for work of a finite duration. Circumstances where these arrangements are appropriate include:
 - a) covering one-off periods of relief;
 - b) work on projects with a finite life, where funding is not guaranteed past a certain date or the work is seasonal in nature;
 - c) roles where the skills and abilities required to perform a function are expected to vary over time; or
 - d) for periods of traineeships, apprenticeships or cadetships.

There is no entitlement to compensation when employment terminates at the end of the term specified.

3. Casual employment has no guaranteed hours of work and is used to meet fluctuating or unforeseen short-term needs or where seasonal workloads occur. Casual employment is intermittent, however may be full time or part time with payment on an hourly basis where each employment contract is a distinct and separate arrangement. A casual loading is generally payable in lieu of sick leave, annual leave, long service leave and payment for public holidays.

POLICY

4. Chief Executive Officers have a right and a responsibility to ensure their organisations are staffed in an appropriate manner.
5. In forming an opinion on the particular type of employment contract to be offered, agencies should consider:
 - a) the nature of vacancy and skills required;
 - b) reliability and source of funding; and

- c) whether tasks are to be on-going or finite in nature.
6. Obligations relating to further contracts of employment need to be carefully considered. For example:
- a) where the possibility for further contracts is to be included in advertisements all conditions need to be tightly prescribed; and
 - b) if a contract is to be renewed or extended for a significant period of time because funding has been extended, the position may need to be readvertised.

PROBATION

- 7. The use of a probationary period offers agencies the opportunity to establish suitability of entry-level employees.
- 8. Permanent officers are usually appointed to the public sector on probation. A probationary period can be waived if the appointee is already within the public sector with at least six months continuous service.
- 9. Where a probationary period is utilised, the period must be relevant to the skill and competence level expected of the position. Generally a probationary period should not exceed 6 months.
- 10. Agencies must ensure a performance assessment is undertaken and finalise appointment decisions prior to the expiry of the period of probation.

LEGISLATIVE PROVISIONS AND SUPPORTING PROCEDURES

- 11. The Public Sector Management Act 1994 [PSMA] provides Chief Executive Officers with the authority to appoint staff as appropriate, to ensure their organisation is appropriately staffed, unless:
 - a) enabling legislation for an agency is inconsistent with the PSMA and would apply to the extent of such inconsistency; or
 - b) the agency is identified in Schedule 1 of the PSMA.
- 12. All appointments, including contract extensions and renewals must:
 - a) be in accordance with the 'Approved Procedures' issued from time to time by the Public Sector Management Division of the Ministry of the Premier and Cabinet which are available on the Public Sector Management Division web site < <http://www.mpc.wa.gov.au/> >; and
 - b) comply with the Public Sector Standard on Recruitment, Selection and Appointment. Details can be obtained from the Office of the Public Sector Standards Commissioner web site < <http://www.wa.gov.au/opssc/> >.

FURTHER INFORMATION

A contract of employment template has been developed to assist agencies communicate and record employment status. A copy is provided in **Attachment A**

TEMPLATE CONTRACT OF EMPLOYMENT
TEMPORARY EMPLOYEE (FULL OR PART TIME)

This contract of employment is made on _____ (date)
between the following parties:

The employing authority, of	And	The employee, of
Address for services of notices		Address for service of notices.

This contract provides employment as a fixed term employee

If in public service include "in accordance with s.64(1)(b) of the Public Sector Management Act, 1994 [PSMA] and the Approved Procedures".

1. Term of Employment

Employment will commence on [date] ,and
 expire on [date] .

OR

The term of employment will expire at the conclusion of the period/task referred to in Clause 4 – see guidelines attached.

In signing this contract, the employee understands that s/he has been contracted to the position for the above period only and following the expiration of this fixed term contract there is no obligation on either party to enter into any further employment arrangement.

2. Termination of employment

Subject to earlier termination in accordance with this contract [circumstances and wording should be determined on a case by case basis – see guidelines attached], the employment will terminate on the expiry of this contract of employment, on the date specified above.

In the event of a breach of the terms of this contract by either party or of any other term or condition of employment, the other party may terminate the employment.

MODES OF EMPLOYMENT

3. Hours of Work

Where these details are not addressed in the industrial agreement or award they should be included in the contract.

4. Position

You are appointed to Position No
as ...< >.

Funding for the position is finite and has been made available by < >
for a period of < > years to < >.

The duties of the position are as attached [needs to be attached]

5. Confidentiality, non competition or Trade Secrets Clause [if required]

Agencies considering including a clause of this nature should obtain specific legal advice on the terms.

6. Other terms and conditions of employment

Other terms and conditions are set out in the [name relevant industrial agreement or award] but such terms and conditions do not form part of this contract of employment.

The employer and employee are also subject to obligations in relation to their employment relationship which arise under relevant legislation, including [but not limited to] the:

- Public Sector Management Act 1994 [PSMA], together with the Approved Procedures which are available on the Public Sector Management office website;
- Western Australian Public Sector Code of Ethics;
- Public Sector Standards in Human Resource Management, made under the PSMA; and
- _____ Code of Conduct.
Department/Agency

Signatures

Signed by

_____ and _____
the Employing Authority the Employee

On theday
of....., 2000

On theday
of....., 2000

In the presence of

In the presence of

Witness's name (print).

Witness's name (print).

GUIDELINES

OPERATION OF FIXED TERM CONTRACTS

1. Permanent employment should be used unless work is required for a specific task that has a limited duration or for which only short term funding is available.
2. Tasks of a finite duration may be filled either by providing an opportunity for a permanent officer to be seconded to or act in the position or externally recruiting someone on a fixed term contract. Careful selection of the type of employment offered is required as once permanent officers accept a fixed term appointment their status as permanent officer ceases.
3. Fixed term contracts can be offered for any period up to a maximum of 5 years. It is generally advantageous to offer a single contract for the life of the task or project rather than cobble together a series of short-term contracts that could be difficult to administer or may imply on-going employment is available.
4. Suggestions of further employment should be avoided.

TERM OF CONTRACT

5. Details of the finite nature of the work together with those conditions upon which employment depends should be clearly stipulated in the contract.
6. Contracts may indicate that the term of employment will expire at the conclusion of the period referred to in the 'position' clause. However, such clauses require careful description to limit ambiguity about what constitutes completion. Claims for compensation for termination may be brought successfully where the contract is to run until some future event the timing of which is uncertain.
7. If it is difficult to accurately predict and prescribe the conditions that constitute completion of the contract it is better to use fixed time period contracts based on estimated time for completion. If the project has not been completed in the time, the agency and employee may agree to enter into another contract of employment for a further period.
8. Where fixed term employment concludes on the specified expiry date no right to compensation for termination exists.

EARLY TERMINATION PROVISIONS

9. Case law indicates that courts will generally hold that the contract should have continued to the specified expiry date in circumstances where a contract makes no provision for early termination.
10. A clause permitting early termination of the contract by either party on notice needs careful construction. Avoid using clauses providing open-ended rights for contracts to end early by the giving of notice as these can characterise employment as being for an indeterminate period of time rather than for a fixed term.

11. Provision may be made for termination of employment before the date specified, for a breach of the terms and conditions of employment. Action taken to terminate employment for breach needs to be managed cautiously if claims of unfair dismissals are to be avoided. In particular, strategies in respect to poor or unsatisfactory performance will need to follow provisions set out in industrial agreements or awards and obligations under the Public Sector Management Act 1994.

FURTHER CONTRACTS OF EMPLOYMENT

12. Renewals and extensions of contracts need to be handled carefully. In practice the length of a fixed term contract should be tailored around the anticipated time frame for the specific project.
13. It is more industrially sound to enter into a new contract of employment for a further period rather than renew or extend a contract. A series of fixed term contracts may suggest continuous employment and can be used to support claims that there was a reasonable expectation of further employment.
14. If an extension or renewal of contract is to be used, then new contracts need to specify the basis for renewal or extension as well.
15. Contracts should cover distinct periods of employment.

OTHER TERMS AND CONDITIONS OF EMPLOYMENT

16. Contracts should contain all terms and conditions of employment or make specific reference to the applicable industrial agreements, awards or policies together with any special requirements.