

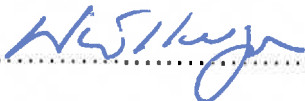
Employment Direction No. 1

## EMPLOYMENT IN THE STATE SERVICE

Operative Date: March 2016

### Directive

Pursuant to Section 17 of the *State Service Act 2000*, I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.



Issued by authority of the Minister administering the *State Service Act 2000*.

Date: 17<sup>th</sup> March 2016.

## Contents

1. Purpose .....	3
2. Application .....	3
3. Definitions.....	4
4. Legislation/Award Basis and Related Documents.....	4
5. Date of Operation.....	4
6. Advertising Duties to be Filled by Permanent Appointment or Promotion.....	5
7. Fixed-Term Employment.....	7
8. Advertising and Selecting a Person to Undertake Fixed-Term Duties.....	7
9. Appointment of a Person to Undertake Fixed-Term Duties.....	8
10. Vocational Education and Training (VET) Placements .....	9
11. Casual Employment.....	9
12. Subsequent Selections from a Selection Process.....	9
13. Requests by the Head of Agency to Change the Employment Status of a Fixed-Term Employee to a Permanent Employee.....	10
14. Requests by a Fixed-Term Employee to Change Their Employment Status from a Fixed-Term Employee to a Permanent Employee.....	11
15. Employment Requirements for Persons other than Australian Citizens and Permanent Residents .....	11
16. Essential Requirements.....	12
17. Promotion Without Advertising.....	12
18. Probation.....	13
19. Secondment of a Person or Employee.....	13
20. Review.....	14

Attachment 1 - Special Probationary Arrangements

## **I. Purpose**

This Direction details procedures and sets out minimum requirements in relation to:

- advertising duties to be filled by permanent appointment or promotion;
- fixed-term employment;
- advertising and selecting a person to undertake fixed-term duties;
- appointment of a person to undertake fixed-term duties;
- vocational education and training (VET) placements;
- casual employment;
- subsequent selections from a selection process;
- requests by the Head of Agency to change the employment status of a fixed-term employee to a permanent employee;
- requests by a fixed-term employee to change their employment status from a fixed-term employee to a permanent employee;
- employment requirements for persons other than Australian citizens and permanent residents;
- essential requirements;
- promotion without advertising;
- probation; and
- secondment of a person or employee.

## **2. Application**

- 2.1 This Direction is issued in accordance with Section 17 of the *State Service Act 2000* (the Act) and applies to employment in the State Service.
- 2.2 This Direction is binding on all Officers and employees exercising a delegated power or function in accordance with this Direction.
- 2.3 The terms and conditions of employment arrangements entered into in accordance with revoked Commissioner's Direction No. 1 operative from 1 November 2010, and in force immediately before the commencement of this Direction, shall continue to apply.
- 2.4 The Head of Agency may delegate a function or power to be exercised in accordance with this Direction, with the exception of Clause 19. – Secondment of a Person or Employee.
- 2.5 All new arrangements made on or after the operative date of this Direction must be in accordance with this Direction.
- 2.6 The provisions of this Direction apply to the employment of employees.

## Non-Application

2.7 This Direction does not apply to the appointment of:

- a. a person as a State Service employee under Section 13 of the Act; or
- b. Heads of Agencies, holders of prescribed offices, senior executives and equivalent specialists.

## 3. Definitions

**'The Act'** means the *State Service Act 2000*.

**'The Minister'** means the Minister administering the Act.

**'Employee'** means a permanent or fixed-term employee appointed under Section 37 of the Act.

**'Officer'** means a person appointed as a holder of a prescribed office, senior executive or equivalent specialist in accordance with Section 31 of the Act.

**'Head of Agency'** is the person holding that office for the purposes of the Act in accordance with Section 30 of the Act.

**'The Employer'** is the Minister administering the *State Service Act 2000* in accordance with Section 14 of the Act.

**'Employment Direction'** means an Employment Direction relating to the administration of the State Service and employment matters as issued by the Employer in accordance with Section 17 of the Act.

**'Head of the State Service'** means the person appointed by the Premier to perform the functions and powers of the Employer, other than the power to issue Employment Directions, in accordance with Section 20 of the Act.

## 4. Legislation/Award Basis and Related Documents

Employment Direction No. 7 - Pre-employment Checks.

*State Service Act 2000* sections 7, 9, 13, 14, 15, 16, 17, 20, 21, 30, 31, 37, 44, 46 and 50.

*Migration Act 1958*.

## 5. Date of Operation

This Direction will take effect from the date of issue and will remain in force until varied or revoked.

## 6. Advertising Duties to be Filled by Permanent Appointment or Promotion

### 6.1 The State Service Principles:

- a. the State Service is a public service in which employment decisions are based on merit [Section 7(1)(b) of the Act] and a decision relating to appointment or promotion is based on merit [Section 7 (2) of the Act] if:
  - i. an assessment is made of the relative suitability of the candidates for the duties; and
  - ii. the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties; and
  - iii. the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
  - iv. the assessment is the primary consideration in making the decision.
- b. the State Service provides a reasonable opportunity to members of the community to apply for State Service employment [Section 7(1)(l) of the Act]; and
- c. where it is proposed to permanently appoint a person or promote an employee to perform duties in an Agency, the duties must be advertised on the Tasmanian Government jobs website at [www.jobs.tas.gov.au](http://www.jobs.tas.gov.au) (the jobs website), unless the Head of the State Service determines otherwise.

### 6.2 Permanent "hard-to-fill" Vacancies:

- a. a Head of Agency may seek approval from the Head of the State Service to advertise a permanent vacancy with a closing date of up to a maximum period of 24 months. This is to allow an agency to make an appointment to an approved "hard-to-fill" vacancy at any time during this period; and
- b. requests by the Head of Agency for approval of "hard to fill" vacancies must be submitted on a case by case basis and contain evidence of the occupational shortage and the Agency's efforts to recruit. Requests for re-approvals after the expiration of 24 months will normally be granted by the Head of the State Service on the presentation of a brief written update of the current recruitment situation.

### 6.3 Advertising:

Advertisements for permanent appointments and promotions must contain at least the following information:

- name of the Agency;
- vacancy title;
- vacancy identification number;
- salary range;
- specific hours per week/fortnight;
- award and classification level;
- employment status;
- period of appointment (if applicable);
- region;
- brief description of duties;
- list of essential and/or desirable requirements;
- name and phone number of the contact officer;
- address for the submission of applications; and
- closing date for applications.

In addition to the above requirements, notice must appear advising the following:

- a. that applicants for a vacancy (other than Senior Executive Service vacancies) should note that, for a period of up to six months from the date of publication, the selection process for a vacancy may be used to fill subsequent or similar vacancies; or
- b. that permanent approved vacancies advertised as “hard-to-fill” can remain open for up to a maximum period of 24 months to allow appointments to be made during this period to specific vacancies where the duties and conditions of these vacancies are the same as those originally published.

#### 6.4 Closing date for applications:

- a. applications for advertisements on the jobs website are to close no less than 9 calendar days after the date of publication of a vacancy;
- b. vacancies advertised during the closure of Government Offices over the Easter and Christmas holiday periods are to have their application closing dates extended to cover the business days lost;
- c. the Head of Agency may approve a later closing date;
- d. late applications may be accepted at the discretion of the Head of Agency; and
- e. applications may be accepted for approved permanent "hard-to-fill" vacancies during a maximum period of 24 months from the date of the initial advertisement on the jobs website.

### 7. Fixed-Term Employment

(Duties for a specified term or for the duration of a specified task):

- 7.1 Permanent employment is the usual form of employment in the State Service. However, where necessary to meet the operational needs of an Agency, fixed-term employees may be appointed for a specified term or for the duration of a specified task [Section 37(3)(b) of the Act].
- 7.2 A Head of Agency must not make fixed-term appointments that could lead to the creation of an expectation of continuing employment; that is, employment that is of a continuing or indefinite nature or for which there is no expressed or implied end date to the instrument of appointment.
- 7.3 Before any decision is made to make or extend a fixed-term appointment, the Head of Agency must give consideration as to whether the duties would be more appropriately undertaken on a permanent basis.

### 8. Advertising and Selecting a Person to Undertake Fixed-Term Duties

- 8.1 For fixed-term duties up to and including 12 months, the Head of Agency must either:
  - a. advertise the fixed-term duties in accordance with Clause 6 of this Direction; or
  - b. select a person who is registered on a fixed-term employment register approved in accordance with Section 15(1)(b) of the Act; or
  - c. seek expressions of interest by either:
    - i. advertising the fixed-term duties within their own Agency; or
    - ii. advertising the fixed-term duties within their own Agency, and any other Agency as the Head of Agency determines.

- 8.2 Where a Head of Agency seeks expressions of interest:
- a. the Head of Agency is to determine application requirements and such requirements are to be included in the advertised expression of interest;
  - b. applications for the vacancy are to close no less than 5 working days after the date of advertising; and
  - c. the appointment of a person to perform the duties must only be made from applicants from within the advertised scope of the expression of interest.
- 8.3 Notwithstanding the requirements of Clause 8.1, for fixed-term duties up to and including 6 months, the Head of Agency may make a selection from employees in their own Agency without advertising.
- 8.4 For fixed-term duties of more than 12 months, the Head of Agency must advertise the duties in accordance with Clause 6 of this Direction.

## **9. Appointment of a Person to Undertake Fixed-Term Duties**

- 9.1 A Head of Agency may appoint a person as a fixed-term employee or assign those duties to a permanent employee to undertake fixed-term duties for a total continuous period of up to 36 months. The total fixed-term period includes the initial appointment/assignment and any additional appointments/assignments to substantially the same duties. The arrangement may be either:
- a) an appointment of a person as a fixed-term employee engaged under a fixed-term instrument of appointment; or
  - b) an assignment of fixed-term duties to a permanent employee to undertake fixed-term duties where payment, if appropriate, is to be made by way of a higher duties allowance in accordance with the relevant State Service Award.
- 9.2 Where the fixed-term appointment [hereafter taken to include assignment] made in accordance with Clause 9.1 is continued, the following maximums are to apply:
- a. where the initial period of appointment to undertake fixed-term duties is 6 months or less and an appointment was made without advertising, that appointment shall not be subject to any additional appointments beyond 6 months. However, where recruitment action has commenced in accordance with either Clause 6, 8.1 or 8.4 of this Direction, the appointment may continue beyond the 6 month period to enable that recruitment action to be completed, provided the total appointment period does not exceed 9 months;
  - b. where the initial period of appointment to undertake the fixed-term duties is up to 12 months, the total length of any additional appointments are not to exceed the length of the initial appointment (e.g. for an initial 10 month appointment, the total length of any additional appointment(s) cannot exceed 10 months); and



- c. where the initial period of appointment to undertake the fixed-term duties is 12 months or more and the vacancy was advertised on the jobs website, the initial appointment and any additional appointment(s) are not to exceed 36 months in total.
- 9.3 Fixed-term appointments, including those that are the subject of additional appointment(s), that provide continuous employment in excess of 36 months, may only be made in special circumstances and with the prior approval of the Head of the State Service.

## **10. Vocational Education and Training (VET) Placements**

- 10.1 Permanent or fixed-term employment is the usual form of employment for apprentices and trainees in the State Service. However, where the nature of the apprenticeship, traineeship or training requirement make it appropriate, a Head of Agency may agree with a Group Training Organisation (GTO) to provide a placement in that Agency to host an apprentice or trainee engaged by the GTO for the purpose of undertaking vocational educational and training for part of, or all of the period of the approved apprenticeship or training agreement.
- 10.2 Apprentices or Trainees undertaking VET placements in a host Agency are not employees of the State Service.

## **11. Casual Employment**

- 11.1 The appointment of a casual employee as specified in the relevant award or industrial agreement can only be made from a casual employment register approved in accordance with Clause 15(1)(b) of the Act, or from a pool of suitable applicants established following advertisement of the duties on a casual basis on the jobs website.

## **12. Subsequent Selections from a Selection Process**

- 12.1 A Head of Agency who, following due process, has selected a person to fill a vacancy, may make a subsequent selection from the same selection process within a period of up to 6 months from the date of advertising the vacancy if:
- a. the successful applicant has failed to take up the appointment or promotion; or
  - b. the successful applicant has vacated the duties to which he/she was appointed or promoted; or
  - c. another similar vacancy occurs that requires a person or an employee to undertake identical or substantially the same duties at the same Award or Industrial Agreement classification level as the originally advertised vacancy.
- 12.2 In making a subsequent selection in accordance with this provision, a Head of Agency must be satisfied that another suitable candidate had been identified in the order of merit documented in the original process.

- 12.3 If the original selection was for a fixed-term vacancy, a subsequent selection can only be made on a fixed-term basis as a full-time or part-time appointment for a period not greater than that originally advertised.
- 12.4 If the original selection was for a permanent vacancy, a subsequent selection can be made on a:
- a. permanent basis as a full-time appointment or promotion; or
  - b. permanent basis as a part-time appointment or promotion provided that the part-time option was notified in the original advertisement; or
  - c. fixed-term basis as a full-time or part-time appointment for a period of up to 36 months duration.
- 12.5 Where a Head of Agency selects a person as a permanent employee in accordance with Clause 12.4 (a) or (b), that appointment or promotion will be subject to the review provisions prescribed in Section 50(1)(a) of the Act.

### **13. Application by a Fixed-term Employee to have Duties Advertised for Permanent Appointment**

- 13.1 A fixed-term employee who has completed 24 months continuous service in the same duties may apply to their Head of Agency as the delegate of the Head of the State Service to have the fixed-term duties they are performing advertised for filling on a permanent basis.
- 13.2 If the Head of Agency determines that the duties are required on an ongoing basis, are funded, and are substantively vacant, and there is no reason why they should not be filled on a permanent basis, then the HoA should give consideration to advertising of those duties on a permanent basis.
- 13.3 Decisions on applications must be fully documented and made in a timely manner.
- 13.4 A decision to advertise duties on a permanent basis will be subject to normal vacancy control requirements as varied from time to time.
- 13.5 Where an application is not approved, the fixed-term employee is to be notified that he/she has 14 days from the date of advice of the decision to make an application to the Tasmanian Industrial Commission for a review of that decision under Section 50(1)(b) of the Act.
- 13.6 Decisions made under this Clause may also be evaluated by the Head of the State Service (or delegate) where determined as necessary.

#### **14. Change of Employment Status from Fixed-term to Permanent under Special and Exceptional Circumstances**

- 14.1 Under Section 37(4) of the Act, the Head of the State Service (or delegate) may change the employment status of an employee from a fixed-term employee to a permanent employee.
- 14.2 The Head of Agency, as the delegate of the Head of the State Service, may change the employment status at level of a fixed-term employee who has completed 12 months continuous service undertaking the same duties, where merit has been consistently applied, and where it can be demonstrated that one of the following special and exceptional circumstances exists:
  - 14.2.a transmission of business into the State Service;
  - 14.2.b following completion of a training, internship, graduate, or cadet pathway;
  - 14.2.c address a critical risk to the Agency; or
  - 14.2.d any other circumstance approved by the Head of the State Service.
- 14.3 Employees must be assessed as possessing all necessary requirements for permanent appointment and be performing duties at a satisfactory level as a prerequisite to permanent appointment.
- 14.4 Decisions must be documented, made in a timely manner and underpinned by an assessment of the public interest.
- 14.5 A decision to change the employment status of an employee from fixed-term to permanent will be subject to normal vacancy control requirements as varied from time to time.
- 14.6 Decisions made under this Clause may be evaluated by the Head of the State Service (or delegate) where determined as necessary.

#### **15. Employment Requirements for Persons other than Australian Citizens and Permanent Residents**

- 15.1 Persons who are not Australian citizens or permanent residents may hold a permanent or fixed-term appointment in the State Service provided that they, at all times, hold and comply with all visa requirements as determined by the Commonwealth Department of Immigration and Citizenship and the *Migration Act 1958*.

## **16. Essential Requirements**

- 16.1 Where a Head of Agency wishes to specify essential requirements other than those specified in an Award, Industrial Agreement, Legislation or Employment Direction, the Head of Agency shall first obtain the approval of the Head of the State Service [Section 15(1) of the Act]. This includes requirements relating to:
- a. educational qualifications clarifying or expanding on those that are stipulated only in general terms by an Award or Industrial Agreement; and/or
  - b. pre-employment checks [Employment Direction No. 7 - 2013].
- 16.2 Notwithstanding, duties that require essential requirements that are classified under the provisions of the Tasmanian State Service Award or Health and Human Services (Tasmanian State Service) Award, are to be determined by the employer in accordance with those Awards.

## **17. Promotion Without Advertising**

- 17.1 Promotion of a permanent employee without advertising is not to be made by the Head of Agency without the approval of the Head of the State Service. A Head of Agency may apply for approval for promotion without advertising where it can be demonstrated that special and compelling circumstances exist.
- 17.2 The Head of the State Service will consider the special and compelling circumstances on a case-by-case basis and will normally only approve promotion without advertising of one classification level.
- 17.3 If the Head of the State Service approves the intention to promote without advertising, the Head of Agency is to notify that intention in the Tasmanian Government Gazette (the Gazette), and allow 14 days for any aggrieved employee to make application to the Tasmanian Industrial Commission for a review of the intention to promote without advertising [Section 50(1)(b) of the Act].
- 17.4 If an employee makes application to the Tasmanian Industrial Commission for a review and that application is determined in favour of the applicant, the duties are to be advertised in accordance with Clause 6 of this Direction.
- 17.5 If the Tasmanian Industrial Commission dismisses the application the nominee is promoted and the promotion is to be notified in the Gazette.
- 17.6 If no employee makes application to the Tasmanian Industrial Commission within 14 days for a review of the intention, the nominee is promoted and the promotion is to be notified in the Gazette.

## **18. Probation**

- 18.1 Probation is to be applied in relation to the appointment of a person as a permanent employee to the State Service [Section 37(6) of the Act].
- 18.2 With the exception of the variations listed in Attachment I to this Direction, the period of probation for permanent employees on appointment will be at the Head of Agency's discretion but must be a minimum of 1 month and no more than 6 months from the date of appointment.
- 18.3 Where an employee on probation is absent from duty on approved leave or workers compensation, the Head of Agency may determine that the absence does not form part of the employee's period of probation and extend the employee's probation accordingly.
- 18.4 At the end of the period of probation the Head of Agency shall:
- a. confirm the appointment at level; or
  - b. terminate the appointment in accordance with Section 44(3) of the Act.
- 18.5 A Head of Agency may permanently appoint a person without probation where immediately before appointment the person was a fixed-term employee for a period of more than six months in the same agency at the same level and all aspects of their performance has been assessed as satisfactory.

## **19. Secondment of a Person or Employee**

- 19.1 The Head of the State Service may, if he or she considers it in the public interest to do so and with the agreement of the Head of Agency, the organisation and the employee, make arrangements for:
- a. a person who is not an employee to undertake duties in their Agency (referred to as a secondment into the State Service) [Section 46(1)(a) of the Act]; and/or
  - b. an employee to undertake duties with an organisation that is not an Agency (referred to as a secondment out of the State Service) [Section 46(1)(b) of the Act].
- 19.2 A secondment into or out of the State Service is to be:
- for a specified term or for the duration of a specified task; and
  - by secondment arrangement in accordance with Section 46 of the Act.
- 19.3 For each proposed secondment the Head of Agency is to provide the Head of the State Service with a statement as to why that secondment is in the public interest.
- 19.4 The Head of Agency is to have the proposed terms of the arrangement signed by all parties before forwarding the arrangement to the Head of the State Service for signature. This process must be completed prior to the secondee commencing the secondment. The Head of the State Service is unable to make a retrospective secondment arrangement.

- 19.5 To enable the Head of the State Service to make the secondment arrangement into the State Service, there needs to be a written agreement between the Head of Agency and the Chief Executive Officer or Authorised Officer of the outside organisation, covering the terms and conditions outlined in the "*Secondment of a person who is not an employee into the State Service*" document, available at the State Service Management Office website ([www.ssmo.tas.gov.au](http://www.ssmo.tas.gov.au)).
- 19.6 Persons from outside organisations who are seconded into the State Service are, during the period of their secondment, considered to be employees for the purposes of Section 9 of the Act (Code of Conduct).
- 19.7 To enable the Head of the State Service to make the secondment arrangement out of the State Service, there needs to be a written agreement between the Head of Agency and the Chief Executive Officer or Authorised Officer of the receiving organisation, covering the terms and conditions outlined in the "*Secondment of an employee to an organisation outside the State Service*" document, available at the State Service Management Office website ([www.ssmo.tas.gov.au](http://www.ssmo.tas.gov.au)).
- 19.8 In respect of a secondment arrangement for an employee under Section 46(1)(b) of the Act, the terms of the arrangement must clearly state the name of the Award/Agreement and the classification level that the employee will return to within the Agency at the conclusion of the secondment arrangement.

## **20. Review**

This Direction will be reviewed by 11 March 2017.

## SPECIAL PROBATIONARY ARRANGEMENTS

[Section 37(6) of the Act]:

OCCUPATIONAL GROUPS	PERIOD
Employees appointed to a classification contained in the Custodial Officers Award or successor agreement or award unless previously employed in a permanent capacity in a similar establishment or institution elsewhere.	12 months
Employees appointed to Teacher classifications under the Teaching Service (Tasmanian Public Service) Award or the Post Year 10 Teaching Staff Award.	12 months

Quarantine Officer – Dog Handler:

Appointment confirmation is subject to the possession of, or successful completion of, a Dog Handler's Certificate issued by the National Trainer (Quarantine Detector Dog Teams).

