

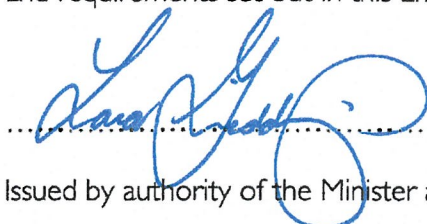
Employment Direction No. 9

**CHANGE OF EMPLOYMENT STATUS OF FIXED-
TERM TEACHERS TO PERMANENT -
DEPARTMENT OF EDUCATION**

Operative Date: 19 September 2013

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.


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

Date:

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Attachment 1 – Administrative Arrangements

1. Purpose

This Direction specifies the criteria and requirements for an application to the Employer to change the employment status of an eligible fixed term teacher in the Department of Education to permanent under Section 37(4) of the Act.

2. Application

- 2.1 These provisions are issued in accordance with Section 17 of the *State Service Act 2000* (the Act) and apply to eligible fixed term employees engaged as teachers in the Department of Education (the Department) and subject to the *Teaching Service (Tasmanian Public Sector) Award*.
- 2.2 This Direction prevails over Employment Direction No. 1: Employment in the State Service to the extent of any inconsistencies.
- 2.3 This Direction does not apply to fixed-term employees engaged as teachers in TasTAFE.

3. Definitions

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

'The Minister' means the Minister administering 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.

'Delegation' means any functions and/or powers exercised in accordance with this Direction that are subject to an approved delegation.

'Change of Employment Status' means a change from a fixed-term employee to a permanent employee in accordance with Section 37(4) of the Act.

'Department' means the Department of Education.

'Employee' means a person appointed under the Act and registered under Section 11(1)(a) of the *Teachers Registration Act 2000*, but excluding employees engaged as teachers in TasTAFE.

'Full Time Equivalent (FTE)' means the hours worked by the employee in proportion to the hours worked by a full-time employee (FTE of 1.0).

'Learning Services' means the regional areas defined as North-West, North or South by the Department and the schools within those Learning Services.

'School' or 'College' means a worksite established by the Department for the purpose of providing instruction or support of instruction.

'School year' means the total number of working days in each calendar year that schools and colleges are open for students.

'School term' means a division of the school year period identified in the 'School Term Dates for Staff' published by the Department.

'Teacher Transfer Policy' means the transfer of an employee as defined in the *Department of Education Teacher Transfer Industrial Agreement 2013* or any agreement that may replace it.

4. Legislation/Award Basis and Related Documents

State Service Act 2000 Part 4 (sections 14, 15, 16, 17) and sections, 20, 21, and 37.

5. Date of Operation

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

6. Direction

Pursuant to Section 17 of the *State Service Act 2000*, I direct that the requirements contained in this Direction (including Attachment 1) apply to employees subject to this Direction.

7. Reporting and Monitoring

The Department is to provide a report by 31 July each year to the Director, State Service Management Office detailing the number of permanent appointments made under this Direction in each financial year.

8. Review

This Direction will be reviewed by 4 February 2014.

9. Attachments

Attachment 1: Administrative Arrangements to apply under this Direction.

Attachment I – Administrative Arrangements

1. Introduction
2. Eligibility Criteria for Consideration of a Change of Employment Status
3. Approved Leave
4. Application for Change in Employment Status by an Employee
5. Late Start/Early Finish
6. Notice
7. Base Grade Conditions
8. Acceptance
9. Probation
10. Conditions Applying to Permanent Employees

1. Introduction

These administrative arrangements pertain to an employee's eligibility under this Direction.

2. Eligibility Criteria for Consideration of a Change of Employment Status

2.1 Under Section 37(4) of the Act, the Head of the State Service acting for the Employer may change the status of an employee from a fixed-term employee to a permanent employee.

2.2 Subject to clause 2.6 of this Attachment, the Head of Agency will seek the change in employment status of an eligible employee, as a base grade teacher, where the employee has completed eight satisfactory, continuous and whole school/college terms of teaching as a fixed-term teacher.

Provided that where eligibility includes continuous whole terms completed under the previous three term year model, and therefore prior to this Direction, the transition arrangement will be as follows:

Commencement of Continuous Service	Eligibility
Term Two 2011	End Term One 2013
Term Three 2011	End Term Two 2013
Term One 2012	End Term Four 2013
Term Two 2012	End Term One 2014
Term Three 2012	End Term Two 2014

2.3 The Head of Agency is to certify that sufficient funding is available for the employee's permanent appointment and that the fixed-term appointment was made on merit. Evidence of merit to the satisfaction of the Employer must be provided by the Department.

2.4 Notwithstanding clause 2.2 of this Attachment, satisfactory, continuous and whole terms may include situations where:

- a. Assignments are issued by the end of the first week of term one (for students) due to unknown enrolment increases at the commencement of the school college/year; and/or
- b. Shorter term assignments that resulted in the employee being engaged for a whole school/college term; and/or
- c. Assignment including periods of approved leave (paid or unpaid) not exceeding 20 working days in a school/college year.

2.5 Fixed-term employees whom the Department identifies as eligible for change in their employment status in accordance with this Direction, should be notified of this not later than 28 calendar days before the end of the qualifying school/college term.

2.6 The Head of Agency should only seek a change in employment status of a fixed-term employee with the agreement of the eligible employee.

2.7 With the exception of 2.4 (a) of this Attachment a complete term is recognised as being the first working day and the last working day of the term.

For a part-time employee, a complete term is the first working day and the last working day of the term based on their work-pattern. For example, a 0.2 employee working each Wednesday worked a complete term if their first working day was 6 February 2013 and their last working day was 17 April 2013.

2.8 An employee is deemed ineligible if they have received an unsatisfactory fixed-term assessment during the eight term period.

3. Approved Leave

A fixed-term employee who has completed a minimum of six continuous, whole and satisfactory terms and proceeds on approved maternity leave (paid or unpaid) that includes the normal eight term eligibility period will be deemed eligible for consideration of permanency at the completion of the eight term period.

All other approved periods of leave (paid or unpaid) over twenty days, and outside of the maternity leave arrangement in this clause will not be counted towards the completion of eight terms. However, consideration may be given to the period not breaking continuity of the eight term eligibility period.

4. Application for a Change in Employment Status by an Employee

An eligible fixed-term employee may also make application to the Head of the State Service for a change of employment status if the Department has failed to do so on his/her behalf.

5. Late Start/Early Finish

5.1 An employee who has not completed a full term as a result of a late start/early finish for reasons not including 2.4 (a) of this Attachment may request a review of their eligibility under exceptional circumstances.

An employee requesting such consideration should provide written details supporting their request for eligibility and forward this to the Department's Human Resources section.

The Department will consider requests on a case by case basis. The employee will be provided with written notification of the consideration given and the decision made.

The Department will not give consideration where an employee was not available to undertake fixed-term duties for a complete term.

If the Department determines a fixed-term employee is not eligible after a review of a late start/early finish the employee may seek a review of the action with the Tasmanian Industrial Commission under Section 50(1)(b) of the Act provided that he/she is a fixed-term employee at the time of lodging a review under 50(1)(b).

6. Notice

Written notification will be sent to employees identified as being eligible, including the determined FTE and details of the duties the Head of Agency, or delegate, intends to assign to the employee under the Teacher Transfer Industrial Agreement 2013, or any agreement that may replace it.

Within 14 calendar days of the date of issue of the notice under clause 2.5 of this Direction, the employee is to inform the Department if they do not agree to a change of their employment status on the terms and conditions outlined in the notice.

The employee may seek a review of the terms and conditions of the notice with the Tasmanian Industrial Commission under Section 50 (1) (b) of the Act.

An employee who has declined to apply for permanency in advance will receive notification of eligibility and may choose to again formally decline at this point.

The FTE will be determined by the Department, based on an average of the hours of fixed-term work performed by the employee during the preceding eight terms, except by agreement with the employee.

The average hours will be rounded to the nearest decimal place. For example, 0.78 would be rounded to 0.8, or 0.72 would be rounded to 0.7. Where the hours worked by an employee have not varied during the preceding eight terms, but have been a partial FTE, i.e. 0.75, the FTE offered to the employee will not be rounded to the nearest decimal place.

The Department will advise fixed-term employees that such notice has been sent. This notification will also include details of the process for a fixed-term employee, who has not been notified of eligibility, to seek an internal review. This notice will be sent in accordance with timeframes of clause 2.5 of this Direction.

If the Department determines a fixed-term employee is not eligible, the employee may seek a review of the action with the Tasmanian Industrial Commission under Section 50(1)(b) of the Act, provided that he/she is a fixed-term employee at the time of lodging a review under 50(1)(b).

7. Base Grade Conditions

A permanent appointment made by the Head of the State Service under this Direction, will be as at the base grade classification of Band 1 teacher under *Teaching Service (Tasmanian Public Sector) Award*.

8. Application to Employer

- 8.1 Upon an employee accepting an offer of eligibility the Department will submit an application to the Employer for consideration of a change of employment status.
- 8.2 A change in employment status, from a fixed-term employee to a permanent employee, will be effective from the date signed by the Employer.
- 8.3 Within 14 calendar days of the Head of Agency being advised of the Employer's approval to appoint the employee as a permanent employee the Head of Agency is to:
 - a. Notify the employee of their change in employment status, as a base grade teacher, and
 - b. Arrange for notification of the change in employment status in the State Service Notices of the Tasmanian Government Gazette.

9. Probation

The period of probation to apply to employees made permanent under this Direction is to be six months.

Where an employee on probation is absent on approved leave (paid or unpaid) or workers compensation, the Head of Agency may determine that absence does not form part of the employee's probation period and extend the period accordingly.

10. Conditions applying to Permanent Employees

The conditions applying to employees made permanent under this Direction will be as per provisions in the Teacher Transfer Industrial Agreement 2013, or any agreement that may replace it.