



STATE SERVICE MANAGEMENT OFFICE

Guide to changes – Employment Direction No 1

Incorporating reviewing and assessing
Change of Employment Status

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Contents

Contents	3
Introduction	5
Agreed criteria from PSUWA	5
Summary of Primary Changes	5
Definition and inclusion of fixed-term casuals in scope of changes	6
Background to revised Change of Employment Status section	7
Delegation of Authority / Power	7
Fixed-term Employment	7
Primary changes and their application	8
Clause 9 – Return to pre-2020 fixed-term maximums	8
Clause 12 – Change of Employment Status – subclauses and entitlement to certain employees	8
Continuous Service Definition and Consideration	8
Exclusion of positions classified under ED 18	9
Clause 12A – Change of Employment Status – training pathway, transmission of business or critical risk	9
Assessment Criteria	9
Who does this apply to?	10
PSUWA Commitment	10
Actively reviewing fixed-term employment and potential entitlement for change of employment status	11
Employee application	11
Fixed-term Casual Employment	11
Assessment Criteria	11
Reasonable Grounds	13
Employee Advice	14
Requests to Head of the State Service under Clause 12C – Special and Compelling Circumstances	15
Public Notification – all change of status	15



Performance Management of fixed-term employees	15
Removal of Application by a Fixed-term employee to have duties advertised for Permanent Appointment	15
Clause 13 – Permanent Increase to Appointed Part-time Hours for Permanent Part-Time Employees	16
Issues to consider	16
Who can apply?	16
Assessment Criteria	16
General advice and other considerations on Change of Employment Status	17
Compliance with Employment Direction No 1	17
Fixed-term Register Appointments	17
Record Keeping and Reporting	17
Applying probation on change of employment status to permanent	17
Interaction of Clause 12B with fixed-term employment generally	18
Example cases	18
Example 1: Clause 12A.1 – circumstance (b)	18
Example 2: Clause 12B	19
Example 3: Clause 12B	19
Example 4: Clause 12B	Error! Bookmark not defined.
Example 5: Clause 12B	19
Example 7: Clause 12B	19
Example 8: Clause 12B	19
Example 9: Clause 13	20
Guidance for employees	20
Other changes	21



Introduction

On 29 July 2024, the Minister administering the State Service Act 2000 reissued Employment Direction No.1: Employment in the State Service (ED1). The key changes incorporate commitments from the Public Sector Union Wages Agreement (PSUWA) which focus on providing permanent employment for fixed-term (including fixed-term casual) employees after 12 months continuous service subject to certain criteria being met, and also providing permanent increases to additional hours worked by permanent part-time employees.

Agreed criteria from PSUWA

A fixed-term employee, including a fixed-term casual employee, can seek to have their employment status change to permanent if the following criteria is met:

- 12 months continuous service in the same or similar duties;
- The duties are required on an ongoing basis;
- The conduct and performance of the employee have been assessed as satisfactory;
- The Head of Agency has no other reasonable grounds to not change the employee's employment status;
- Fixed-term casual employees must also have a regular and systematic pattern of hours over the last 12 months and have a reasonable expectation of ongoing employment.

It is expected that reasonable grounds to not change employment status, where the criteria are met, will be rare.

Summary of Primary Changes

A new **Clause 12.B Change of Employment Status – same or similar duties for 12 months or more** establishes an entitlement for fixed-term employees who have completed 12 months continuous service in defined circumstances to have their Head of Agency change their employment status to permanent unless that Head of Agency can establish reasonable grounds that the employee does not have such an entitlement.

The new **Clause 13: Permanent Increase to Appointed Part Time Hours for Permanent Part-Time Employees** gives permanent part-time employees the ability to apply to their Head of Agency to have their part-time hours permanently increased if they have worked additional hours in a regular and systematic pattern for 12 months.



The amendments now provided through Clauses 12 and 13 have been made to assist in providing greater job security to fixed-term employees and part-time employees.

Clause 9: Appointment of a Person to Undertake Fixed-Term Duties or assignment of Fixed-Term duties to a permanent employee has also been amended, with Clause 9.4 removed, reverting fixed-term appointment limits back to pre-ED1A, as issued in 2020, periods. The maximum period for a fixed-term appointment or assignment without HoSS approval is now returned to 36 months.

Note – these changes do not prevent a Head of Agency appointing a fixed-term employee for a specific period or task for a term longer than 12 months without giving rise to an automatic right to a change of employment status, for example where the specified task or period is for a clear and determined specific purpose, or limited to a specific defined project or period of leave or other absence of another employee, for example.

This guidance document must be read in conjunction with *Employment Direction No. 1: Employment in the State Service* and is not considered to supersede or prevail over any requirement of that Direction, or any other relevant Employment Direction currently in force.

Note that due to the incorporation of prior Clause 11, Casual Employment into the revised Clause 7, Fixed-term Employment, the numbering of clauses has changed from Clause 11 onward.

This document also replaces *Reviewing and assessing fixed-term employment under Clause 13 and 14 of Employment Direction No 1* guidance document issued in March 2016 which has now been withdrawn.

Other more minor changes unrelated to the above, resulting from consultation with agencies and Unions, are outlined in the Other Changes section on page 20 of this Guide.

Definition and inclusion of fixed-term casuals in scope of changes

For the purposes of the Change of Employment Status clauses, a fixed-term employee includes a fixed-term casual employee.

Fixed-term casual employment for this purpose means employment that is on an irregular basis and at short notice, and where the offer of engagement may be accepted or rejected on each and every occasion, as fully defined in clauses 7, 7.4 and 7.5 of the ED.



Background to revised Change of Employment Status section

Delegation of Authority / Power

The power to change the employment status of an employee under Section 37(4) of the Act is currently delegated by the Head of the State Service to Heads of Agencies:

37. Appointment and promotion of employees

(4) The Employer may change the employment status of an employee from a fixed-term employee to a permanent employee.

This delegation gives Heads of Agencies the power to change the employment status of an eligible fixed-term employee to a permanent employee, with the limitation that the power be exercised in accordance with the requirements of ED1.

As the authority to change an employee's employment status from fixed-term to permanent is delegated from the Employer directly to the Head of Agency, the Head of Agency does not have the ability to 'on-delegate' that power.

However, the Employer has also provided delegation of this power to Associate Secretary offices, with the same limitation. Where a Head of Agency is referred to in this document in relation to change of employment status, the reference is also to an Associate Secretary.

Fixed-term Employment

A fixed-term employee is one that is appointed in accordance with Section 37(3)(b) of the *State Service Act 2000* (the Act). In this document, a reference to a fixed-term employee is also a reference to a fixed-term casual employee unless stated otherwise.



Primary changes and their application

Clause 9 – Return to pre-2020 fixed-term maximums

Clause 9 - Appointment of a Person to Undertake Fixed-Term Duties or assignment of Fixed-Term duties to a permanent employee has been varied to remove the additional six months that Heads of Agencies were able to extend fixed-term appointments or arrangements when maximums under Employment Direction No 1A of 2021 were incorporated into ED 1 on 31 August 2022. This change has been made recognising that the additional flexibility that was needed during and in recovery from COVID-19 is no longer required. The ability for an agency to request approval for a fixed-term appointment or assignment of duties to extend beyond 36 months remains, with that power still delegated to the Deputy Secretary SSMO and the Deputy Directors Workforce Management & Employment and Workforce Strategy by the Head of the State Service.

Appointments or arrangements already authorised within the previous timeframes may continue, but all new arrangements must adhere to the new maximums.

Clause 12 – Change of Employment Status – subclauses and entitlement to certain employees

Clause 12, previously *Clause 13 – Change of Employment Status* in ED 1 as issued March 2024, has been reframed. It now has a preamble around change of employment status generally that applies to the clause in its entirety, and then provides sub-clauses as below:

- 12A – Change of Employment Status – transmission of business, graduate or cadet pathway or critical risk to agency;
- 12B - Change of Employment Status – same or similar duties for 12 months or more; and
- 12C – Change of Employment Status – any other circumstances

The preamble and the redrafted Clauses 12A and 12C effectively continue the provisions in the March 2024 version of ED 1, where Heads of Agencies can change the employment status of employees in four situations - transmission of business, training or similar pathway, addressing a critical risk to the agency (12A) or any other circumstance approved by the HoSS (12C).

Continuous Service Definition and Consideration

Service for the purposes of this clause is considered continuous for 12 months or more even if it has been broken by a period up to and including four weeks, unless the break in service occurred because there was a legitimate reason that the duties the fixed-term employee was performing were no longer needed to be performed by anyone during that period.

For example, if following the conclusion of the first appointment, those duties were no longer needed to be performed by anyone and two weeks later the employee had a new fixed-term appointment at the same classification (in same or similar duties), the service would not be considered continuous.



Two fixed term appointments to the same or similar duties performed concurrently (at any point) do not have their terms ‘added together’ – e.g. a person who had had a five month (part time) fixed term appointment starting 1 December 2023 and then a separate eight month (fixed term) appointment starting 1 February 2024, would not have an entitlement until 12 months from the 1 February appointment (if other criteria is met). Appointments stand alone.

However where an employee holds more than one fixed-term appointment at the same time, it is possible that an entitlement to two changes of employment status (provided other criteria are met) may result.

Some further examples on continuous service are provided in the examples section of this document.

Exclusion of positions classified under ED 18

The Clause now includes a proviso that the Head of Agency may not change the employment status of a fixed-term employee at General Stream Bands 9 or 10, as this would be inconsistent with *Employment Direction No 18 – Administrative Arrangements for the Assignment of General Stream Bands 9 & 10 and Professional Stream Band 6 Classifications to Duties*, which provides that the Deputy Secretary SSMO may approve that such a classification be assigned, and determine that such a classification is time limited in nature.

Where a Head of Agency believes there are special and compelling reasons to change employment status at this classification level, an application can be made to the HoSS under Clause 12C.

Clause 12A – Change of Employment Status – training pathway, transmission of business or critical risk

This section retains the ability in earlier versions of ED 1 (since 2016) for a Head of Agency to change an employee’s employment status to permanent where any of those three criteria are demonstrated.

Assessment of these will not materially change; with assessment as provided in the table below.

Assessment Criteria

Clause No	Clause	Consideration	Evidence
12A	A Head of Agency, as the delegate of the Head of the State Service, may change the employment status of a fixed-term employee who has completed 12 months	Have there been any breaks in service (i.e. did the employee undertake different duties for any period of time under a separate Instrument)? Were there other breaks and why were they taken?	<ul style="list-style-type: none"> • Program approval (for pathways) • Transmission of business Minutes or legislative basis • Evidence that the employee has met any requirements of the program to allow an



<p>continuous service undertaking the same duties, where merit has been applied, and where it can be demonstrated that one of the following special and exceptional circumstances exists:</p> <p>a. transmission of business into the State Service;</p> <p>b. following completion of a training, internship, graduate or cadet pathway; or</p> <p>c. to address a critical risk to the Agency.</p>	<p>Has the employee been performing the same duties (e.g. not acting in a number of different duties over the period as a result of consecutive, short-term register appointments)?</p> <p>Does the initial appointment of the employee, and any/all subsequent appointments and extensions meet the requirements of relevant clauses of ED1 (including Clauses 7, 8 and 9)?</p> <p>Have all appointments and subsequent appointments satisfied the merit test?</p>	<p>application to be made (e.g completion of Degree).</p> <ul style="list-style-type: none"> • Work history review showing the employee has been in the same duties on a continuous basis. • Evidence that the appointment was based on merit. • Evidence that the ongoing employment has been in line with ED1.
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Clause 12B – Change of Employment Status – same or similar duties for 12 months or more

This is the new subclause that enables the PSUWA commitment for change of employment status for fixed-term employees as defined on page 8 and who have met set criteria.

Who does this apply to?

Any fixed-term employee who has been undertaking the same or similar duties for a continuous period of at least 12 months subject to meeting the criteria is considered entitled to have their employment status changed to permanent unless the Head of Agency has any other reasonable grounds to determine that the employment status should not be changed.

PSUWA Commitment

The new provision arises from the PSUWA commitment on change of employment status however it applies to all employees regardless of whether they are covered by the PSUWA. This Clause sets out additional circumstances where a Head of Agency may change employment status using their delegated power under Section 37(4) of the Act and as part of this establishing an entitlement for fixed-term employees in duties who satisfy all the criteria below:

- 12 months continuous service where merit has been applied;
- The duties and hours of the position are required on an ongoing basis;
- The conduct and performance of the employee have been assessed as satisfactory; and
- There are no other reasonable grounds, at the discretion of a Head of Agency, for the employee to not have their employment status changed to permanent;



Actively reviewing fixed-term employment and potential entitlement for change of employment status

Agencies should proactively undertake regular review of fixed-term employees who have extended beyond 12 months and who may therefore have an entitlement to having their employment status changed. Agencies can assess whether the criteria under Clause 12B is met, however changes of status at the initiation of an agency should only be progressed beyond initial assessment stage if the employee has been consulted and has indicated they would like the Head of Agency to consider changing their employment status, as some employees may prefer fixed-term or fixed-term casual employment in certain circumstances.

It is also important going forward that where fixed-term appointments are made for a specific task or purpose for a period of 12 months or more, that the specific task or purpose is made clear in the IoA and to the employee, as this will establish the reasonable ground for not changing employment status where the duties will not be available, or substantively vacant, after the fixed-term appointment term ends and also assists in managing employee expectations.

Employee application

An employee may initiate an application with or without the assistance of their Union representative. The Head of Agency may also initiate the process without an application having been made.

Fixed-term Casual Employment

Where an employee has been appointed as a fixed-term employee working on a casual, as-and-when-required basis, but may have worked a pattern of regular hours over an extended period, they may have developed an expectation of ongoing employment. As such, these employees may consider their employment to be fixed-term, part-time and not casual, and consider they have an entitlement under Clause 12B alone.

Clause 7.5 of ED1 sets out the methods by which a casual appointment may be made and casual employment is defined in Clause 7.4.

If it is determined that the duties are not ongoing but casual in nature, the Head of Agency should review the volume and pattern of work being undertaken to ensure that an employee is only employed on a casual, as-and-when-required basis in line with the above definitions.

Assessment Criteria

Clause No	Clause	Considerations	Evidence
12B.1	A fixed-term employee, including a fixed-term casual employee, who has completed 12 months continuous service undertaking the same or similar duties is entitled to have a Head of Agency as the delegate of the Head of the State Service change their employment status to permanent where merit	Is there need for the duties to be performed on an ongoing basis? Have there been any breaks in service – for how long and why?	Work history review showing the employee has been in the same or similar duties on a continuous basis. Evidence that the appointment was based on merit.



	<p>has been consistently applied and where:</p> <ul style="list-style-type: none"> a) the duties and hours of the position are required on an ongoing basis; b) the conduct and performance of the employee has been assessed as satisfactory; c) there is no other reason at the discretion of the Head of Agency as to why the employee should not have their employment status changed; and d) for a fixed-term casual employee, an employee is only entitled to have their employment status changed to permanent where the employee has worked a regular and systematic pattern of hours for the prior 12 months and has a reasonable expectation of ongoing employment, as outlined in Clause 12B.4. 	<p>Has the employee been performing the same duties (e.g. not acting in a number of different duties over the period as a result of successive new short-term appointments)?</p> <p>Does the initial appointment of the employee, and any/all subsequent appointments meet the requirements of relevant clauses of ED1?</p> <p>Have appointments and subsequent appointments satisfied the merit test?</p> <p>Does the employee meet any essential requirements and/or pass the pre-employment checks necessary to perform the duties?</p> <p>Does the employee possess any qualifications required to perform the duties?</p> <p>Is the employee's performance satisfactory, or are there any outstanding performance issues, or investigations which should be taken into consideration as part of this review?</p> <p>Decisions should be made and communicated in a reasonable timeframe.</p>	<p>An outline of the employee's work history showing the initial appointment date and period, and any subsequent appointments and their start and finish dates.</p> <p>Statements of Duties.</p> <p>Confirmation of qualifications.</p> <p>Evidence that employee passed essential requirement/pre-employment checks at the time of appointment and continues to hold valid registrations or licences where applicable.</p> <p>Performance management records.</p>
12B.2	<p>Service for the purposes of this clause is considered continuous service even if it has been broken by a period up to and including four weeks, unless the break in service occurred because there was a legitimate reason for the duties the</p>	<p>What breaks in service have occurred and what were the reasons for those breaks?</p>	<p>Records of the employee's work history</p>



	fixed-term employee was performing were no longer needed to be performed by anyone over that period.		
12B.3	Where an employee holds more than one fixed-term appointment or a fixed-term and a fixed-term casual arrangement, they are treated separately as individual arrangements for the purposes of this Clause.	Have separate appointments been held concurrently or consecutively? Consideration of the criteria is for each concurrent appointment separately.	Records of the employee's work history
12B.4	Where a fixed-term employee under this Clause is a fixed-term casual employee and where the provisions of subclause 12B.1(c) are being considered, an assessment of the pattern of work over the prior 12 months will be undertaken and taken into account, specifically: a) whether the employee has worked a regular and systematic pattern of hours on an ongoing basis for at least the last 12 months; and b) whether the employee has a reasonable expectation of continuing employment.	Employees made aware that change of employment status to permanent would mean loss of casual loading.	
12B.5	Should the Head of Agency consider that there are reasonable grounds as to why a fixed-term employee is not entitled to have their employment status changed from fixed-term to permanent, the Head of Agency will provide those grounds to the employee in writing. This notification from a Head of Agency will include advice that the employee 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.	The decision must be provided both in writing and in a reasonable timeframe.	All documentation supporting the decision-making process, including the signed decision by the Head of Agency.

Reasonable Grounds

The PSUWA offer included examples of reasonable grounds where an employee should not have their employment status changed to permanent, such as where the duties are not substantively vacant or where the change of employment status would not comply with the merit principle.

Reasonable grounds for not changing employment status could be that the duties relate to a finite activity (for example customer service duties in a contact centre that has been stood up



due to an specific event, or a project officer role where the defined scope of the project is time limited and is about to be closed off) or that they are backfilling an employee who will be returning to those duties.

It may come to light during the assessment process that merit was not fulfilled in the current appointment (for example the person may have been selected from a register without the required documented assessment process) and this would provide reasonable grounds for not approving a change of employment status; it would then be appropriate to consider if the duties should be advertised for permanent filling.

Employee Advice

Once a Head of Agency has made a determination on whether or not to change the employment status of an employee, either from an application from an employee or having been initiated by an agency (with the agreement of the employee to do so), the final determination made by the Head of Agency must be communicated to the employee in writing, in a timely manner. This communication may only be signed by the Head of Agency as the power to change employment status, or not change it, sits only with them.

If the determination relating to an employee application under Clause 12B.2 is that the Head of Agency considers there are reasonable grounds for the employee to **not** have their employment status changed to permanent, the advice to the employee will include:

- the reason/s for the decision;
- rights of review under Section 50(1)(b) of the Act; and
- the name and contact details of a relevant contact person.

If the determination is that the employee's status will be changed to permanent, arising from an employee application or from a process initiated by the agency with the agreement of the employee, the advice will include:

- the reason/s for the decision;
- the date of permanent appointment;
- whether probation is to apply to the permanent appointment or whether probation will be waived under Clause 17 of ED 1;
- advice of treatment of any leave balances, noting:
 - Long service leave balances and service will be treated as per the *Long Service Leave (State Employees) Act 1994* and therefore will be carried forward to the new, permanent, appointment
 - Personal leave balances would be reinstated for the new permanent appointment under Ministerial Direction No 2, Clause 2.2.1(4)
 - Recreation leave balances and any leave loading that may be applicable will be paid out at the end of the fixed-term appointment; and
- the name and contact details of a relevant contact person.



Requests to Head of the State Service under Clause 12C – Special and Compelling Circumstances

Where a Head of Agency considers there to be special and exceptional circumstances which do not meet any of the sub-clauses of Clause 12C, the Head of Agency is still able to submit an application to the HoSS (or delegate) for consideration, including all supporting documentation. This is now Clause 12C.

Applications may consider, industrial relations issues which impact broadly on the Tasmanian State Service, individual Agencies, or occupational groups, or when other criteria under Clause 12B may be met but 12 months service has not been completed.

Heads of Agencies will be advised in writing of the result of the HoSS / delegate decision.

Public Notification – all change of status

As a change of status is a permanent appointment, a Head of Agency who has determined a change of employment status, or who has changed the employment status of an employee after approval by the HoSS, must publish a Staff Movement notice advising of the permanent appointment in the Gazette, in accordance with Section 52 of the Act, and Regulation 10(a) of the State Service Regulations 2021. This is not however an appointment that is reviewable under Section 50(1)(a) of the Act, noting that any decision relating to an employee's employment other than termination may still be reviewable under Section 50(1)(b).

Performance Management of fixed-term employees

Change of employment status requires that the employee has been assessed as demonstrating successful performance. As well as being good practice generally for fixed-term employees to have defined outcomes and performance measures, and it being a requirement for all employees to have performance management plans, to be able to assess eligibility under Clause 12B some form of documented performance management process will be required.

If any performance issues have not been identified and addressed during the term of the fixed-term employment, it is likely that the assumption would be that performance is satisfactory.

Removal of Application by a Fixed-term employee to have duties advertised for Permanent Appointment

Clause 13 as was numbered in earlier versions of ED 1 has now been removed as it was considered that the new provisions given in Clause 12B make it largely irrelevant.

However any process that is underway under Clause 13 should continue to its completion as though the Clause still stands.



(New) Clause 13 – Permanent Increase to Appointed Part-time Hours for Permanent Part-Time Employees

Issues to consider

As part of an assessment, the Head of Agency should consider whether:

- there has been a regular pattern of additional hours over the past 12 months;
- ongoing funding is available for additional hours; and
- the additional duties are required on an ongoing basis.

Who can apply?

A permanent part-time employee may apply to their Head of Agency to request a permanent increase in their part-time hours, if they have worked hours regularly and systematically over their regular work pattern for at least 12 months. A Head of Agency may also initiate the process.

It is possible a person with more than one permanent part-time appointment may make more than one application, but each appointment and therefore application stands alone.

Assessment Criteria

Each assessment under Clause 13 must be considered on a case-by-case basis. Individual employment histories and other details vary and can impact an employee's ability to meet the criteria of Clause 13.

The following table sets out each requirement of Clause 13, and the information and evidence which should be considered as part of the Head of Agency's decision-making process. This table is provided as a guide and is not intended to be an exhaustive list of evidence or considerations that a Head of Agency may take into account.

Clause No	Clause	Consideration	Evidence
13.1	<p>A permanent part-time employee may apply to a Head of Agency to permanently increase the part-time hours that apply to their appointment to reflect additional hours that they have worked regularly and systematically for a period of at least 12 months above the hours set out in their appointment. These requests will be subject to the following assessment criteria:</p> <p>a) The employee has completed a regular and systematic pattern of additional hours for at least the last 12 months;</p> <p>b) The additional hours are required on an ongoing basis; and</p> <p>c) The additional hours have ongoing funding</p>		Timesheets, payslips, rosters and other records of the employee's work pattern for the previous 12 months as well as the employee's contracted hours of work.
13.2	Should the Head of Agency consider that there are reasonable grounds to not permanently increase the part-time hours of an employee who has made an application under Clause 13.1, the	The decision must be provided both in writing and in a timely manner.	Documented and signed evidence of the consideration



	Head of Agency will provide those grounds to the employee in writing. This notification from a Head of Agency will include advice that the employee 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.		
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General advice and other considerations on Change of Employment Status

Compliance with Employment Direction No 1

Any assessment made under a Clause of ED1 must be made with consideration of the ED as a whole, as well as any relevant Sections of the Act, Awards or Agreements.

When assessing duties under Clause 12 or 13 of ED1 in each case, a Head of Agency's decision must be made based on the criteria of the relevant clause and with reference where required to any other applicable legislation.

Fixed-term Register Appointments

The purpose of employment registers is to fill short, fixed-term or fixed-term casual duties which are critical to business continuity and where advertising is an inefficient way of filling those duties (Clause 2 - *Practices, Procedures and Standards No.1*). A Head of Agency should not use a fixed-term employment register to fill duties that are considered permanent or likely to extend to up to a 12 month period.

Record Keeping and Reporting

A Head of Agency must retain a record of decision making including supporting evidence and particularly documented as to:

- how each criteria of the relevant clause was determined to be met or not met; and
- evidence of any merit assessment used to support a change of employment status decision

Applying probation on change of employment status to permanent

When an employee's employment status is changed and they become permanent, probation applies unless the Head of Agency or other delegate waives that probation, on the basis that the employee has been in a fixed-term position for more than six months, performed at the



required level and assessed as suitable for permanent appointment to the Tasmanian State Service. This power will still need to be formally exercised if probation is to not apply, and the employee advised.

Probation applies to permanent employees under the State Service Act. The conditions for probation are contained in ED 1, and do not apply to any fixed-term or fixed-term casual arrangement.

Interaction of Clause 12B with fixed-term employment generally

The usual means of employment in the State Service is permanent, and also Clause 7.3 states that before progressing any fixed-term vacancy, the Head of Agency should first consider whether or not it should be filled on a permanent basis. It is recognised with the reasonable grounds to refuse a request provision that even with the introduction of the entitlement under Clause 12B, there are still times when a position will be genuinely fixed-term in nature such as projects with a defined end date or when it is backfilling a temporary vacancy.

It is important that Instruments of Appointment are clear where there is a specific purpose for the appointment and / or where it is tied to funding. Further, where the project may need to be extended, it should be made clear on what grounds this would occur.

Example cases

The following fictional case studies are provided as examples only. All assessments, whether initiated by an employee request or by a Head of Agency under Clause 12, and assessments under Clause 13 must be considered on a case-by-case basis. Exhaustive advice on individual situations cannot be provided in this Guide and SSMO remain available to discuss any individual case as required.

Example 1: Clause 12A.1 – circumstance (b)

An agency advertised fixed-term vacancies under its Human Resources Graduate Recruitment Program. Three Graduates were appointed at this time.

The Graduates are nearing the end of their final rotation, and an assessment is made that they have all met the completion criteria of the graduate program. The Head of Agency determines that vacant duties are available and ongoing at the graduate level.

The Head of Agency assesses each Graduate against the criteria of Clause 12A and determines that they are eligible for a change of employment status from fixed-term to permanent under Clause 12A.1.

-or-

The Head of Agency assesses each Graduate against the criteria of Clause 12A and determines that although the employees are eligible for a change of employment status from fixed-term to permanent under Clause 14.2.b, the Human Resources Graduate Recruitment Program was designed as a development program with placements only offered for a fixed-



term and therefore the duties are not ongoing and at the end of the fixed-term period to the graduate program the graduate has not found permanent employment by application, the fixed-term appointment will then terminate.

Example 2: Clause 12B

An employee is employed on a fixed-term basis through a merit selection and makes an application under Clause 12B to have their employment status changed to permanent. The employee has been employed on a fixed-term basis for 12 months, undertaking two six-month appointments in the same role at the same classification level, with a break of three weeks between appointments. The break in service is less than four weeks and it is not the case that the duties did not need to be performed by anyone during the break in service. The Head of Agency considers that the duties are required on an ongoing basis, and that the employee's performance meets the standard required, and therefore changes the employee's appointment status to permanent.

Example 3: Clause 12B

An employee is employed on a fixed-term casual basis, and makes an application under Clause 12B to have their employment status changed to permanent. The employee has been employed in the same fixed-term casual duties for 18 months, and for the previous 12 months has been undertaking the same hours and shifts each fortnight (equating to 0.5FTE). They have a reasonable expectation of continuing employment due to the regular and systematic nature of the shifts provided and that the area of operation is continuing to need multiple people to perform the duties of that position. The Head of Agency considers that the criteria of Clause 12B.4 has been met, and in addition, that the employee has been undertaking a regular and systematic work pattern, and therefore changes the employee's employment status to permanent part-time (0.5FTE).

Example 5: Clause 12B

An employee is employed on a fixed-term basis under two separate and concurrent six-month contracts, for 0.5FTE each and makes an application to have their appointment status changed to permanent. However, as the two six month contracts have been worked concurrently, there is no eligibility to the employee, therefore the Head of Agency advises the employee of that in writing.

Example 7: Clause 12B

The fixed-term employee was appointed to duties for more than 12 months because a permanent employee has taken parental leave for a year and has then been granted another year without pay. It is clear that the fixed-term appointment was for the duration of a specified task/purpose and there are no ongoing duties if the permanent employee returns from parental leave. The Head of Agency determines that there are reasonable grounds for the fixed-term employee to not have their employment status changed and advises the employee of the reasons for that determination.

Example 8: Clause 12B

The fixed-term employee was appointed to work on an ICT decommissioning project of eighteen months that has a very clear end date aligned to the project plan. The employee puts in an application after twelve months in the role with only six months remaining in the



project, which is running to plan with the project team to be disbanded once complete. The duties are not required ongoing and the Head of Agency determines that there is not an entitlement for the employee to have their employment status changed and advises the employee of the reasons for that determination.

Note that it is important that the employee in this instance was notified of the specific purpose and term of the appointment, related to the finite nature of the project.

Example 9: Clause 13

A permanent employee is employed on a part-time basis at 0.5FTE. For the past 12 months, the employee has been undertaking additional hours in the same pattern each fortnight, which equates to an additional 0.2FTE. The Head of Agency considers that the additional hours have been completed in a regular and systematic pattern, that the additional hours are required on an ongoing basis and that there is ongoing funding, and therefore permanently increases the employee's part-time hours to 0.7FTE.

Guidance for employees

Employees may, once having been made aware of the new provisions, contact Human Resources / People and Culture Branches or their Manager seeking guidance on how they may make application under the new provisions of Clause 12B or Clause 13.

Suggested advice for an application under Clause 12B is that:

- Employees advise their Manager that they intend to write to the Head of Agency seeking consideration of change of employment status to permanent
- Employees compose correspondence to the Head of Agency setting out their reasoning for having an entitlement, providing:
 - o Their dates of fixed-term employment and position / s that those dates relate to
 - o Any breaks in that fixed-term employment and reasons for those
 - o Their understanding of the ongoing nature of the duties
 - o A copy of their Statement of Duties

and request that the Head of Agency assess changing their employment status under Clause 12B.

- Employees should attach any evidence supporting their stated entitlement, such as records of Performance Management processes, Instruments of Appointments and their Statement of Duties with their application.
- Employees can be advised that while their Union may assist them in preparing an application, the application itself should come from the employee directly.

Where a Head of Agency determines that there is not an entitlement, and does not change the employment status of the employee, it is possible the employee might later decide to make a further application. The particulars of the case would need to change for a new application to be considered.



Suggested advice for an application under Clause 13 is that:

- Employees advise their Manager that they intend to write to the Head of Agency seeking consideration of a permanent increase in hours
- Employees compose correspondence to the Head of Agency setting out their reasoning for having an entitlement, providing:
 - o Their appointment letter showing their current permanent contracted part-time hours and their current job title
 - o A summary of hours worked above those contracted hours and pay periods in which those hours have been worked

and requesting that the Head of Agency increase their permanent hours to the regular and systematic hours that are being worked.

Other changes

As well as the reversions of fixed-term maximums, additional grounds for a Head of Agency to change the employment status of an employee to permanent and the ability for a permanent part-time employee to request additional regularly worked hours become part of their appointment permanently, the new version of ED 1 has some other minor changes:

- *6.3 Advertising* - now states any approved market allowance is to be included; that the advertisement can clarify that a region for the duties to be performed from can be negotiated; and contemporises the application process by removing the need for a phone number and physical address for applications, replacing this with an email contact address
- *7.4 in Fixed-term employment* – updates the definition of fixed term casual employment
- *7.5 in Fixed-term employment* – splits out the means for fixed-term casual appointment to be enabled and provides that it can also be enabled through subsequent selection from a fixed-term or permanent advertisement
- *8.1/8.4 in Advertising and Selecting a Person to Undertake Fixed-Term Duties* – moves the requirement for duties of more than 12 months to be advertised from the end of the clause to the beginning.
- *9 Appointment of a person to undertake Fixed-Term Duties* now includes in the clause title that it refers to assignment of fixed-term duties to a permanent employee as well as appointing someone on a fixed-term basis
- *11 Subsequent Selection from a Selection Process* reflects the changes in 7.5 as above
- *16.2 in Promotion without Advertising* removes reference to such promotion normally only being at one classification level



- *16.5 (d) in Promotion without Advertising* - now allows that if promotion occurs where duties are reclassified, a higher duties allowance is effective from the date the review was formally sought or commenced (whichever is earlier), which had been part of the PSUWA offer.
- *17.3 in Probation* – the Premier may now issue further Special Probationary Arrangements under Attachment 1 without the need to reissue the entire ED
- *17.6 in Probation* - allows that a HoA may now waive probation if the person holds another permanent appointment where probation has been completed, or if the person had a fixed-term appointment at a higher classification level than the role to which they are being permanently appointed.

