

EMPLOYMENT CATEGORIES AND SECURE EMPLOYMENT

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Authority and Application

Clause 15 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 15 of the Agreement sets out the categories of employment in which an Employer can engage an Employee and the entitlements and restrictions which apply to each category. The clause also imposes a range of obligations on Employers to be carried out at the commencement of the Employee's employment and/or during the probationary period.

Clause 15 is interrelated with clause 14 of the Agreement, which acknowledges the positive impact of secure employment on Employees and the obligation on Employers to preference ongoing forms of employment over casual and fixed term arrangements wherever possible.

Relevant provisions of the VPS Enterprise Agreement

Clause 14. Secure Employment

- 14.1** The Employer acknowledges the positive impact that secure employment has on Employees and the provision of quality services to the Victorian community.
- 14.2** The Employer will give preference to ongoing forms of employment over casual and fixed term arrangements wherever possible.
- 14.3** Where a Union or affected Employees identify fixed term or casual employment that is considered not to meet the criteria established in **clauses 15.6 or 15.7**, the Union or affected Employees will refer the matter to the Employer. If the parties cannot resolve the matter, it will be dealt with under **clause 12** (Resolution of Disputes).

Clause 15. Employment Categories and Entitlements

15.1 Basis of Employment

Employees may be employed on:

- (a) an ongoing basis;

- (b) a fixed term basis; or
- (c) a casual basis.

15.2 Usual Place of Work

- (a) The Employer must determine a usual place or places of work for the Employee.
- (b) Where the Employer wishes to reassign work to the Employee that will require a change to the work location, two weeks' notice must be given or a lesser period if agreed between the Employer and the Employee.
- (c) If an Employee believes that a proposed relocation would create demonstrable hardship, the Employer must consider any alternative proposal put by the Employee.

15.3 Job Information

- (a) As soon as practicable after the commencement of employment, the Employee will be provided in writing or electronically with details of the job title, classification level and job statement for his/her position.
- (b) A fixed term Employee must be provided in writing or electronically the reason for their fixed term employment consistent with **clause 15.6**.
- (c) The Employee will carry out the duties described in the job statement and such other duties as directed consistent with their skills and classification descriptors.
- (d) The Employer will provide the Employee with a copy of this Agreement and information regarding the role of Unions and/or Union delegates under the terms of this Agreement.
- (e) The Employer will ensure that an induction process is developed and maintained for the purpose of educating new Employees about Agency structures and policies within the framework of employment in the VPS. The Employer will ensure that Unions are provided with an opportunity to explain their role and functions in consultative and dispute resolution processes provided for under this Agreement.

15.4 Probationary Period – New Employee

- (a) The Employer may appoint an Employee or a former Employee who commences employment in the VPS on a probationary basis. A casual Employee cannot be appointed on a probationary basis.
- (b) The period of probation shall be a reasonable period having regard to the nature of the position but, subject to **clause 15.4(d)** shall be no more than three months.
- (c) A person initially employed in an Agency on a fixed term basis who is subsequently employed in that Agency on an ongoing basis shall have the fixed

term employment taken into account in the determination of any probationary period.

(d) Performance during probation

- (i) If conduct or performance issues are identified during the probationary period, the Employer shall counsel the Employee during the probationary period in relation to his or her conduct or performance and shall provide a written record of such counselling to the Employee.
- (ii) The probationary period may be extended by a period of not more than three months to allow the Employee to address performance issues.
- (iii) The probationary period may also be extended by not more than three months if non-attendance at work limits the Employer's ability to properly assess an Employee.

(e) Confirmation of employment

Unless the employment is terminated earlier in accordance with **clause 15.4(f)**, at the end of the period of probation the Employer shall confirm the Employee's appointment in writing.

(f) Termination of employment

- (i) A probationary Employee may resign at any time by giving a minimum of two weeks' written notice to the Employer, or a shorter period that is agreed with the Employer.
- (ii) In the event that the Employee's conduct or performance during the probationary period is unsatisfactory, the Employer may terminate the probationary Employee's employment by giving two weeks' notice or two weeks' pay in lieu of notice.
- (iii) For the avoidance of doubt, any notice period must be given no later than two weeks' prior to the end of the period of probation. Alternatively, the Employee's employment may be terminated by giving two weeks' pay in lieu of notice prior to the end of the probationary period.
- (iv) A probationary Employee's employment may be terminated without notice or payment in lieu of notice if the Employee has committed any act of serious misconduct (as defined in regulation 1.07 of the *Fair Work Regulations 2009*).

15.5 Part-Time Employment

- (a) Provisions relating to salary, leave and all other entitlements contained within this Agreement apply to part-time Employees on a pro rata basis calculated on the number of ordinary hours worked.
- (b) Part-time employment is for not less than three consecutive hours in any day worked except:

- (i) where the Employee works from home by agreement with the Employer;
or
 - (ii) with the agreement of the Employee.
- (c) Part-time employment may be worked only by agreement between the Employee and the Employer, where that agreement includes a roster specifying:
 - (i) the days in each fortnight the Employee will work;
 - (ii) the start and finish times on the days which the Employee will work;
 - (iii) the number of hours the Employee will work on each day he or she works;
and
 - (iv) agreed processes for the variation of hours of work.
- (d) Rostered hours agreed under **clause 15.5(c)** shall be considered the Employee's ordinary hours.

15.6 Use of Fixed Term Employment

- (a) The Employer will not use fixed term contract positions for the purpose of undermining the job security or conditions of full time ongoing Employees.
- (b) In accordance with the principle set out in **clause 15.6(a)**, the use of fixed term employment in all areas covered by this Agreement is limited to:
 - (i) replacement of Employees proceeding on approved leave;
 - (ii) meeting fluctuating client and employment needs and unexpected increased workloads;
 - (iii) undertaking a specified task which is funded for a specified period;
 - (iv) filling a vacancy resulting from an Employee undertaking a temporary assignment or secondment;
 - (v) temporarily filling a vacancy where, following an appropriate selection process, a suitable ongoing Employee is not available; or
 - (vi) filling a vacant role whilst a review of the area is undertaken, provided that such appointment does not exceed a period of twelve months.
- (c) In other than exceptional or unforeseen circumstances, fixed term appointments to a specific position shall be for a maximum of three years, subject to **clause 51** (Parental Leave).
- (d) Where an Employee is posted overseas the limitations on the use of fixed term employment outlined in this clause do not apply.

15.7 Use of Casual Employment

- (a) The Employer will not use casual labour for the purpose of undermining the job security of ongoing Employees, for the purpose of turning over a series of

casual workers to fill an ongoing employment vacancy or as a means of avoiding obligations under this Agreement.

- (b) In accordance with the principle set out in **clause 15.7(a)**, the employment of casuals in all areas covered by this Agreement is limited to meeting short term work demands or specialist skill requirements which are not continuing and would not be anticipated to be met by existing Employee levels.
- (c) Casual employment will be for not less than three consecutive hours in any day worked except:
 - (i) where the Employee works from home by agreement with the Employer;
or
 - (ii) with the agreement of the Employee.
- (d) Except as expressly provided for, all other provisions of this Agreement apply to casual Employees.

Supplementary Guidance Information

1. Secure employment

- 1.1. Where possible, preference should be given to ongoing forms of employment. Employers should consider, before entering into fixed term or casual engagements, whether it would be more appropriate in the circumstances to engage the Employee in an ongoing form of employment.
- 1.2. In making this assessment Employer's must have regard to clauses 15.6 and 15.7 of the Agreement which place restrictions on the engagement of fixed term and casual Employees.

2. Ongoing employment

- 2.1. The Employer should consider using ongoing employment where:
 - (a) the need for the work has no foreseeable end date,
 - (b) there is a requirement to fill a vacancy where the criteria for fixed term or casual employment does not apply,
 - (c) funding is available to enable the creation of a new ongoing role, or
 - (d) filling an existing ongoing vacancy.
- 2.2. In considering whether an individual position should be filled in an ongoing capacity, the factors above will need to be weighed against the appropriate use of fixed term employment (as outlined in clause 15.6 of the Agreement) or casual employment (as outlined in clause 15.7 of the Agreement) to determine the appropriate mode of employment in the circumstances.

3. Use of fixed term employment

- 3.1. Fixed term employment must have a specified start and end date. The maximum duration of a fixed term employment arrangement (other than in cases of exceptional or unforeseen circumstances) is three years. Where a role is required for more than three years (either initially or as a result of an extension to an original fixed term arrangement), the Employer should review the circumstances to ensure the position is appropriately classified as fixed term, with reference to the requirements outlined in clause 15.6 of the Agreement.
- 3.2. Specific provisions exist for the use of fixed term labour for Parental Leave purposes - 'replacement Employees' (see clause 51.26 of the Agreement).
- 3.3. Continuous paid service under a fixed term arrangement will be taken into account where the Employee is subsequently engaged on an ongoing basis (including in determining any probation period required (see clause 15.4(c) of the Agreement).

4. Casual employment

- 4.1. The use of casual Employees is limited to short-term or seasonal work demands or specialist skill requirements which are not required on a continuing basis and would not be anticipated to be met by existing Employee levels.

5. Movement between employment types

- 5.1. The Agreement does not provide an automatic right to move between employment types (for example from casual or fixed term employment to ongoing employment).
- 5.2. Movement from fixed term to ongoing employment or from casual employment to any other type of employment may occur in accordance with the Employer's recruitment and selection policy and processes.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 14 or clause 15 may apply for a Review of Actions under the Employer's Review of Actions policy.

However, clause 14 prescribes an obligation upon an Employee or Union (union being defined in clause 4 as the CPSU), where there is a belief that a fixed term or casual Employee has been engaged inconsistent with the criteria in clauses 15.6(b) or 15.7(b) to first refer the matter to the Employer for resolution. If the matter cannot be resolved between the Employee/Union and Employer, the Resolution of Disputes procedure in clause 12 may be utilised.

Parties should note that clause 14.3 prescribes a jurisdictional obligation upon parties to first attempt to resolve a matter pertaining to the engagement of a fixed term or casual Employee before the Resolution of Disputes procedure may be utilised. It is recommended that parties follow this procedural requirement prior to commencing a Resolution of Disputes process in accordance with clause 12 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Probation

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpsc.vic.gov.au/vps-enterprise-agreement-common-policies/>