

Filling a Public Sector Vacancy

Commissioner's Instruction 2

Statement of intent

This Commissioner's instruction (CI) sets out the requirements which apply when filling a vacancy in the Western Australian public sector.

It amends and updates the CI which commenced on 21 February 2011, to reflect the operation of the Public Sector Management (Redeployment and Redundancy) Regulations 2014 effective from 1 May 2015.

Scope and application

This CI applies to public service officers appointed under Part 3 of the *Public Sector Management Act 1994* (PSM Act) and to employees otherwise employed by employing authorities of public sector bodies, as defined in the PSM Act.

This CI revokes under section 22A(5) of the PSM Act (and replaces):

- a. CI, formerly Approved Procedure 3 - Permanent Appointments (Public Service Officers); and
- b. CI, formerly Approved Procedure 4 - Fixed Term Contract of Service (Public Service Officers).

References

When making employment decisions and exercising employment powers and functions the employing authority of each public sector body and its employees must comply with the minimum standards of merit, equity and probity established by the Commissioner under the Employment Standard and the CI on Filling a Public Sector Vacancy, set out below. This requirement is in addition to compliance with the PSM Act (particularly section 8(1)(a), (b) and (c), section 8(3) and section 9), the Western Australian Public Sector Code of Ethics and other relevant legislation.

Supporting information produced by the Public Sector Commission may assist the employing authorities of public sector bodies fill vacancies. Such material is explanatory and does not form part of the legislative framework. A list of products is available at the end of this CI.



Instruction

1. Filling a vacancy

Options for filling a public sector vacancy

- 1.1 Where a CEO/employing authority decides to fill a vacancy, this should be by:
 - a. a permanent or a fixed term appointment or contract of service;
 - b. redeployment;
 - c. transferring an employee at level;
 - d. a secondment; or
 - e. an acting opportunity.

Using fixed term appointments and contracts of service

- 1.2 Subject to any industrial awards, agreements and legislative requirements, public sector vacancies should be filled on a permanent basis, or by permanent officers acting or seconded, unless a CEO/employing authority chooses to use a fixed term arrangement covering:
 - a. one-off periods of relief;
 - b. work on projects with a finite life, where funding is not guaranteed past a certain date or the work is seasonal in nature;
 - c. roles where the skills and abilities to perform a function are expected to vary over time; or
 - d. periods of traineeships, apprenticeships and cadetships.
- 1.3 A CEO/employing authority should manage the employment of fixed term or casual employees in accordance with industrial awards, agreements, legislative requirements and the Department of Commerce – Labour Relations Circular to Chief Executive Officers Modes of Employment Policy (21st May 2001). Where there is no likelihood the temporary employment will become permanent this is to be specified and no commitment to on-going employment beyond the term of the contract should be implied.

2. Redeployment clearance

- 2.1 Redeployment clearance is to be obtained in accordance with the CI – Redeployment and Redundancy.
- 2.2 Unless otherwise exempted by the Commissioner vacancies filled from an appointment pool require redeployment clearance at the initial stage of the process, if one or more vacancies exist, and prior to each subsequent appointment.



3. Advertising requirements

Unless Part 4 of this CI applies, once a CEO/employing authority has obtained redeployment clearance they should, depending on the circumstances, use general advertising, targeted advertising, quarantined advertising or an expression of interest.

General advertising

- 3.1 As a minimum requirement, all permanent public sector vacancies, vacancies identifying the possibility of permanency, or fixed term contract opportunities over six months are to be advertised on the WA Government's Jobs Board, Jobs WA, unless the circumstances arise that justify targeted advertising, quarantining or expressions of interest.
- 3.2 To attract a competitive field CEOs/employing authorities should also consider advertising in other mediums. These could include community newspapers and online recruitment services.

Targeted advertising

- 3.3 Targeted advertising limits the invitation to apply for a vacancy, including a permanent vacancy, to, at least, public sector employees who are currently employed by the CEO/employing authority. Current employees include employees seconded from other public sector bodies and employees of the public sector body who are seconded to other public sector bodies. The invitation may also be extended to employees of other agencies or selected groups of external candidates, for example, members of a particular regional community.
- 3.4 Decisions to use targeted advertising should be documented and endorsed by the CEO/employing authority and should only occur in circumstances where:
 - a. it is difficult to staff regional or remote locations, where general advertising would be unlikely to result in a competitive field; and
 - b. the CEO/employing authority has formed an opinion that a competitive field can be obtained through targeted advertising.

Quarantining

- 3.5 Quarantining is an invitation for existing permanent employees of a CEO/employing authority to apply for particular vacancies at substantive level. Quarantining should only be used to minimise the potential displacement of existing permanent public sector employees or disruption to the provision of services resulting from organisational change, such as a restructure.
- 3.6 Decisions to use quarantining should be documented and endorsed by the CEO/employing authority.
- 3.7 There is no requirement to seek redeployment clearance where a CEO/employing authority is quarantining existing positions.



Expressions of interest

3.8 Acting opportunities greater than six months, which do not have a possibility of becoming permanent, can be circulated as appropriate within a public sector body as an expression of interest.

4. Non advertising and competitive assessment of merit

4.1 A CEO/employing authority should advertise to establish a competitive field and conduct a competitive assessment of merit to fill a vacancy, unless one of the following circumstances applies. In all the circumstances below, an individual assessment of merit is required:

- a. an employee is transferred (see terminology section) at level (comparable or equivalent conditions based on salary/wage excluding allowances, penalty rates etc, no loss of tenure or service continuity) to another position within the public sector body in which they are currently employed or to another public sector body;
- b. acting, secondment and fixed term contract opportunities less than six months, where there is no likelihood these opportunities will be extended;
- c. when it is a Level 1 applicant or trainee who has satisfied the entrance requirements and has been referred to the public sector body by the Public Sector Commission for an assessment of individual merit;
- d. where the CEO/employing authority is satisfied that advertising will not attract a competitive field due to the specialist nature of a position (see terminology specialist position);
- e. where the position is critical, has a whole of government focus and is for no more than 12 months;
- f. where a public service officer holds an existing office and is to be appointed to a further office/s that is not higher than the current office or classification held; or
- g. where a previous permanent employee of an agency (not in the Senior Executive Service) is to be appointed to a vacancy that is the same or similar (same level and same or similar job requirements) to a previous role held by the employee, and the following criteria are met:
 - i. the employee must have worked for the agency for a period of no less than 12 months;
 - ii. the employee must have a documented record of satisfactory performance in their previous role; and
 - iii. if applicable the employee is to have met any severance or redundancy conditions.

4.2 The decision not to advertise and conduct a competitive assessment of merit should be documented and endorsed by the CEO/employing authority.



Commissioner's review of advertising

4.3 The Commissioner may either in response to a compliance inquiry or on his/her own initiative review a CEO/employing authority's decision not to use the minimum requirement of general advertising or not to advertise a position and conduct an assessment of merit. A CEO/employing authority must provide all relevant information and material to facilitate any such review.

5. Subsequent appointments following a merit process

General appointment

5.1 A CEO/employing authority who has advertised a vacancy and conducted a recruitment process can use this process to fill subsequent vacancies six months from when the CEO/employing authority endorsed the recruitment decision.

5.2 Subsequent vacancies should be at the same level and have identical or similar job requirements to the original vacancy. Selection documentation should support that the person to be appointed was considered to be suitable for the original vacancy.

5.3 The possibility of appointment to a similar vacancy should be stated in the original advertisement.

Appointment pools

5.4 A CEO/employing authority may form an individual agency pool or combine with other CEOs/employing authorities to form a shared appointment pool. These pools should run for a specified period of time, unless they are advertised as an open pool (no closing date). Appointments should be made prior to the pool's closing date.

5.5 A CEO/employing authority may use a pool to make subsequent appointments to positions, provided they are at the same level and have identical or similar job requirements to the original vacancy. Selection documentation should support that the person to be appointed was considered to be suitable for the original vacancy.

5.6 The possibility of appointment to a similar vacancy should be stated in the advertisement.

Suitability lists

5.7 Suitability lists should remain open for a defined period of time (have a closing date), unless they are maintained as part of an open pool (no closing date). If no date is specified suitability lists should not remain open and accessible for more than six months from when the CEO/employing authority has endorsed the recruitment decision.

5.8 A CEO/employing authority may access the suitability list of another CEO/employing authority to make appointments to vacancies provided the vacancies are at the same level and have identical or similar job requirements to the original advertisement. Selection documentation should support that the person to be appointed was considered to be suitable for the original vacancy.



5.9 A CEO/employing authority conducting the recruitment process must obtain a person's consent prior to providing their details to another CEO/employing authority. Generally this is obtained at the application stage.

6. Permanent appointment of secondees and acting employees

- 6.1 A CEO/employing authority may appoint seconded or acting employees permanently to the vacancy or a similar vacancy provided the following criteria are met:
- a. the possibility for permanency to the vacancy or a similar vacancy was stated in the original advertisement;
 - b. the possibility of permanency has been documented as part of a recruitment decision;
 - c. a person has been acting or seconded into a position generally for no less than 12 months and the conversion to permanency occurs no later than 2 years after the vacancy was advertised;
 - d. performance management has been undertaken and documented during the term of the secondment or the acting opportunity. Documentation supports satisfactory performance; and
 - e. an individual assessment of merit is undertaken prior to permanent appointment to confirm suitability.

7. Permanent appointment of fixed term contract employees

- 7.1 A CEO/employing authority may appoint employees on fixed term contracts of service permanently to the vacancy or a similar vacancy provided the following criteria are met:
- a. the possibility for permanency to the vacancy or a similar vacancy was stated in the original advertisement. For public service vacancies (appointed under Part 3 of the PSM Act) the position needs to have been advertised in accordance with
 - b. s 64(4) of the PSM Act;
 - c. the possibility for permanency has been documented as part of a recruitment decision;
 - d. the person has been on contract for generally no less than 12 months and the conversion to permanency occurs no later than 2 years after the vacancy was advertised;
 - e. performance management has been undertaken and documented during the term of the fixed term contract. Documentation supports satisfactory performance; and
 - f. an individual assessment of merit is undertaken prior to permanent appointment to confirm suitability.
- 7.2 Subject to specific legislative requirements the following groups of fixed term contract employees are excluded from the ability to be appointed permanently:
- a. Senior Executive Service officers;
 - b. CEOs; and
 - c. Term of Government or term of Minister ministerial officers (s 68 PSM Act).



8. Appointment documentation

A permanent appointment or a fixed term contract of service appointment should only proceed when certain documentary evidence has been provided.

- 8.1 An appointment may proceed when the appointee provides documentary evidence of:
- a. date of birth;
 - b. Certificate of Australian citizenship, evidence of permanent resident status, an entitlement to live and work indefinitely in Australia or temporary visa with entitlement to work (applies to contract positions only); and
 - c. any essential qualifications.
- 8.2 A CEO/employing authority may also require additional documentary evidence. This may include:
- a. health status;
 - b. disability status;
 - c. criminal record check;
 - d. working with children checks; and
 - e. information regarding any outstanding disciplinary processes.

9. Offer and acceptance

Before the commencement of an employee (permanent or fixed term contract), an offer and acceptance of employment should be prepared and signed by both parties.

- 9.1 The offer and acceptance should contain the following:
- a. an offer of appointment setting out the date of appointment;
 - b. the section of the PSM Act or other relevant legislation under which the appointment is made;
 - c. details of remuneration;
 - d. the relevant position;
 - e. conditions of service;
 - f. details of the documentary evidence required from the appointee; and
 - g. any special conditions of appointment.
- 9.2 Where the conditions of the original offer are renegotiated, the revised agreed conditions of appointment should be signed by both parties before the employee commences duty.
- 9.3 A copy of the signed offer and acceptance of employment shall be retained on file by the public sector body and a copy provided to the employee.



10. Probation

Public sector employees may be subject to a period of probation in accordance with relevant industrial awards, agreements and legislation.

Every person appointed as a permanent officer in the Public Service should normally be on probation for a period not exceeding six months. An officer, who is appointed from the WA public sector and who has had at least six months of continuous satisfactory service immediately prior to their permanent appointment, is not required to serve a probationary period, unless otherwise determined by the employing authority. Prior to the expiry of the period of probation, the employing authority should:

- a. undertake a performance assessment, and
- b. confirm the officer's permanent appointment;
- c. extend the period of probation; or
- d. terminate the services of the officer.

11. Breach of Standard claims

A CEO/employing authority should provide notification of a person's right to lodge a breach of standard claim in accordance with the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005.

Terminology

Acting

The temporary movement of an employee to the same or a higher classification level within the same public sector body. The Employment Standard applies to acting at a higher classification level and where a person has applied for an acting opportunity, even if they are at the same level.

Appointment pool

A pool of people assessed as being suitable for appointment. An appointment pool is formed and maintained by one or more CEO/employing authority (see also open appointment pool and shared agency pool).

Breach of Standard claims

Claims made in accordance with the Public Sector Management (Breaches of Public Sector Standards) Regulations 2005 by a person who considers they have been adversely affected by a breach of a public sector standard by a CEO/employing authority.

Commissioner

The Public Sector Commissioner.



Commissioner's instructions

Commissioner's instructions (CIs) are written instructions which generally deal with matters of public sector management and administration.

CIs are provided for in the PSM Act.

Section 9(a)(ii) of the PSM Act provides that CIs must be complied with by all public sector bodies and employees, and section 30(b) provides that CIs must be complied with by CEOs and chief employees.

Competitive assessment of merit

A process in which more than one person has their respective merit assessed for a vacancy.

Competitive field

A field which includes more than one person who meets the requirements of the vacant position; competitive fields are generally achieved through the advertising of a vacancy.

Compliance inquiry

An inquiry made to the Commissioner about a matter the Commissioner has jurisdiction to monitor under the PSM Act.

Employee

Includes an officer, in which case 'employment' is to be taken to include 'appointment'.

Employment decision

A decision to recruit, select, appoint, transfer, second or act an employee.

Employment Standard

Sets out the minimum standards of merit, equity and probity to be complied with by the employing authority of each public sector body when filling a vacancy by recruitment, selection, appointment, transfer, secondment and temporary deployment (acting) activities.

Fixed term appointment (public service officers)

A person appointed by the CEO (or by another employing authority) under section 64(1)(b) of the PSM Act.

Fixed term contract of service (public sector employees)

A person employed by a CEO/employing authority in accordance with relevant legislative provisions for a fixed term.

Individual assessment of merit

The assessment of one person's merit for a vacancy.



Open pool

An open pool has no closing date. Open pools are generally advertised on Jobs WA or a public sector body's website. Open pools are used where there are likely to be ongoing vacancies.

Permanent appointment

The appointment of a person by a CEO, or other employing authority, under section 64(1)(a) of the PSM Act or relevant other Act (public sector) for an indefinite period.

Public sector body

As defined in section 3 of the PSM Act.

Public Sector Standards in Human Resource Management

The Commissioner's functions include the issuing of CIs that establish Public Sector Standards in Human Resource Management. The standards set out minimum standards of merit, equity and probity to be complied with in the public sector.

As at 21 February 2011, there are five other established standards (in addition to the Employment Standard):

- i. Redeployment Standard;
- ii. Discipline Standard;
- iii. Grievance Resolution Standard;
- iv. Performance Management Standard; and
- v. Termination Standard.

Recruitment

The process used by an agency to attract, assess and select applicants to fill a vacancy.

Redeployee

An employee who has been formally registered as a 'registered employee' under the Public Sector Management (Redeployment and Redundancy) Regulations 2014. These regulations provide the employee priority access to employment opportunities in public sector bodies.

Secondment

The temporary movement of an employee to a different employing authority or outside of the public sector.

Shared agency pool

A pool of people assessed as being suitable for appointment. A shared agency pool is formed by the employing authorities of two or more public sector bodies.



Similar vacancy

A position that is at the same level to the advertised vacancy and comparable in terms of job requirements and the skills, knowledge and abilities required to undertake the position.

Specialist position

A position, the CEO/employing authority for which, has determined special particular skills, knowledge, experience or qualifications are required.

Suitability list

A list of people assessed as being suitable for appointment maintained by one public sector body. A suitability list can be accessed by other public sector bodies seeking to appoint provided the vacancy is the same or demonstratively similar.

Transfer

The permanent movement at the same classification level. Transfers occur in accordance with the Employment Standard, industrial awards and agreements or legislation.

Vacancy

A vacant post, office or position within the public sector. A vacancy can result from the creation of a new post, office or position or by the temporary or permanent movement of another employee.

For redeployment purposes a vacancy is defined as all posts, offices or positions, newly created, recently vacated or to be filled on a temporary basis in excess of six months.

Work related requirements

The requirements determined and documented by the CEO/employing authority to undertake the functions of the role.