

EMPLOYMENT CATEGORIES & SECURE EMPLOYMENT

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Authority and Application

Clauses 17 and 18 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 18 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 18 is interrelated with clause 17 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 Agreement

Clause 17 – Secure Employment

Clause 18 – Employment Categories and Entitlements

Supplementary Guidance Information

1. Secure employment

- 1.1. Preference should be given to ongoing forms of employment where possible. Before entering into fixed term or casual engagements, Employers should consider whether it would be more appropriate in the circumstances to engage the Employee on an ongoing basis
- 1.2. In making this assessment Employer's must have regard to clauses 17.3 and 17.4 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 work has no foreseeable end date,
 - (b) there is a requirement to fill a vacancy and the criteria for fixed term or casual employment does not apply,
 - (c) there is funding available to enable the creation of a new ongoing role, or
 - (d) there is a need to fill 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 17.3 of the Agreement) or casual employment (as outlined in clause 17.4 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 is three years unless there are exceptional or unforeseen circumstances.
- 3.2. 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 17.3 of the Agreement.
- 3.3. Specific provisions exist for the use of fixed term employment for Parental Leave purposes - 'Replacement Employees' (see clause 55.34 of the Agreement).
- 3.4. 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 18.3(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.

- 4.2. Employment of casuals must be in accordance with clause 17.4 of the Agreement. In addition to this, Employers must also ensure that casual employment complies with the definition of casual employment set out by section 15A of the *Fair Work Act 2009*.

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 17 or clause 18 may apply for a Review of Actions under the Employer's Review of Actions policy.
- However, clause 17.5 of the Agreement prescribes an obligation upon an Employee or Union (union being defined in clause 2 of the Agreement as the CPSU), where it is considered that a fixed term or casual Employee has been engaged inconsistent with the criteria in clauses 17.3 or 17.4 of the Agreement to first refer the matter to the Employer for resolution.
- Parties should note that clause 17.5 of the Agreement 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. Parties should in the first instance follow this procedural requirement, prior to commencing a Resolution of Disputes process in accordance with clause 13 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
- Review of Action

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

Key Details

Version

Final as approved

Date

June 2022

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