

FILLING VACANCIES

1. Scope

- 1.1. This Employment Instruction:
 - a) sets out rules for undertaking actions to employ a person, or promote or transfer an employee in accordance with the *Public Sector Employment and Management Act 1993* (the Act);
 - b) is issued in accordance with section 16 of the Act; and
 - c) is to be read in conjunction with, and subject to, Part 5 of the Act.

2. Agency procedure

- 2.1. A Chief Executive Officer must develop a procedure for the filling of vacancies consistent with the Act, its subordinate legislation and any relevant award or enterprise agreement.

3. Multi-designation and cross stream advertising

- 3.1. A Chief Executive Officer has the discretion to advertise a vacancy with multiple designations within the same employment stream (e.g. Professional 2/ Professional 3) provided there are separate job descriptions for each level.
- 3.2. A Chief Executive Officer has the discretion to advertise a vacancy across employment streams (e.g. Nurse 5/Professional 2) where:
 - a) the labour market is in short supply of a specific skills set;
 - b) the job allows flexibility to develop employees in the role; and
 - c) separate Job Descriptions and Job Analysis Questionnaires are available for each stream.
- 3.3. In the case of both multi-designation and cross stream advertising, a person can only be employed to a designation for which he or she meets the specified criteria and qualifications, and must accept the conditions of employment relevant to that

particular designation.

4. Conditions for employment

- 4.1. A person is not eligible for employment in the Northern Territory Public Sector unless the person has produced:
 - a) evidence of age to the satisfaction of the Chief Executive Officer;
 - b) documentary evidence of change of name where the name currently used by the person differs from that shown on other documentation;
 - c) evidence of any relevant tertiary qualifications held, as claimed in the person's job application; and
 - d) if relevant, evidence of an appropriate visa to enable employment in Australia.
- 4.2. In addition to the above, a person is not eligible for ongoing employment unless the person:
 - a) is an Australian citizen, or
 - b) has been granted permanent resident status; or
 - c) is a New Zealand citizen with a Special Category visa that allows them to remain and work in Australia indefinitely; or
 - d) has a visa enabling temporary employment in Australia; however, employing the person as a 'fixed period employee' would result in a breach of the fixed term contract provisions of Division 5 of Part 2-9 of the *Fair Work Act 2009* (Cth); or
- 4.3. A former employee who has accepted a voluntary retrenchment is not eligible for employment for a period of 12 months from the date of termination, except with the approval of the Commissioner.

5. Acceptance of an Executive Contract of Employment

- 5.1. An ongoing employee is required to resign from his or her employment in order to accept an executive contract of employment.

6. Release of employee to an ongoing vacancy

- 6.1. A Chief Executive Officer must release an employee successful for an ongoing transfer or promotion opportunity. The employee is not required to resign and be re-employed.

7. Release of employees for temporary vacancies

- 7.1. A Chief Executive Officer may decide not to release an employee for a temporary vacancy for business reasons including the following:
 - a) releasing the employee would significantly impact on the capacity of the relevant work unit to deliver its services;
 - b) releasing the employee adversely affects other recruitment actions in the work unit;
 - c) the employee is part way through a probation period; or
 - d) the employee is part way through an inability or discipline process.
- 7.2. If a temporary vacancy, or series of temporary vacancies, is for a period of greater than 18 months, the Chief Executive Officer of the releasing agency can:
 - a) refuse the request;
 - b) require the Chief Executive Officer of the receiving agency to transfer and accept continued responsibility for the employee; or
 - c) agree to the continued release of the employee for the requested period.

8. Salary level on employment

- 8.1. A person's commencing salary must be the minimum of the salary range of the relevant designation unless:
 - a) otherwise specified in a relevant award, enterprise agreement or Commissioner's determination; or
 - b) a Chief Executive Officer determines that a person's prior experience, special expertise or qualifications warrant employment at a higher salary increment having regard to the experience, expertise and qualifications of employees in the workplace where the duties are to be performed.

9. Payment on promotion

- 9.1. An employee's effective date of promotion is the date the employee first performs the duties of the new designation and from when the employee's higher salary will commence.
- 9.2. An employee's salary on promotion must be at the minimum of the salary range of the relevant designation unless:
 - a) otherwise specified in a relevant award, enterprise agreement, by-law, or Commissioner's determination; or

- b) the promotion is across streams, in which case the employee will be paid at the salary increment equal to the employee's nominal salary immediately prior to accepting the promotion, or where there is no directly corresponding salary increment, the salary increment that next constitutes a salary increase when compared against the employee's nominal salary received immediately prior to accepting the promotion.
- 9.3. Where a relevant award or enterprise agreement enables an employee to be promoted to a higher salary increment, a Chief Executive Officer must consider whether the employee's prior experience, special expertise or qualifications warrant promotion at a higher salary increment having regard to the experience, expertise and qualifications of other employees in the workplace where the duties are to be performed.

10. Section 35 Transfers

- 10.1. When initiating a transfer to perform other duties under section 35 of the Act, a Chief Executive Officer must take into account:
- a) the suitability and capability of the employee to perform the duties;
 - b) whether the employee is qualified to perform the duties;
 - c) the employee's personal and family circumstances; and
 - d) any relevant objections of the employee regarding the proposed transfer.

11. Multiple Employment Arrangements

- 11.1. Where an employee is considering entering into more than one employment arrangement in the Northern Territory Public Sector the employee must:
- a) seek the approval of the Chief Executive Officer of the agency in which the employee is employed at the time of considering entering into another employment arrangement, and notify the Chief Executive Officer of the new agency of the employee's existing employment arrangement to enable any relevant matters to be considered;
 - b) notify payroll so that appropriate tax arrangements may be made.
- 11.2. If the employee is the subject of any inability or disciplinary action, notify the Chief Executive Officer of the other agency of that action to enable any relevant matters to be considered including potential implications of the action on the employee's continued employment in the second agency.

12. Filling Vacancies Resulting From Substantial Changes

- 12.1 When filling vacancies resulting from substantial change the CEO will adopt a fair and orderly process consistent with the following principles:
- a) Employees and the relevant union(s) are to be consulted about the process.
 - b) Any work reorganisation and job redesign will, where appropriate be undertaken taking into account the views of employees within the affected work unit.
 - c) Any newly created or redesigned jobs will, where necessary, be promptly evaluated through the Job Evaluation System or other relevant classification review system.
- 12.1 Where the CEO and majority of employees agree, vacancies are to be filled as follows:
- a) the CEO may transfer ongoing employees affected by the change to the same or like job within the agency under section 35 of the Act.
 - b) If there is more than one suitable affected ongoing employee affected by the change available for transfer to a vacancy, a selection will be made on merit between them.
 - c) Ongoing employees from the affected work unit (including those who may be on leave or temporary transfer to another work unit or agency) have priority over all other employees.
 - d) Where a vacancy resulting from substantial change cannot be filled by a suitable ongoing employee under c), the CEO may transfer a suitable potentially surplus employee from outside the affected work unit.
 - e) Ongoing employees from the affected work unit who cannot be placed within the work unit, or elsewhere within the agency, may be dealt with in accordance with the Redeployment and Redundancy provisions under the relevant enterprise agreement.
 - f) Where a vacancy is not filled through c) or d), the CEO may appoint, transfer or promote (as appropriate) a suitable employee from one of the following categories:
 - Employees who were originally selected on merit to a vacancy in the work unit and who have been employed in the unit for more than six months service on either a renewal or second contract for the same position, and not in an externally funded position, may be considered for an appropriate on-going vacancy in the unit at level or a lower level; or
 - Employees with more than 18 months service and on their third fixed period contract, for the same position in the work unit, which is externally funded; or
 - Employees on continuous higher duties allowance for more than 18 months in the same job.

- g) Where there is more than one suitable employee for a vacancy from employees set out in f), a selection will be made on merit between them.
- 12.2 The work allocation of employees who, at the time of the change occurring, have been on continuous higher duties, leave without pay, study leave, or parental leave will be resolved on a case by case basis at the CEO's discretion in consultation with the union at the employee's request.
- 12.3 If there is no agreement between the CEO and the employees under clause 12.2, vacancies will be filled in the normal manner.
- 12.4 Employees whose jobs have changed or who have transferred to a new job where different skills are required are to be assessed and provided with relevant training.



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Acting Commissioner for Public Employment

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Note: This Employment Instruction is to be read in conjunction with The Fair Work Act 2009, Part 2-9 Division 5 – Fixed term contracts, Subdivision A – Limitations on fixed term contracts, and the Commissioner's Guideline: Fixed Period Employment.