

Conversion to Permanency

Fixed Term Contract Employment

Eligibility for Review

Consecutive contracts: Where an employee has performed the same or a similar role in more than one position for an employer, the total employment period is to be considered when calculating the two-year anniversary for eligibility.

Concurrent contracts: Where an employee has two or more part time contract positions with the same employer, each arrangement should be considered in isolation. For example, an employee working on a 0.4 FTE contract in one role may subsequently take up a 0.6 FTE contract in another, similar role. Once the first contract has reached the two-year milestone, if the employee is considered eligible for permanency in either contract, the conversion would only be to the eligible portion of FTE, not to a full time position. Subsequent reviews of the second contract should be made in accordance with the clause. In the event the two roles are not similar, the contracts should be considered separately.

Conversion

Commissioner's Instructions: Conversion from fixed term contract to permanency does not create a vacancy, therefore agencies do not need to consider the requirements of Commissioner's Instruction 2 in making a fixed term employee permanent under this clause.

Employee requests: An employee can only request a review based on a potential change in eligibility referred to in clause 18.5 after they have worked for at least two years in the same or a similar role on any number of fixed term contracts with the same employer.

Funding arrangements & notification

It is expected that employees working in roles that are subject to finite or uncertain funding arrangements would already be aware of this, and of its implications for eligibility for permanent employment, separately from the review of employment permanency (see clause 18.6 of the PCSA). If assessment of funding certainty as part of the conversion review process reveals new information, employers must consult with affected employees in accordance with the relevant Notification of Change provisions in the Agreement, the applicable Award and the *Minimum Conditions of Employment Act 1993* as soon as possible.

Employers should be able to demonstrate that funding for a role will expire in the foreseeable future if they seek to rely on clause 18.12 to maintain a fixed term contract arrangement.

Dispute pathways

Available actions for employees who dispute the outcome of an employer's assessment include:

- Informal discussion with employers
- Internal grievance resolution processes
- Dispute Settlement Procedure under clause 62 of the Agreement
- Access to the Western Australian Industrial Relations Commission in some instances and for represented employees.

Employers should make every effort to resolve disputes at an early stage. This includes by providing relevant information in writing to the employee as soon as possible to help the employee better understand the reason/s behind the decision.

Casual Employment

Fluctuating work patterns

In line with Government's preference for permanent employment, if there is a business need that has provided consistent, regular employment to one individual through casual employment over a period of at least two years, which is reasonably expected to continue, the casual role must be converted to a permanent role and offered to that individual.

When assessing whether working patterns 'fluctuate substantially' employers should consider whether the demand for that work is ad-hoc and unpredictable. For example, it may not be sufficient for work completed every month on different days or at different times to be treated as fluctuating if there is certainty that the work will be available each month on an ongoing basis.

If, a review of the total hours worked by the individual employee identifies a proportion of hours worked by the employee that are reasonably consistent and do not substantially fluctuate, employers should create a permanent role for the relevant FTE proportion that has been consistently worked and offer this to the employee.

Eligibility for review

Where a break in service of more than 30 days disqualifies a casual employee from eligibility for review, employers should revisit the review process every 2 years without a break in service.

Establishing a position – Commissioner's Instructions

The creation of a permanent position under this clause invokes Commissioner's Instruction 12 – Redeployment and Redundancy (CI12). CI12 requires vacancy details to be posted on RAMS to allow priority consideration to registered employees prior to offering permanent employment.

After clearance, offers of appointment must be made in accordance with Commissioner's Instruction 1 – Employment Standard, and comply with the principles of merit, equity and transparency.

Dispute pathways

Available actions for employees who dispute the outcome of the assessment include:

- Informal discussion with employers
- Internal grievance resolution processes
- Dispute Settlement Procedure under clause 62 of GA 2021
- Access to the Western Australian Industrial Relations Commission in some instances and for represented employees.

Employers should make every effort to resolve disputes at an early stage. This includes by providing relevant information in writing to the employee as soon as possible to help the employee better understand the reason/s behind the decision.

Permanent employment declined

If an employer is required to create a new permanent position following review of a casual employee's engagement, employers should advertise to appoint to the vacancy created if the employee does not wish to alter their employment status. The employee may be retained on a casual basis in a different role and, if that arrangement continues, would be eligible for review again after two years. Employers should ensure employees are aware of this option and of the consequences of rejecting an offer of permanent appointment at the same time the permanent role is offered to that employee.

Written Statement of Review Outcome

After a review finds that the employee does not meet the definition of 'eligible' for conversion from either fixed term or casual modes of employment to permanent, the employer must write to the employee to confirm the finding and the reasons for it. Employers should include sufficient detail in correspondence to explain their reasons (for example: "*the role you occupy is seasonal and limited to the months from December to March each year.*")

The clause requires the written advice to cover three specific areas:

- 1) **The review outcome and the reasons for it:** there are limited reasons that a review would make a finding of ineligibility. These could be:
 - That the fixed term or casual mode of employment were found to be the correct modes of employment under the definitions in the clause. Example wording: *your fixed term employment is appropriate because it relates to covering a one-off period of relief (or) a vacancy created due to the substantive employee being on maternity leave.*

- That the employees were found to be eligible for appointment but the agency’s funding situation could not support the role on a permanent basis. Example wording: *the funding for your position ends on 30 June 202x and no further funding is available for the [describe service, project or function no longer continuing] beyond this time. We will advise you as soon as practicable if funding circumstances change.*
- That the casual employee holds a visa with a time-limited right to employment in Australia.
- That the position created as a result of the pattern of hours worked by a casual employee was filled by a registered employee.

2) A ‘plain-language’ summary of the employer’s obligations under this clause to appoint eligible employees to permanent employment: Employers may consider adapting the following words:

Fixed Term Contracts:

If a vacant position can provide ongoing, consistent and regular work and an employee has been appointed to that position on a fixed term basis for more than two years, (agency name) must offer to permanently appoint that employee to that position.

Casual employment arrangements:

If the pattern of hours worked by an employee under a casual employment arrangement for two years confirms that ongoing, consistent and regular work is available, (agency name) must create a permanent position and offer to appoint that employee to that permanent position.

3) The actions the employee can take if they disagree with the outcome. These are described above.

Notes on ‘Plain Language’

There are numerous resources available to support writing in ‘plain language’ and your agency style guide may have notes to assist. The goal of plain language is to present information so that readers can understand it quickly. Writing should be easy to read, understand and use by the reader. Translation into other languages may also assist.

Employers should also consider offering the information in alternative forms to increase accessibility for all employees. Depending upon an employee’s individual needs, this may include an offer for a HR representative or the employee's line manager to discuss the information with the employee.