



Probation Policy

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Introduction/Purpose

1. The purpose of the Probation Policy (the policy) is to provide information about the ACT Public Sector (ACTPS) probation process.
2. The purpose of the probationary process is to:
 - a. Provide managers with an opportunity to make a considered assessment about the conduct and work performance of the employee on probation.
 - b. Assist new employees to understand what is required of them.
 - c. Provide both parties with the opportunity to assess whether the employee is suitable for the role and the organisation they have been appointed to on probation.
3. Probation is a critical employment process that determines the suitability of newly appointed employees engaged in the ACTPS. It must be a supportive process during which mutual evaluation and delegate decisions about confirmation of permanent appointment to the ACTPS can be made.
4. This probation process is a requirement under section B3 'Probation' of the Administrative and Related Classifications Enterprise Agreement (or equivalent provisions within the other enterprise agreements) and Division 5.3 'Appointment of Officers' under the *Public Sector Management Act 1994* (ACT) (the PSM Act).
5. Probation provides an opportunity to assess new employees to ensure they:
 - a. Deliver to the performance standards required in the role.

This includes demonstrating relevant eligibility requirements (e.g. passing any health and fitness standards, mandatory qualification and licence) and the ability to undertake the functions of the role to the required standard within set time frames.
 - b. Display appropriate conduct in accordance with section 9 of the PSM Act and the ACTPS Code of Conduct.

This includes adequate work attendance and building and maintaining respectful working relationships with colleagues and stakeholders.

Application

6. This policy contains a set of whole-of-government guidelines issued by the Head of Service.
7. Probation applies to all newly appointed officers engaged under the PSM Act and are referred to as 'employees' for the purposes of this policy.
8. Probation does not apply to:
 - a. Permanent ACTPS employees who are transferred or promoted within or between directorates.
 - b. Employees who are appointed without probation in exceptional circumstances in accordance with section 71C of the PSM Act.

Key Legislative Provisions

9. The key principles of this policy are consistent with the following:
 - a. ACTPS enterprise agreements. The Administrative and Related Classifications Enterprise Agreement provisions are contained in Section B3 – Probation (or equivalent provisions within the other enterprise agreements).
 - b. *Public Sector Management Act 1994* (ACT). Division 5.3 of the PSM Act provides for probation upon appointment and extensions to probation.
 - c. *Public Sector Management Standards 2016* (ACT). Section 83 of the PSM Standards provides for the consideration of unsuitability criteria for officers on probation and the reappointment on probation in certain circumstances.

Principles

10. The principles that underpin the probation process are:
 - a. The probation period is recognised as an important phase of the employment process, allowing both parties to assess suitability for permanent appointment to the ACTPS.
 - b. The probation period is a defined period during which a new employee's performance and conduct is subject to formal review.
 - c. During the probation period, the manager must:
 - i. Provide the new employee with clear expectations, consistent guidance, regular, timely and constructive feedback.
 - ii. Assess the suitability of the employee having regard to conduct, work performance and behaviour, including providing at least 2 formal written assessment reviews to the employee in their probation report.
 - iii. Ensure that the work provided (and therefore the performance assessed) is representative of the work likely to be encountered in the role post-probation.
 - iv. Make a recommendation to the delegate on the suitability of the employee for permanent appointment to the ACTPS based on the work performed and behaviour assessed during this period.
 - d. If a manager identifies deficiencies, corrective action should be taken as early as possible, with additional advice sought from the directorate Human Resources (HR) team who can assist with this process and any staff development activities or training.

Procedure

Probation period

11. Any probation period applied to a new employee must be communicated in writing in their appointment documentation prior to their commencement and must include:
 - The length of the probation period.
 - The possibility of an extension to the probation period where required.

- The maximum probation period.
 - Any other relevant information.
12. The probation period begins on the day the employee is appointed.
 13. The probation period will ordinarily be no more than 6 months for most ACT Government directorates unless stated otherwise in an applicable enterprise agreement or under Division 5.3 'Appointment of Officers' of the PSM Act i.e.:
 - a. It is in accordance with an approved training scheme employment arrangement, including entry level programs such as graduate and cadet programs, traineeships or apprenticeships.
 - b. It is for the employment of a person to a teaching position.
 14. A period of probation of 10 months is generally considered reasonable for participants in the ACTPS graduate program.
 15. Depending on the nature and circumstances of the employment, a work area may consider a probation period longer than 6 months. Probation periods longer than 6 months should only be approved in extraordinary circumstances and cannot exceed a maximum of 12 months. These provisions may vary across enterprise agreements.
 16. An employee may be appointed without a probation period where the delegate is satisfied that:
 - a. The employment is in the public interest.
 - b. The employee has completed a period of employment, either as a full-time or temporary officer, in a similar position for at least 12 months.
 - c. They have undergone a medical examination and their health has been deemed satisfactory unless this is not a requirement for the role.

Managing Probation

17. As in any performance management, proactive management, clear documentation and record keeping are essential during the probation process.
18. Setting expected performance and behaviour standards and establishing tasks and duties to be undertaken should occur from the employee's first day of duty so the new employee knows what is required of them. The Performance and Development Plan (PDP) can be used to document this.
19. An appropriate induction will complement the probation process in ensuring that the new employee is given adequate information and training to enable them to perform the duties of their position efficiently at an early stage.
20. Induction may cover, but is not limited to, activities such as:
 - a. Discussion about expected behaviours (e.g. section 9 of the PSM Act, the [ACTPS Code of Conduct, values and signature behaviours](#)) and performance that is expected in the role.
 - b. Establishing a performance development plan and the timeline for the formal probation reviews within their first few weeks.
 - c. Assigning and assisting with mandatory or on-the-job training.
21. Managers are to provide new employees with prompt and appropriate feedback on work performance, including recognition of acceptable and exceptional work performance, and constructive feedback on areas of work performance that need improvement. Details of

feedback should be documented within the probation report to ensure the employee has a clear understanding of any areas that require improvement.

22. Multi-source feedback or other means of gathering information on performance assessment is encouraged. This may include verbal or written feedback and feedback through relevant training or practical experience.
23. Managers must provide the new employee with a reasonable opportunity to address any concerns.
24. Reasonable adjustments for health conditions must be implemented where necessary to ensure the employee has an equal opportunity to be fairly assessed against the probationary requirements and is supported throughout the probation process. Refer to the Reasonable Adjustment Policy for further guidance.
25. At least two formal written assessments of the new employee's performance are to occur during the probation period. Typically, these should occur at the second month of service, and towards the end of the fourth month, during a 6 month probation process. The probation report form is to be used to record these formal assessments.
26. The probation report will provide:
 - a. For employees' part-way through probation; any feedback to guide the employee completing the probationary period.
 - b. For employees nearing completion of their probation; feedback on whether employment should be confirmed or if probation should be extended or annulled.
27. Where criterion on the probation report are rated as 'requires development', this should be supported with a probation action plan. The probation action plan should:
 - a. Identify the expected standards of work on an ongoing basis.
 - b. Identify and develop learning and development strategies.
 - c. If required, specify any further assessments that may be undertaken to monitor the employee's performance.
28. The new employee must be provided with a copy of their probation report following each of the formal reviews and must be given an opportunity to respond within seven business days.
29. Effective management and regular, timely and constructive feedback during probation should ensure any performance issues are addressed during the probation period.
30. There may be occasions when an underperformance process may need to be initiated to improve work performance. Refer to the underperformance policy and the Administrative and Related Classifications Enterprise Agreement Sections H4 (or equivalent provisions within the other enterprise agreements) for further guidance.
31. During probation, the underperformance process may be administered on a proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice. This means that during probation, the underperformance process as specified in accordance with the relevant agreement may be modified. For example, full underperformance processes and actions plans may include outsourced and prolonged training sessions which may not be feasible during a probation period due to time constraints, therefore on the job training and mentoring may be utilised as an alternative (see subclauses H4.2 of the Administrative and Related Classifications Enterprise Agreement or equivalent provisions within the other enterprise agreements).

32. During probation, where misconduct arises a manager should follow the relevant processes under Administrative and Related Classifications Enterprise Agreement Sections H6 (or equivalent provisions within the relevant enterprise agreement).

Confirmation of appointment

33. If it is determined that the new employee has satisfied the performance and behaviour objectives of their role and met the required standards of their appointment, a manager will recommend the appointment to the delegate at the end of the probation period. If the delegate confirms the appointment, a letter confirming the appointment will be issued to the employee at the end of the probation period.
34. Confirmation of appointment will be made by the delegate at the close of the probation period on the basis that the employee has:
- a. Successfully completed any mandatory training required;
 - b. Completed at least two formal reviews and their performance is determined to be satisfactory; and
 - c. Where required as a prerequisite for appointment, has undergone a medical examination as necessary for the role, and satisfies the health and fitness requirements.

Note: Where the delegate has not confirmed the appointment by the end of the probation period (including where the probation period has been extended) the employee will be automatically confirmed in accordance with section 70(2) of the PSM Act.

35. Confirmation of appointment can be made prior to the completion of the probation period where the employee has demonstrated satisfactory performance and the delegate is satisfied that a robust assessment of the employee's suitability to perform the position has occurred and the employee has met the requirements above.

Extending probation

36. Extensions to probation should only occur where there are extraordinary circumstances as it is expected that 6 months provides a sufficient opportunity to establish the employee's suitability to perform the role. This period of time should also be sufficient in identifying and managing any underperformance issues. This may vary across enterprise agreements and is covered under section 71B of the PSM Act. Extensions can occur for reasons such as:
- a. There has not been a reasonable opportunity to assess the employee's performance. This may be due to extended periods of unplanned absences or transfers.
 - b. The employee has demonstrated good progression towards the required standards, and it is anticipated this will be achieved within a short period.
37. A manager's failure to be actively involved in the probation process is not a reason to extend a probation period for a new employee.
38. Any extension to a probation period must be for a reasonable period having regard to the nature of the role and circumstances of employment and should be clearly communicated to the employee prior to the cessation of their initial probation.
39. If the manager wishes to extend the probation period, they must contact their directorate HR area for advice in determining whether it is appropriate to do so.
40. If the probation period is to be extended, the delegate must inform the employee in writing of:
- a. The period of the extension, including the day the probationary period will end.

- b. The reason(s) for the extension.
 - c. The required standard of performance and/or conduct that needs to be achieved before the end of the probation period.
 - d. The consequences that may occur in the event that performance and/or conduct standards are not met within the extended period. For example, if there is a possibility that the employee's employment may be annulled, this should be clearly outlined.
- 41. This written notice of an extension must be provided at least 14 calendar days prior to the expiry of the probation period.
- 42. The employee must be provided with a copy of their probation report and be given an opportunity to respond to the extension within seven business days.
- 43. A period of probation will be no longer than six months unless in extraordinary circumstances and approved by the delegate, or if stated otherwise in an applicable enterprise agreement or under Division 5.3 'Appointment of Officers' of the PSM Act. The total probation period must not exceed a total of 12 months.
- 44. Where a probation period has been extended, the appointment will be confirmed on the new date advised to the employee in writing unless confirmed at an earlier date or the employment is annulled.

Annuling the employment of an employee on probation

- 45. Action to cease employment during probation is a legitimate action which recognises that not all selection decisions result in an outcome that is right for the employer or the employee. If performance issues and/or conduct cannot be appropriately resolved, the employee's ongoing employment should not be continued.
- 46. Where the manager believes that annulment should be recommended, they should seek advice from their directorate HR area before providing a copy of the probation report to the employee. Supporting evidence and reasons for recommending the annulment must be clearly provided in the report.
- 47. The employee will be given an opportunity to respond within seven business days. After this time, the report will go to the delegate for consideration.
- 48. The manager will provide a copy of the report to the delegate along with any written response from the employee for consideration.
- 49. Annulment during probation is a decision for the delegate to consider where an employee has been assessed as not meeting the required performance or conduct standards of their role. The delegate will consider one or more of the following criteria:
 - a. A written performance assessment warrants the manager's recommendation that the employee's employment is annulled.
 - b. Where required as a prerequisite for appointment, the employee on probation fails to satisfy the health and fitness requirements for the role or fails to have a medical examination.
 - c. The employee is not an eligible person to remain an employee.
 - d. The employee is an excess officer.
- 50. Decisions about whether the employee has satisfied the conduct or performance requirements of their role should not be left until the last few weeks of the probation period. Rather, these

decisions should be formed following active monitoring, feedback and management of the employee's conduct and performance from their commencement.

51. If the decision is to annul the appointment based on the employee failing their probation, the employee should be advised that in accordance with Section 138.3 of the PSM Act, they will be unable to re-enter the ACT Public Service for a period of 12 months, starting on the day their appointment is annulled.
52. The employment of an employee on probation must not be annulled unless the employee has been given at least 14 calendar days written notice of:
 - a. The reason for the annulment; and
 - b. The day the employment will end.

This time frame should be noted when conducting the formal probation reviews and follow up assessments.

53. A decision to annul an employee on probation is excluded from the internal review procedures at Section I of the relevant enterprise agreement and the appeal mechanism at Section J of the relevant enterprise agreement.
54. A decision to annul an appointment of a probation period of 6 months or more may mean employees have access to unfair dismissal protections under the Fair Work Act 2009 (Cth) (FW Act). Under the FW Act, an employee cannot make an unfair dismissal claim if their employment is annulled during the minimum employment period (i.e. less than 6 months at the time they are dismissed). However, this does not prevent an employee from lodging an adverse action or discrimination claim (for example unlawful termination) against an employer for dismissal during probation.

Additional probationary considerations

55. Grandparental leave is not available to employees on probation (subclause F19.2 of the enterprise agreement).
56. Suspension, reassignment, or transfer requirements can apply to employees on probation (subclause H8.1 of the enterprise agreement).
57. Employees on probation cannot take leave to engage in employment or work outside the ACTPS (Annex D of the enterprise agreement).
58. In circumstances where employees cease employment while on probation and are reappointed under the PSM Act under Division 7.3, Former officers (including (but not limited to) excess officers and unattached officers), they must be reappointed on probation. If this occurs, the length of the probation period will include the remainder of the probation period that was not formerly completed.
59. Probation applies to the position that the employee was engaged in. However, in situations where a transfer or a higher duties arrangement is offered prior to the completion of the original probation period, the probation period may be extended to allow probation to be completed on return to the substantive position.

Responsibilities

Employee

61. The employee on probation is responsible for:

- Actively participating in the probationary process.
- Actioning and acknowledging any constructive feedback provided.
- Ask relevant questions where required and participate in any training that may develop knowledge.
- Reviewing and, where appropriate, signing a copy of the probation report within seven business days of the report being provided to them and making any necessary comments as required.
- Advising their manager of any work-related factors which may affect an adequate assessment of their performance.

Manager

62. The manager is responsible for:

- Ensuring the length of probation is understood by the employee.
- Raising concerns about performance and/or conduct with the employee at the time the concerns are identified. Providing advice and support to the employee to overcome these concerns.
- Ensuring the employee understands the standard of work required and level of conduct required.
- Ensuring they have appropriate delegation to manage the probationary process.
- Guiding the probation process including the provision of all associated materials to the employee, organising induction, arranging delegate approvals, assessments, completion of reports, and determining any extensions and/or terminations.
- Reviewing probation reports.
- Providing appropriate support to the employee on probation including specific on-the-job training or development.
- Regular monitoring of performance and provision of regular clear and constructive feedback to rectify any issues during the probationary period.
- Conducting assessments in good faith and providing feedback in an open, honest and constructive manner.
- Conducting at least two formal assessments, ensuring the employee receives a copy of the report and has an opportunity to provide feedback within seven business days.
- Where the employee's performance has been less than satisfactory, determining a reasonable plan and/or strategy to assist with a successful outcome (this plan should be documented in the probation report).

Delegate

63. The Delegate is responsible for:

- Determining the initial period of probation, or to appoint an employee without probation.
- Determining the periods of extension for the probation.
- Providing advice in line with the relevant requirements under the PSM Act, relevant enterprise agreement and this Policy.
- Approving extension of probation or annulment of an employee while on probation.

Directorate HR areas/Shared Services

64. Directorate HR areas/Shared Services are responsible for:

- Supporting and educating managers of the probation process.
- Following up on any outstanding probation reports in a timely manner to achieve compliance with KPIs and probation intent.
- Providing termination letters where necessary.

Consultation

65. This policy was consulted with People Forum, Unions, the Workforce Capability and Governance Division, Chief Ministers Treasury and Economic Development Directorate and the Head of Service.

References

66. The key principles of this policy are aligned with the following authorised sources:

- a. Public Sector Management Act 1994 (ACT)
- b. Public Sector Management Standards 2016 (ACT)
- c. Fair Work Act 2009 (Cth)
- d. ACTPS Enterprise Agreements
- e. ACTPS Performance Agreement Framework
- f. Probation Report
- g. Underperformance policy

Further Information

67. If you have further questions about the application of this policy please contact the Whole of Government Industrial Relations and Public Sector Employment team, Workforce Capability and Governance, Chief Ministers Treasury and Economic Development Directorate on EBA@act.gov.au

Review

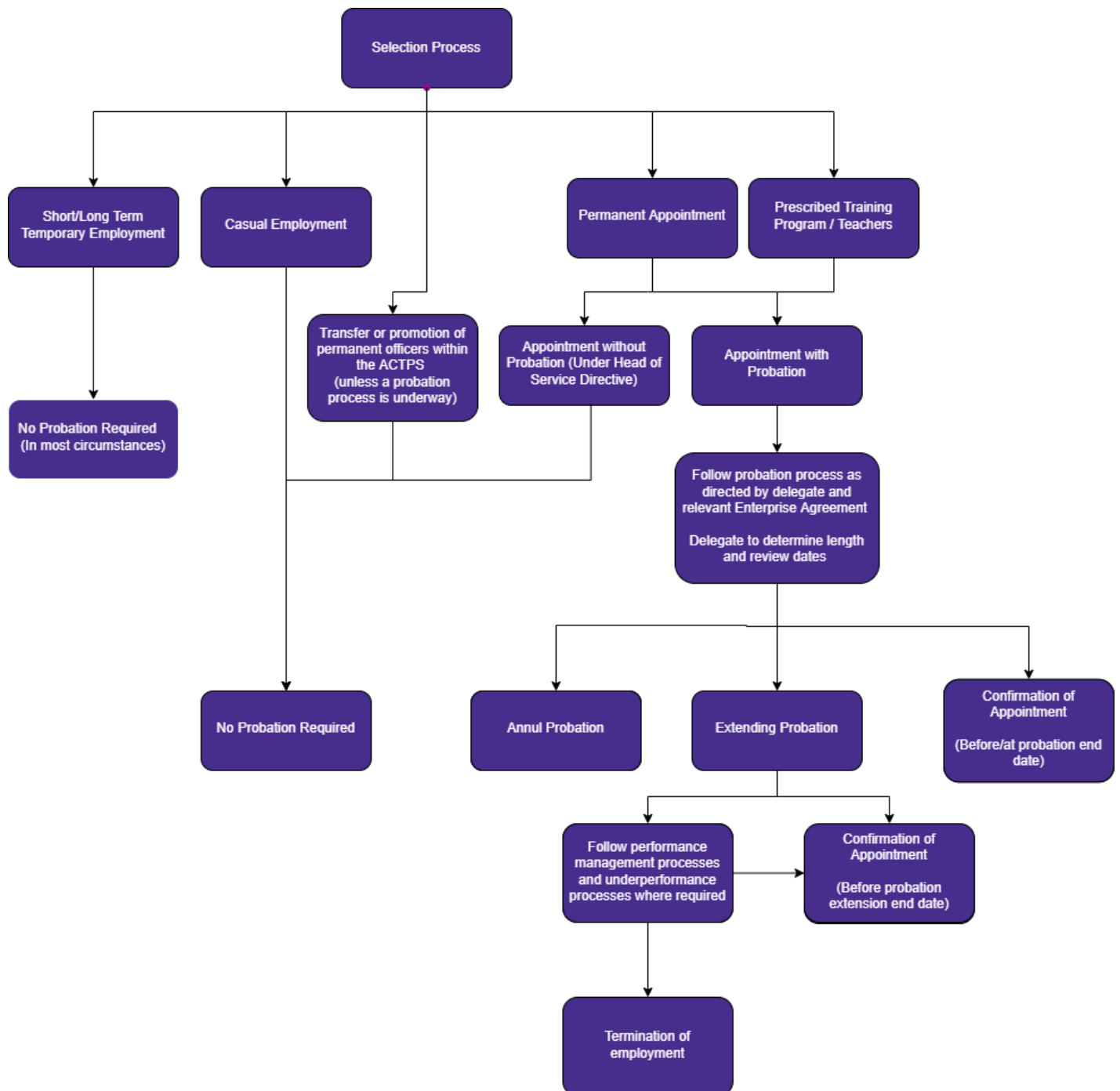
68. This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

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Approval Authority

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Chief Minister, Treasury and Economic Development Directorate
On behalf of the Head of Service
February 2023

Appendix A: Overview of the Probation Process





Workforce Capability and Governance,
CMTEDD

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