

EMPLOYMENT INSTRUCTION NUMBER 2

PROBATION

1. SCOPE AND PURPOSE

Probation is a critical employment process in the Northern Territory Public Sector, as it may lead to confirmation of permanent appointment. Section 32 of the *Public Sector Employment and Management Act* (the Act) sets out the requirements for Chief Executive Officers in relation to probation.

This Employment Instruction requires Chief Executive Officers to establish a probationary process within their agency. As the probationary process for each agency may be different, the Instruction outlines the minimum requirements of a probationary process.

2. LEGISLATIVE BASIS

Sections 32 and 59 of the Act. Section 59(1)(a) of the Act details rights of review of termination of an employee's employment on probation.

3. OTHER SOURCES OF INFORMATION

Employment Instruction Number 3 - Natural Justice should be read in conjunction with this Employment Instruction.

4. AGENCY ACTION REQUIRED

Chief Executive Officers shall develop a probationary process for their Agency.

Chief Executive Officers should convey details of the probationary process to probationary employees within the first week of reporting for duty.

5. GENERAL

5.1 Definition

Probation is a period during which an employee's conduct and performance is assessed. The assessment determines whether the employee's permanent appointment should be confirmed or terminated.

5.2 The Probationary Process

The probationary process should cover, at a minimum, the following:

- an explanation of the process to both the probationary employee and the person who will be conducting the assessments, including the role of each party in the process;
- two assessments of the employee's conduct and performance against the job requirements;
- opportunities for the employee to engage in discussion and feedback;
- the completion of written probation reports; and
- the formal confirmation of permanent appointment, extension of probation, or termination of the appointment.

5.3 Documentation of the Probationary Process

The following aspects of the probationary process need to be documented and conveyed to the employee:

- the length of the probationary period;
- the types and number of assessments to be completed during the probationary period, when the assessments will occur and the person who will carry out the assessments. This requirement also applies to extended periods of probation;
- that probation continues to completion regardless of any transfers or promotions of the employee during the probationary period;
- any requirements specific to the individual;
- any requirements specific to the job; and
- the rights of review where a decision is made to terminate the probationary appointment.

5.4 Probation and Temporary Employment

Temporary employment does not count towards the probationary period except where it is authorised by section 32(2)(b) of the Act. However, Chief Executive Officers may appoint a person to the Public Sector under section 32(2)(a) of the Act without probation if the person merits such an appointment.

6. COMPLETION OF PROBATIONARY PERIOD

6.1 Standard Probation Period

For the majority of employees, the standard probation period prescribed under the Act is six months. Certain classes of employees, such as teachers, PAWA employees and members of the Fire Service, may have a shorter or longer standard period of probation.

Within the standard probation period, an employee's performance and conduct shall be assessed by the manager or supervisor to determine whether the employee's appointment should be confirmed or terminated.

Not later than the end of the standard probation period, the Chief Executive Officer shall:

- confirm the permanent appointment;
- extend the period of probation; or
- terminate the appointment.

6.2 Confirmation

At any time during the probationary period, the Chief Executive Officer may confirm the probationary appointment. Where permanent appointment is confirmed, written confirmation should be given to the employee.

6.3 Extension

Under the Act the Chief Executive Officer may extend the probation for a further period not exceeding 6 months or in the case of certain classes of employees, for a period not exceeding the maximum period determined by the Commissioner under section 32(4) of the Act for that particular class of employee.

The probationary period can only be extended on one occasion after the initial probationary period. Where probation is extended, the Chief Executive Officer must advise the employee in writing, giving reasons for the Chief Executive Officer's decision.

Not later than the end of the extended period, the Chief Executive Officer must confirm or terminate the appointment.

6.4 Termination

Termination can occur at any time during the probation period. Where the Chief Executive Officer proposes to terminate the appointment, the principles in Employment Instruction Number 3 - Natural Justice shall be observed. Section 7 of this Employment Instruction sets out other requirements that must be observed.

7. TERMINATION OF PROBATIONARY APPOINTMENT AND RIGHT OF REVIEW

7.1 Intention to Terminate Probationary Appointment

Where a Chief Executive Officer intends to terminate the probationary appointment of an employee, the employee must be given not less than 14 days notice in writing. The notice must contain the reasons for the Chief Executive Officer's decision and the details of the employee's review rights.

Agencies are advised to act promptly in cases where the Chief Executive Officer intends to terminate the probationary employee, as the 14 day notice period must fall within the standard probation period or the extended probation period.

The Chief Executive Officer shall not take action to terminate unless he or she has given the employee not less than 14 days notice of the Chief Executive Officer's intention to take the action and:

- (i) the employee has waived the right to request the Commissioner to review the Chief Executive Officer's intention to take the action; or
- (ii) the period within which the employee may make the request has expired and no such request has been made; or
- (iii) if such a request has been made, the Commissioner has confirmed the intended action or the request has been withdrawn.

7.2 Request for Review

Under section 59(1)(a) of the Act, an employee may request the Commissioner to review the intended action of the Chief Executive Officer to terminate the appointment. The employee has 14 days to lodge a request for review with the Commissioner. The 14 days commences from the date the employee receives notice of the Chief Executive Officer's intended action.

The Commissioner, after receiving a report from the Chief Executive Officer and reviewing the matter, may confirm the intended action of the Chief Executive Officer to terminate the employment of the probationary employee, or direct the Chief Executive Officer to take other specified action.

Termination of the employee shall not occur before the Commissioner has completed the requested review and advised the Chief Executive Officer and the employee concerned of the outcome of the review.

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COMMISSIONER FOR PUBLIC EMPLOYMENT

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