



# Commissioner's Instruction Employment Standard

Questions and Answers

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## A question and answer approach

The Frequently Asked Questions contain practical information to assist public sector bodies and their employees to understand and apply the Commissioner's Instruction: The Employment Standard.

The issues discussed are not precedent or law, nor do they form part of the Commissioner's Instruction.

## Disclaimer

The Frequently Asked Questions are neither exhaustive nor definitive. While it attempts to address the key points of the Commissioner's Instruction there will be many issues and situations that cannot be predicted.

## Advisory line

For further assistance or clarification about the Commissioner's Instruction: Employment Standard please contact the Public Sector Commission's (PSC) Advisory Line on: 9219 6433.

## Further updates

These FAQs will be updated in response to agency inquiries.

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## What has changed?

### **A number of Standards have been incorporated in the Employment Standard, what are they?**

The Employment Standard amalgamates four previous Standards. These are the:

- Recruitment, Selection Appointment
- Temporary Deployment (Acting) Standard
- Secondment Standard
- Transfer Standard.

### **What are the principles of the Employment Standard?**

The Employment Standard contains four principles to be complied with when filling a public sector vacancy. They are:

- Merit
- Equity
- Interest
- Transparency.

### **The Employment Standard no longer includes the “open and competitive” principle. Do public sector bodies need to advertise vacancies?**

**Yes.** Public sector bodies advertise in accordance with the Commissioner’s Instruction: Filling a Public Sector Vacancy.

There are circumstances when advertising may not need to occur and a competitive assessment of merit may not need to be undertaken. These circumstances are outlined in Part 4 of the Commissioner’s Instruction: Filling a Public Sector Vacancy.

In these cases an individual assessment of merit is required and the principles of the Employment Standard are to be met.

## **The Employment Standard no longer includes the part principle “free from unlawful discrimination”. Do agencies still need to comply with the *Equal Opportunity Act 1984* (EO Act)?**

**Yes.** The General Principles of Human Resource Management s.8 (1) (d) of the *Public Sector Management Act 1994* (PSM Act) states:

*There is to be no unlawful discrimination against employees or persons seeking employment in the public sector on a ground referred to in the EO Act or any other ground.*

## **What has not changed?**

### **Has an agency’s responsibilities to comply with the Employment Standard changed?**

**No.** Agencies have a responsibility to design processes that meet the principles of the Employment Standard.

### **Has the Commissioner’s monitoring and reporting role changed?**

**No.** Section 21 of the PSM Act still outlines the Commissioner’s role to monitor compliance by public sector bodies and employees with the Public Sector Standards.

The Commissioner can still report to a Minister responsible for a public sector body and reports annually to Parliament.

### **How does the Commissioner monitor compliance with the Employment Standard?**

The Commissioner may use a variety of methods to monitor compliance within a public sector body or across the public sector including:

- breach of Standards claims and compliance inquiries
- reviews and audits
- annual agency surveys
- information received via the Commission’s advisory line.

## **When using a private provider do agencies need to comply with the Employment Standard?**

**Yes.** It is the responsibility of public sector bodies and their employees to comply with all the Public Sector Standards in accordance with s.9 of the PSM Act.

If the Commissioner determines there has been non compliance with the Employment Standard it will be found against the public sector body not the private provider.

## **Do agencies still need to comply with ethical codes and the general principles of human resource management and official conduct when filling a public sector vacancy?**

**Yes.** When filling public sector vacancies agencies also need to comply with the Western Australian Public Sector Code of Ethics and their agency's own code of conduct.

Agencies also need to comply with the general principles of human resource management and the general principles of official conduct (sections 8 and 9 of the PSM Act).

## **Application of the Standard**

### **What does the Employment Standard apply to?**

The Employment Standard applies when a public sector body fills a vacancy by way of recruitment, selection and appointment, secondment, transfer and temporary deployment (acting). It covers fixed term, casual or permanent positions.

Breach of Standard claims, however, cannot be lodged in relation to all vacancies.

### **Who does the Employment Standard apply to?**

The Employment Standard applies to public service officers appointed under Part 3 of the PSM Act.

The Employment Standard also applies to employees otherwise employed by employing authorities of public sector bodies, as defined in the PSM Act.

## Who doesn't the Employment Standard apply to?

The Employment Standard does not apply to entities listed in Schedule 1 of the PSM Act.

These entities include, but are not limited to:

- Local Government Authorities
- Public Universities
- Elected officials (members of Parliament and local government council representatives)
- Sworn members of the Western Australian Police Force (police officers).

These bodies and their employees are covered by other legislation.

## Does the Employment Standard apply to the temporary deployment of an employee at the employer's initiative within the public sector body at level?

**No.** The Employment Standard does not apply to temporary deployments at the employer's initiative within the same employing authority at the same level.

If an employee has concerns about their temporary deployment they may utilise their agency's internal grievance resolution process. Grievance resolution processes are subject to the Grievance Resolution Standard and the breach of Standard claim process. For more information refer to the *Public Sector Standards (Breaches of Public Sector Standards) Regulations 2005* and *Breach Claims - An Agency Guide*.

## Does the Employment Standard apply when a registered employee (redeployee) is referred to a vacancy?

**No.** The *Public Sector Management (Redeployment and Redundancy) Regulations 1994* apply to registered employees referred to a vacancy.

The Employment Standard does, however, apply when a registered employee applies outside the redeployment process for a vacancy.

## Principles of Employment Standard

### Merit principle

#### **What is the merit principle?**

This principle ensures employment decisions in the Western Australian public sector are based on merit.

#### **How is the merit principle applied?**

The merit principle is applied by conducting a proper assessment of the person's skills, knowledge and abilities relevant to the work related requirements. It considers outcomes sought by the public sector body and may include previous employment or occupational duties.

#### **What does the merit principle mean “if relevant, the way in which the person carried out any previous employment or occupational duties”; shouldn't this always be relevant?**

**No.** Not every person assessed will have a previous work history, for example, a person who has not worked but has completed a course of study.

#### **Does the Employment Standard require a job description form?**

**No.** The Employment Standard does not require the use of a Job Description Form (JDF), however, documentation must exist which outlines the work related requirements. Documentation assists agencies to undertake a proper assessment that is transparent and capable of review. Documentation also assists in communicating to applicants how their merit will be assessed.

It is up to agencies to choose in what form the work related requirements are described and documented.

## **Is there a set assessment process that can be used to meet the Employment Standard, for example, a panel process?**

**No.** It is up to the agency to decide on the assessment process to be used. When making a decision about what process to use agencies should consider the:

- Employment Standard
- type of job it is, for example, different jobs may lend themselves to different assessment methods
- identified work related requirements of the job and the skills, knowledge and abilities needed to undertake the job.

## **What may assist an agency to conduct a proper assessment of merit?**

The following may assist an agency to conduct a proper assessment of merit:

- A person with an good understanding of the work related requirements and outcomes sought by the agency is part of the assessment process
- Combining assessment methods, for example, an interview and work test
- An assessment process that includes the verification of information provided by the applicant, for example, work tests, work samples, referee checks and verification of qualifications
- An independent person to review (quality check) the process undertaken in consideration of the Employment Standard and other requirements (s.8 and s.9 PSM Act).

## Equity principle

### **What does impartiality refer to in the Employment Standard?**

Generally impartiality means to be objective or not to act on behalf of any person when making an employment decision.

### **What does free from bias refer to in the Employment Standard?**

Free from bias refers to employment decisions being based on merit rather than a pre established view, for example, for or against a person.

### **What does nepotism refer to in the Employment Standard?**

Nepotism refers to the favourable treatment of a family member when making an employment decision.

### **What does patronage refer to in the Employment Standard?**

Generally patronage refers to a favour given to a person when making an employment decision due to a close personal relationship or affiliation.

### **For transfer what do comparable conditions refer to?**

Comparable employment conditions include:

- Comparable or equivalent conditions based on salary/wage excluding allowances, penalty rates etc
- no loss of tenure
- no loss of service continuity.

### **I would like to transfer an employee into another position. Does the Employment Standard provide the CEO/Employing Authority with the power to do this?**

**No.** The Employment Standard applies to transfers but it does not provide the CEO/Employing Authority with the power to transfer. The power to transfer an employee is usually found in enabling legislation, awards, employment contracts or industrial agreements.

## Interest principle

### **What is the interest principle?**

This principle requires the public sector body to take account of an employee interests when making employment decisions about secondment, transfers and acting. It does not, however, oblige the employer to assent to them.

Employee interests could include career considerations, medical issues or personal circumstances.

### **Does an employee have to be consulted prior to the CEO/Employing Authority deciding to transfer them?**

Where a decision is being made to transfer an employee, that employee should be given the opportunity to comment on the proposal. The CEO/Employing Authority should consider the employee's comments prior to making the final decision. Consultation will assist an agency to consider an employee's interests.

### **What needs to happen before an employee proceeds on secondment?**

Prior to any secondment, there needs to be agreement about the period of the secondment, remuneration and the employee's placement at the completion of the secondment.

Service continuity and tenure of employment are not affected by a secondment.

## Transparency principle

### **What is the transparency principle?**

This principle requires that processes undertaken and decisions made can withstand independent scrutiny. As part of supporting this principle agencies should ensure that clear and concise documentation explaining the process and how the final decision was made is available.