

COMMISSIONER FOR PUBLIC EMPLOYMENT

# GUIDELINE

*for the South Australian Public Service*

## Recruitment and Employment of Non-Executive Employees

MARCH 2001



Government  
of South Australia

## *INTRODUCTION*

Quality staffing is essential to the success of an organisation. A decision to recruit an individual to a position is one of the most important decisions a manager and their organisation will make. Considerable resources are devoted to defining jobs, advertising, selecting the best person for the job, and then developing the successful person.

Poor recruitment decisions can have a major impact on the productivity of an organisation and can prove costly both to the employee and the organisation.

This guideline provides principles for the development of quality agency policies and practices for the recruitment and employment of non-executive employees in public sector agencies.

Because this area of human resource management is considerably defined by the legislation and government workforce policies, this guideline details more formal requirements than other Commissioner's Guidelines.

## *KEY RESULT AREA*

This guideline is linked to the Quality Staffing key result area of the Strategic Human Resource Management Framework for the South Australian Public Sector.

### *Quality Staffing*

Appoint the best possible staff and manage their career mobility to best effect.

(eg selection, appointment, promotion, redeployment and separation of staff)



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## *PRINCIPLES*

### *1. Recruitment and employment are approached strategically*

To maximise the value of its human resources, an agency's workforce decisions should be linked to its strategic and corporate objectives.

Agencies should:

- (a) base decisions to create, change and fill positions on agency strategic and corporate objectives
  - (b) balance short term operational flexibility against longer term workforce requirements when making such decisions.
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## *2. Position requirements are identified*

To ensure that position duties and outcomes reflect the agency's strategic direction, an agency should clearly identify position requirements prior to beginning any process of filling a newly created or vacant position.

Necessary steps include:

- (a) an assessment of the need for the position. Consideration should be given to other ways of achieving the position's outcomes such as by employees in other positions in the organisation or by external service providers
  - (b) the definition of the duties and key outcomes of the position
  - (c) the definition of the essential and desirable education, knowledge, experience and abilities which will enable an incumbent to achieve the key outcomes of the position. These should reflect those requirements which are critical to success, rather than an extensive or narrowly focused list which may unnecessarily exclude potential applicants
  - (d) the fixing of a remuneration level for the position as required by the Public Sector Management Act 1995, which must be within the appropriate remuneration structure and relevant criteria established by the Commissioner under Section 30 of the Act
  - (e) a consideration of the degree to which flexible working arrangements may assist in attracting a wider range of applicants and contribute to success in the position. Such arrangements should reflect both organisational needs and employee needs and responsibilities
  - (f) a realistic assessment of how long a position will continue, recognising that if a position cannot be defined as temporary or casual under the Public Sector Management Act, and if it does not fit the restricted circumstances under which appointment can be subject to a 1-5 year contract, then by law it must be an 'ongoing' position. That is, the conditions of employment are left to be governed by the Act, including the excess provisions outlined in Section 50
  - (g) the determination of whether it is more appropriate to fill a position using the appointment or assignment provisions of the Public Sector Management Act. In most cases positions should be filled by appointment. Assignment must not be used as an administrative means to circumvent merit based selection processes.
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### ***3. Recruitment processes optimise operational efficiency and reflect workforce policies***

Agency recruitment processes should assist agencies to optimise their operational efficiency, while supporting the government's priorities by reflecting public sector workforce policies and programs.

Agencies need to:

- (a) ensure that priority is given to public sector excess employees, employees with work injuries requiring alternative placements, and participants in any equal employment opportunity programs established by the Minister under Section 67 of the Public Sector Management Act
  - (b) ensure that processes for advertisement and seeking applicants for all positions reflect the personnel management standards of the Act, public sector workforce policies and the requirements of PSM Act Determinations issued by the Commissioner
  - (c) consider negotiating alternative arrangements for the filling of specific classes of positions with the Commissioner
  - (d) use external expertise to assist with the recruitment and selection processes if the agency does not have the necessary human resource skills or resources.
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#### ***4. Personnel management standards are the basis of selection***

To ensure that methods of selection meet community expectations as reflected in legislation, an agency must base all its selection processes on the personnel management standards of the Public Sector Management Act.

Agencies should give proper consideration to:

- (a) merit, which the Public Sector Management Act defines as the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience), and personal qualities relevant to the position. This could also encompass the potential for development of the applicants.

Subject to a determination by the Commissioner under Part 5 of the Public Sector Management Act, that selection processes will not be required, and except in the case of appointments to temporary or casual positions, agencies must only make appointments as a consequence of selection processes conducted on the basis of merit in accordance with the personnel management standards of the Public Sector Management Act and any related PSM Act Determinations issued by the Commissioner.

Agencies should note that the Personnel Management Standards require that all selection decisions (both assignment and appointment), including those for temporary and casual positions, should be based on a proper assessment of merit

- (b) ensuring that the pool of applicants for a position reflects as far as possible the diversity of the South Australian community, particularly relevant client groups
  - (c) the provision of equal opportunities for employees to secure promotion and advancement, together with the valuing of diversity in the workforce
  - (d) ensuring that all decisions and processes embody the principles of natural justice, are free from bias, patronage and nepotism, and are appropriately documented and capable of review
  - (e) maintaining appropriate confidentiality
  - (f) providing appropriate feedback to all applicants on the outcome of the selection process, their performance in the selection process and the reasons for the final selection decision.
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## 5. *Appropriate employment conditions for contract appointments are successfully negotiated*

To maximise agency efficiency and flexibility, agencies should ensure that employment conditions for temporary, casual and longer term 1-5 year contract positions reflect operational needs.

In particular an agency should:

- (a) ensure that contracts offer fair and equitable conditions which reflect public sector remuneration and workforce policies. Agencies should assess the potential problems and inequities which may occur if different conditions of employment are offered in an agency to employees carrying out similar duties. Agencies should also consider the benefits of consistency in employment conditions for similar positions across the public sector
  - (b) ensure that unless a particular condition of employment needs to differ from that of an 'ongoing' employee because of the particular requirements of a position, it should be left to be governed by the provisions of the Public Sector Management Act rather than addressed in the contract. The most common conditions of employment specified within such contracts include the term of appointment, duties of the position, any grounds for termination, the remuneration package, and any rights to reappointment or further employment without the need for further selection processes to be conducted
  - (c) write each contract as far as possible in plain English, while recognising that a contract will be a legally binding document. An agency should explain what a contract means, and in particular should explain what (if any) rights to further employment the person will have at the end of the contract. If a person does not understand a contract they should be encouraged to seek independent advice from their union, a legal representative or another appropriate person
  - (d) when appointing an employee who is currently appointed to a position in the public service to a contract position, ensure that any existing right to further employment at the end of the contract appointment is retained in line with PSM Act Determinations issued by the Commissioner, unless the employee elects to give up this right
  - (e) recognise that contracts are to be negotiated on a mutually agreed basis. If either the agency or the employee do not agree with a proposed contract it should not be signed. A contract should be signed by both parties before a person is appointed to a position. Verbal agreements may constitute a contract of employment and should not be given before a written contract is agreed.
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## ***6. Employment declaration is satisfactorily completed***

To ensure that a potential employee can fulfil the requirements of a position and that government public sector workforce policies are reflected in recruitment processes, an employment declaration must be completed by a successful applicant recruited from outside the public sector, before they are appointed to the position.

The declaration should address relevant employment issues such as:

- (a) any disability or medical condition which would affect the person's ability to carry out the functions of the position. Note that under the Equal Opportunity Act 1984 and the Commonwealth Disability Discrimination Act 1992 such a disability or condition does not necessarily exclude the person from being the successful candidate. Note that an agency may be required to make 'reasonable adjustments' to allow a person with a disability to perform a job, including adjustments to access, workplace design, modifications to equipment, job redesign and work schedule restructuring
  - (b) receipt of any capital payment from the South Australian public sector, involving the resignation of the person from public sector employment, in redemption of a liability under the Workers' Compensation and Rehabilitation Act 1986. A person who received such a payment must not be appointed within any associated 'no re-employment' period
  - (c) receipt of a voluntary early retirement or voluntary separation package from the South Australian public sector within the last three years
  - (d) any criminal offences punishable by imprisonment, for which the person has been found guilty or is currently facing charges. Such information should only be taken into account where the offences committed or alleged to be committed by the person are relevant to the duties of the position
  - (e) proof of essential qualifications.
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## ***7. Grievances are resolved***

To ensure the fair and equitable treatment of employees, and to minimise any potential negative impact of grievances on operational efficiency and employee morale, employees should have access to avenues of redress against improper or unreasonable recruitment and selection decisions.

Agencies should:

- (a) try to resolve by conciliation any grievances about decisions related to the creation, change or filling of positions prior to such matters being brought before the Promotion and Grievance Appeals Tribunal or the Commissioner
  - (b) establish processes for resolving grievances within the agency and inform employees about these processes
  - (c) ensure that employees are provided with information about the independent grievance resolution processes which are available to them, for example the Promotion and Grievance Appeals Tribunal for promotion appeals and other grievances, and the Commissioner for reviews of remuneration levels
  - (d) involve all affected parties in any conciliation process, including the person(s) making the decision, the appellant(s) or person(s) with the grievance, and in the case of a grievance about the nomination of a person for a position, the nominee(s).
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## ***8. Performance is actively managed***

A newly appointed employee's performance within an agency will be maximised by the active management of the performance and development of the employee.

Agencies should:

- (a) provide induction which addresses the particular requirements of the position as well as wider agency and public sector issues
  - (b) where a person is newly appointed to the public sector, determine an appropriate period of probation and use a performance management system to actively manage the performance of the person throughout the probationary period. If an employee is not performing adequately during the probationary period, and the employee has been given a reasonable opportunity to improve, then following a period of notice, their employment should be terminated
  - (c) use the appropriate provisions of the Public Sector Management Act, and where relevant the termination provisions of contracts, to address unsatisfactory performance of employees.
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## ***OTHER INFORMATION***

### ***Legislation***

Public Sector Management Act 1995

- Part 2 General Public Sector Aims and Standards
- Part 5 Commissioner for Public Employment
- Part 6 General Employment Determinations and Positions
- Part 7 Public Service Appointments (Apart from Chief Executives): Division 2 – Other Positions; and Division 3 – Appointment Procedures and Promotion Appeals
- Part 8 General Public Service Employment Provisions: Division 1 - Assignment Between Positions; Division 2 – Remuneration; and Division 9 - Appeal Against Administrative Decisions
- Regulations 9, 10, 11 and 12

Equal Opportunity Act 1984

Commonwealth Disability Discrimination Act 1992

Industrial and Employee Relations Act 1994 and any relevant awards, determinations or enterprise or industrial agreements in force under this legislation

Workers Rehabilitation and Compensation Act 1986

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### ***Publications issued by the Commissioner for Public Employment***

- Guideline for the Protection of Merit and Equity
  - Guideline for Individual Performance Development
  - Guideline for Planned Human Resource Development
  - PSM Act Determination 2 – Recruitment and Employment of Non-Executive Employees
  - Background Briefing Paper - Recruitment and Employment of Non-Executive Employees (being developed)
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### *About Guidelines*

The Commissioner for Public Employment issues guidelines in accordance with Section 22 of the Public Sector Management Act 1995.

The guidelines detail the principles underpinning the eight key result areas of the Strategic Human Resource Management Framework for the South Australian Public Sector.

This guideline has been prepared in consultation with agencies with a view to facilitating agency level decision making. Where a requirement exists under legislation, or in government policy, the guideline indicates this.

Where necessary, the Commissioner issues PSM Act Determinations and supporting material. The determinations are binding, so as to ensure the effective implementation of Government public sector workforce policies and the personnel management standards of the Act, and the protection of key employment conditions. The supporting materials explain best practice in human resource management and provide additional information to agencies.