

# Public Sector Industrial and Employee Relations

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**Circular No.** C3/04

**Date** 5 October 2004

## Probationary Periods for Newly Appointed Public Sector Employees

The purpose of this circular is to provide information which may assist departments to better understand and, thus, implement a correct and consistent approach to probationary periods for newly appointed public sector employees.

Section 73(1) of the *Public Service Act 1996* (the PS Act) contains a discretionary provision whereby chief executives may place employees on probation. This section provides that the period of probation is to be not less than 6 months.

Section 72 of the *Industrial Relations Act 1999* (the IR Act) provides that an employee during the first three months of employment is excluded from the unfair dismissals part of that Act unless there is agreement in writing before employment started that the employee serve a longer probationary period and it is a reasonable period having regard to the nature and circumstances of the employment. In effect, if there is no written agreement in relation to probation before the employment commences, then the employee is deemed to be on three months probation for the purposes of the unfair dismissal provisions of the IR Act. However, there are no exclusions if the dismissal is for an invalid reason as set out in section 73(2) of the IR Act.

The IR Act and the PS Act are not inconsistent in relation to probationary periods. Even where a chief executive does not exercise his/her power under Section 73 of the PS Act to impose a probationary period an employee may not commence unfair dismissal proceedings if the employee is dismissed in the first three months of their employment, provided the dismissal is not for an invalid reason.

If a chief executive does exercise his/her power to impose a probationary period (which the PS Act prescribes to be not less than six months) and this is agreed to in writing before commencing employment, then the employee may not commence unfair dismissal proceedings if dismissed during the agreed-to probation period.

It is a misconception that a public sector employee is deemed to be subject to a six month probationary period under the PS Act where there is no written agreement prior to commencing employment. If there is no written agreement specifying a probationary period prior to commencing employment, the employee is not subject to a probationary period. Only in matters related to unfair dismissal will the employee be deemed subject to the probationary period specified in the IR Act.

The Division of Public Sector Industrial and Employee Relations provides policy advice and consultancy and training services to Queensland Government departments and agencies. It is part of the Department of Industrial Relations. Enquiries about this circular should be directed to Nick Gillespie on 07 322 51422.

- General enquiries about public sector industrial and employee relations matters should be directed to telephone 07 322 51422.
- Written enquiries should be addressed to:  
The General Manager  
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Copies of all current circulars issued by Public Sector Industrial and Employee Relations are available from the department's web site at [www.psier.qld.gov.au](http://www.psier.qld.gov.au)

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## **Probationary Periods for Newly Appointed Public Sector Employees**

Whilst probation is discretionary under the PS Act, it is recommended as sound practice that Departments ensure that all employees who are eligible to be placed on probation are in fact placed on a probationary period and there is written agreement with the employee prior to commencing employment via the written offer of employment.

Section 7 of the *Public Service Regulation 1997* prescribes that the chief executive may extend probation by written notice following a show cause procedure. However, this extended period of probation will not exclude the employee from pursuing unfair dismissal remedies under the IR Act if dismissed after the initial agreed probation period has expired.

It should be noted that, whilst the PS Act stipulates a minimum probation period of six months, no maximum is set. However, the period should be reasonable having regard to the nature and circumstances of the employment and must be agreed to by the employee in writing prior to commencement of employment.

The purpose of this circular is to clarify issues associated with the PS Act and the IR Act in relation to probation. Some agencies may also need to consider provisions of other legislation in relation to some groups of employees.

It is also important to note that section 73(2) of the PS Act provides for a chief executive to extend an employee's period of probation.

**TOM BARLOW**  
General Manager

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