

Public Sector Industrial and Employee Relations

Probation Guidelines

The *Public Service Act 2008* provides for probation for public service officers. In forming policies for probation, agencies should take the following into consideration:

- (i) The probationary period under the *Public Service Act 2008* is consistent with the probationary period of 3 months under section 72 of the *Industrial Relations Act 1999*.
- (ii) Section 126 of the *Public Service Act 2008* provides that the probationary period for officers will generally be 3 months.
- (iii) Section 126 also provides for a longer probationary period by written agreement between the officer and the chief executive before the commencement of employment. The longer probationary period may be up to 13 months under section 126; however such a long period should only be used in exceptional circumstances.
- (iv) Section 72(b) of the *Industrial Relations Act 1999* also provides for a probationary period longer than 3 months if the period “is a reasonable period having regard to the nature and circumstances of the employment”.
- (v) The issue of whether 6 months probation for certain job types is ‘reasonable’ under section 72 of the *Industrial Relations Act* has never been tested in the Queensland Industrial Relations Commission.
- (vi) Since the *Public Service Act 2008* prescribes that probation will generally be 3 months, there is a greater risk that a longer period of probation for some employees will be challenged as not being reasonable in the QIRC.
- (vii) Whether a period of probation greater than 3 months should apply is a decision for each agency to make based on the “nature and circumstances of the employment”, and bearing in mind that a period greater than 3 months could be challenged in the QIRC in dismissal proceedings.
- (viii) Where an officer had been engaged immediately preceding appointment for a period of time equal to or greater than the proposed period of probation, and the previous role is comparable to the new role, DJAG would support a departmental policy that does not require the officer to be placed on a new period of probation.
- (ix) Probation for general employees (i.e. non-officers) and trainees is subject to the *Industrial Relations Act 1999* only.

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What is a “reasonable period”?

The purpose of a probationary period is to provide for training and induction and to allow an assessment to be made of the employee’s aptitude and capacity to perform the work. The Australian Industrial Relations Commission (AIRC) has previously outlined some criteria that should be considered when determining whether a probationary period exceeding 3 months is reasonable:

- (i) The entire circumstances of the employment and not merely the circumstances of the position held must be considered.
- (ii) It is relevant to consider a probationary employee’s previous experience, training and employment in assessing the ‘entire circumstances’ of the employment.
- (iii) Regard should be given to the situation at the date the employment commenced.
- (iv) A decision on whether a probationary period is reasonable should be based on an assessment having regard to the nature of the job and other factors.

Assessing the “nature of the job”

In assessing the nature of the job to determine if a probationary period is reasonable, the following factors should be taken into account (note this list is not *exhaustive*):

- The size, location and mode of operation of the employer.
- The personal characteristics and circumstances of the employee.
- A probation period may be shorter for an experienced employee as their capacity to perform their duties may be assessed more quickly.
- A long probation period is harder to justify if the employer has previously employed the employee concerned.
- A junior/unskilled position should not have a long probation period.
- A position with close levels of supervision should not have a long period of probation.
- Longer probation periods are reasonable for professionally qualified employees.
- A longer period of probation can be justified if a person requires a long period of formal or on the job training and it will take time to assess performance.

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- A long probation period may be reasonable where an employee's capacity to carry out their duties cannot be assessed until the final phase of a long training period is completed.
- Longer probation periods can be justified where employees have high levels of responsibilities, operational independence or are responsible for the safety of others.

A model process

The following is an example of a model process that can be used to manage probationary employees. Agencies should still comply with their own performance management policies when assessing the performance of and providing support to probationary employees.

Step 1 – Induction and performance planning

A clear outline of the purpose of the probationary period should be provided at induction.

This outline should include the employer's expectations of the role, including any performance standards or benchmarks, along with identification of the development, support and feedback that the probationary employee requires in order to meet the agreed performance expectations.

The employer should ensure the probationary employee has a clear understanding of performance monitoring and feedback processes and possible action to be taken if benchmarks or standards are not met.

The goals to be achieved and the strategies to achieve them should be documented and a copy signed by both the employee and the supervisor should be retained on the employee's personnel file.

Step 2 – Ongoing performance feedback and assistance

A probationary employee should receive regular, timely and balanced feedback to develop his or her capability to achieve the required performance standards. Additional performance support should be identified and provided as required.

Step 3 – Assessment of performance

The probationary employee's supervisor should schedule a series of meetings at which performance against the benchmarks or standards will be assessed. The meetings should summarise feedback already given. If the employee has failed to meet a benchmark despite assistance, strategies should be developed in consultation with the employee to assist him or her to achieve performance goals within a reasonable timeframe.

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Any goals set should be tangible, measurable and placed within a reasonable timeframe. These goals and strategies should be documented and a copy signed by both the employee and the supervisor should be placed on the employee's personnel file.

Step 4 – Decide whether to confirm, extend or dismiss

If at the end of the process the employer decides that the employee is suited to the position, they should confirm the employee's employment in writing.

If towards the end of the probationary period the employer decides that the employee has not performed satisfactorily, the employer can extend the period of probation (see Step 5) or dismiss the employee (see Step 6).

Step 5 (if required) – Extension

If the period of probation is extended, steps 1-4 should be repeated. This option is essential in order to provide the employee with the opportunity to reach a satisfactory level of performance. Extension of probation must comply with the principles of natural justice. However, if probation is extended past the initial 3 month probationary period, this will not preclude an employee from being able to access the unfair dismissal provisions in the *Industrial Relations Act 1999*.

Step 6 (if required) – Dismissal

If the employer proposes to dismiss the employee, the employee should be informed of the proposed dismissal – and the reasons for the proposal to dismiss – prior to the expiry date of the probationary period. The employee should be provided with an opportunity to respond prior to the expiry date of the probationary period. The termination of employment must comply with the principles of natural justice.