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## **TRANSITION OF FIXED TERM SENIOR PRACTITIONERS TO PERMANENCY – FREQUENTLY ASKED QUESTIONS**

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### **1. What is the minimum service requirement to be eligible for a review for transition to permanency?**

There is no minimum service requirement to be eligible for a review. All practitioners employed at the date the *WA Health System – Medical Practitioners – AMA Industrial Agreement 2022 (Industrial Instrument)* is varied by the WA Industrial Relations Commission to provide for permanent employment, are eligible for a review for transition to permanent employment.

For ease of administration, the Transition of Fixed Term Senior Practitioners to Permanency Policy (the policy) provides for WA health entities to sequence reviews based on a practitioner's length of service with WA health entities as a senior practitioner (i.e., priority groups recommended for review are practitioners who have 5 years or more service or are on a fixed term contract of 5 years or more).

### **2. Are all fixed term senior practitioners eligible to a review for permanent employment?**

No. A senior practitioner may be excluded from review for permanency where they are not directly employed by a WA health entity, not covered by the Industrial Instrument and/or are legislatively precluded from permanent employment. The categories of practitioners excluded from review for permanency are summarised as follows:

#### Contracted Medical Practitioners (CMPs) or Visiting Medical Officers (VMOs)

The commitment to review senior practitioners for permanency is isolated to senior practitioners employed directly by WA health entities as employees under the Industrial Instrument. CMPs or VMOs are engaged pursuant to a Medical Services Agreement (MSA) and therefore excluded from review. Periods of service provided under a MSA do not contribute to the length of service considerations listed in section 3.2 of the policy.

#### Health Executives or Department Executives

Chief Executives and Health Executives appointed under the *Health Services Act 2016* are legislatively precluded from permanent employment, as are executives appointed to the Senior Executive Service under the *Public Sector Management Act 1994*. The Industrial Instrument and policy stipulate positions equivalent to those of the Senior Executive Service (e.g., Chief Health Officer, Chief Medical Officer, Assistant Directors General, Executive Director Patient

Safety & Clinical Quality, Director Communicable Disease Control), are to be limited to fixed term appointments of not more than five years.

#### Clinical Academics

The scope of permanent employment for senior practitioners is limited to those covered by the Industrial Instrument. Clinical academics employment pursuant to the WA Health System – Medical Practitioner (Clinical Academics) – AMA Industrial Agreement 2022 are not eligible for review.

### **3. Are all fixed term senior practitioners reviewed eligible for permanent employment?**

No. A senior practitioner may be excluded from permanent employment for reasons stipulated in the Industrial Instrument and or policy as follows:

#### Resignation and Notices of Non-renewal

Practitioners who have provided notice to resign or have been advised in writing no less than 12 months prior to the expiry of the practitioner's contract that it will not be renewed pursuant to clause 20(6) of the Industrial Instrument are excluded from permanent employment.<sup>1</sup>

#### Probation

Practitioners on probation are not eligible for transition to permanency. However, a practitioner who successfully completes their probation within the review period is entitled to a further review by the employer.

#### Disciplinary or Substandard Performance Proceedings

Practitioners subject to current disciplinary or substandard performance proceedings are not eligible for transition to permanency. Pending conclusion of proceedings, a practitioner is entitled to a further review by the employer (see further information at FAQ 4).

#### Fixed Term Contract pursuant to Permissible Reasons

Practitioners employed pursuant to listed circumstances for fixed term employment stipulated in the Industrial Instrument are excluded from permanent appointment. Specifically, these reasons are<sup>2</sup>:

- to cover one-off or temporary periods of relief, such as parental leave cover;
- for projects with a finite life and/or to fill a position that is subject to external funding;
- to temporarily fill a vacancy during a recruitment process;
- the practitioner is on a visa with a fixed duration;

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<sup>1</sup> The exemption whereby a practitioner has been advised in writing no less than 12 months prior to the expiry of the practitioner's contract that it will not be renewed only applies for notification which occurs prior to the date the Industrial Instrument is varied to introduce permanency.

<sup>2</sup> Clause 20(3) of the Industrial Instrument.

- the practitioner has limited registration to practice, supervision practice arrangements or conditions placed on the practitioner's registration;
- any other circumstances as agreed between the employer and the Association; or
- the practitioner is appointed pursuant to subclause 2(11) of Schedule 3.

### Heads of Departments and Directors

The Industrial Instrument provides for Heads of Department to be concurrently appointed for:

- a term not exceeding five years for permanent senior practitioners; or
- the duration of the contract of employment for senior practitioners employed on a fixed term contract.<sup>3</sup>

Concurrent Head of Department appointments are not eligible for transition to permanent employment under the Industrial Instrument. These practitioners however remain eligible for review for permanency through their fixed term contract as a senior practitioner.

Director positions, as defined in the Industrial Instrument, are intended to cover positions providing:

- strategic direction, planning and or coordination of clinical training, education, accreditation and/or research, i.e., Directors/Coordinators of Training or equivalent; and
- strategic direction and operational management of medical services i.e., Directors/Co-Directors/Deputy Directors of Clinical/Medical Services or equivalent.

These positions are excluded from permanent employment and are subject to terms of up to 5 years.<sup>4</sup> However, these practitioners also remain eligible to be reviewed for permanency through their fixed term contract, or FTE allocated to performing the duties of a senior practitioner. Pursuant to the Industrial Instrument, practitioners who were employed on a permanent basis as a senior practitioner prior to being appointed to a director position, will retain their right to return to the permanent role.<sup>5</sup>

#### **4. What does it mean to be subject to disciplinary or substandard performance proceedings?**

Disciplinary proceedings are undertaken in accordance with the applicable principles of the [Discipline Standard](#) and, depending on the employment arrangement, Division 3 Part 11 of the *Health Services Act 2016 (HS Act)* and Division 3 Part 5 of the *Public Sector Management Act 1994 (PSM Act)*, the

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<sup>3</sup> Clause 20(9) of the Industrial Instrument.

<sup>4</sup> Clause 20(3)(c) of the Industrial Instrument.

<sup>5</sup> Clause 20(3)(c)(iii) of the Industrial Instrument.

industrial instrument, WA health mandatory/Department policy, and/or common law.

Disciplinary proceedings include:

- when an external body has been notified of alleged conduct or misconduct of an employee; or
- where the employing authority has notified the employee in writing of allegations of breach of discipline.

Disciplinary proceedings are undertaken in accordance with Division 2 Part 11 of the HS Act or Division 2 Part 5 of the PSM Act and [MP 0127/20 Discipline Policy](#) or [Department of Health Discipline Policy](#).

Substandard performance proceedings occurs when the employing authority has provided written notification to the employee that their performance has been identified as unsatisfactory and the performance concerns are in an active formal process of being managed consistent with the [MP 0041/16 Managing Unsatisfactory and Substandard Performance Policy](#).

This criterion only relates to a current disciplinary or substandard performance proceedings.

**5. Are fixed term senior practitioners employed pursuant to subsidiary agreements eligible for transition to permanent employment?**

WA health has eight subsidiary agreements made pursuant to Clause 7. Agreement Flexibility of the Industrial Instrument. Subsidiary agreements provide for terms and conditions to be implemented in substitution of those in the Industrial Instrument.

Except for any inconsistency, the terms and conditions of the Industrial Instrument continue to apply to these practitioners, including Clause 20 – Contract of Service which provides for practitioners to be employed permanently.

Senior practitioners who are under subsidiary agreements who meet the criteria for permanency should receive a contract of employment in line with the Industrial Instrument. Application of subsidiary terms to a practitioner's employment following review and transition to permanent employment will continue in line with the terms of the specific subsidiary agreement.

Senior practitioners subject to the BreastScreen WA Agreement 2022, or the Pathologist Agreement 2022 will receive a further letter regarding their ongoing employment arrangements from the relevant WA health entity.

**6. Is the employer obliged to offer permanent employment commensurate to a practitioner's current classification?**

The employer is expected to provide an offer of permanent employment to an eligible senior practitioner which aligns with their current classification and increment which has been determined in accordance with clause 26 of the Industrial Instrument.

If an employer has a question with regards to a practitioner's current classification, it is recommended the employer engages with their relevant Industrial Relations team.

**7. What if a practitioner has a contractual or administrative arrangement in place such as a special allowance or Attraction & Retention Incentive. Is the employer obliged to offer a permanent contract of employment including these arrangements?**

No. Under no circumstance are contractual or administrative arrangements for allowances, conditions or others identified as part of the review process to be included in an offer of permanency. Employers do not have the delegated authority to offer above Industrial Instrument arrangements, or to include such provisions and/or attraction and retention incentives within a contract of employment.

If an employer identifies these arrangements during the review, they are to engage with their relevant Industrial Relations team who will liaise with System-wide Industrial Relations on the matter.

**8. What happens if the practitioner declines an offer for permanent employment?**

There is no obligation for a senior practitioner to accept an offer for permanent employment. If a practitioner declines an offer of permanent employment, they can retain their current fixed term contract arrangement.

In this circumstance there is no obligation for the employer to re-review the practitioner for permanency.

**9. What happens if the practitioner is eligible for permanent employment and holds more than one fixed term contract within a WA health entity or across WA health entities?**

WA health entities will need to conduct a separate review of each of the practitioner's contracts of employment against the criteria contained in section 3 of the policy.

As part of the review, WA health entities will need to consider the practitioners classification and increment in the context of each contract and position they are being assessed for against for permanency consistent with section 3 of the policy.

Practitioners with multiple contracts with WA health entities should not be offered permanent employment in excess of 1.0 FTE in totality with WA Health.

**10. Can the employer extend a senior practitioner's current contract of employment who is eligible for review to facilitate further time to complete the review?**

Yes. Where an employer or practitioners seeks an extension to their contract for the purpose of the review process, the employer has discretion to do so.

**11. What rights does a practitioner have to appeal the results of a review?**

If a senior practitioner has concerns regarding the outcome of their review and employment status, the dispute settlement procedure prescribed in the Industrial Instrument should be used where an issue arises in the application of the Industrial Instrument and policy.