

Introduction

This advice is intended to provide clarity on the operation of s.180 of the *Corruption, Crime and Misconduct Act 2003* – the ‘right of return’ provisions for former Western Australian public service officers.

Your attention is drawn to the entitlement and eligibility criteria defined in s.180 of the *Corruption, Crime and Misconduct Act 2003* regarding right of return.

s.180. Entitlements of public service officers

- (1) *If a public service officer is appointed to the staff of the Commission under section 179, that person is entitled to retain all his or her accruing and existing rights, including any rights under the Superannuation and Family Benefits Act 1938, as if service as an officer of the Commission were a continuation of service as a public service officer.*
- (2) *If a person ceases to be an officer of the Commission and becomes a public service officer the service as an officer of the Commission is to be regarded as service in the Public Service for the purpose of determining that person’s rights as a public service officer and, if applicable, for the purposes of the Superannuation and Family Benefits Act 1938.*
- (3) If —
 - (a) *an officer of the Commission was immediately before his or her appointment under section 179 a permanent officer under Part 3 of the Public Sector Management Act 1994; and*
 - (b) *that person ceases to be an officer of the Commission for a reason other than dismissal for substandard performance, breach of discipline or misconduct,**that person is entitled to be appointed to an office under Part 3 of the Public Sector Management Act 1994 of at least the equivalent level of classification as the office that person occupied immediately prior to appointment under section 179.*

Please carefully note the Eligibility Criteria [s180 (3)] provision above, that is relevant to whether or not former Western Australian public service officers have a right of return to the sector after leaving the Corruption and Crime Commission (the Commission). Appointment under Part 3 of the *Public Sector Management Act 1994* (PSM Act) is not common to all employees of all public departments and authorities; there are many other employment mechanisms used in the sector, including enabling legislation and awards. Additionally, appointment under Part 3 of the PSM Act is not perpetual. It may be lost if an officer resigns to take up a role with an organisation that does not have similar provisions to s.180(3) in its enabling legislation and that appointment is not made under Part 3 of the PSM Act.

Understanding Your Rights

If you are interested in applying for a position with the Commission, and are currently employed in the Western Australian public sector, you are encouraged to contact your current agency HR department to find out how you were appointed to your current position and how these provisions may impact your employment with the Commission.

Commissioner's Instruction No. 15

Additional Guidance on right of return is provided in the Public Sector "*Commissioner's Instruction No. 15 - Appointment of former public service officers ceasing employment with statutory offices*". (CI No 15). CI No. 15 sets out the minimal procedural requirements to be followed to appoint former public service officers to the public service where an officer has a legislative entitlement to be appointed to a public service office on their cessation with the statutory office.

At the time of accepting employment with a statutory office (the Commission), a public service officer must provide written notice to the home agency of:

- their resignation from the public service
- the existence of the entitlement, under the legislation for the statutory office, to appointment to the public service on cessation with the statutory office.

Applicants who are offered employment with the Commission are advised to refer to CI No. 15 and its associated guidelines prior to resigning from the public service.

Under CI No. 15, an officer of the Commission on return to the public sector has an entitlement to be appointed to a vacant public service office which is at a level no less than the person's previous substantive classification level in the public service.

Links

- [Commissioner's Instruction No. 15 - Appointment of former public service officers ceasing employment with statutory offices](#)
- [Appointment of former public service officers ceasing employment with statutory offices - guidelines](#)
- [Corruption & Crime Commission Act 2003](#)