



**Australian Government**  
**Office of the Registrar of  
Indigenous Corporations**



This document has been prepared solely for the use of not-for-profit corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). Its application in any particular case will depend upon the facts of that case. In every case, due care will need to be taken by a corporation registered under the CATSI Act in assessing the suitability of its application. The Australian Government Solicitor and ORIC cannot take any responsibility for this assessment.

This document may only be reproduced or distributed for use in the drafting of a contract for a not-for-profit corporation registered under the CATSI Act. All other rights are reserved.

# How to guide – completing the contract templates

– for Aboriginal and Torres Strait Islander corporations covered by the Western Australian industrial relations system – not covered by the federal industrial relations system

**Permanent, Full-time or Part-time Employment**

Western Australian Industrial Relations System

**JULY 2024**

# Before you start to fill in the contract template check the following:

## STEP 1

The template only works for corporations employing employees in Western Australia who are covered by the Western Australian industrial relations system. The template will produce the wrong legal outcomes for anywhere other than Western Australia so do not use this template for employment in any other location.

This template only works for corporations in Western Australia that are not covered by the federal industrial relations system. For more information about which corporations are covered by the federal industrial relations system, see 'The federal industrial relations system: A guide for Aboriginal and Torres Strait Islander corporations and their employees'.

If you have any doubt about whether your corporation is covered by the federal industrial relations system or by the Western Australian industrial relations system, you should look at the Western Australian Department of Commerce website at:

<https://www.commerce.wa.gov.au/labour-relations/which-system-employment-law-applies>

If you are still in doubt you should seek legal advice.

## STEP 2

The template assumes that the employment is permanent – that is, it is not for a fixed period but is meant to continue indefinitely. If the employment is meant to be for a fixed period, a slightly different template will be needed.

## STEP 3

**The template covers both full-time and part-time employees. However, the corporation will need to select the relevant clauses that apply to either full-time or part-time employees, and delete the clauses that don't apply. STEP 4**

The template assumes that your corporation does not have a registered industrial agreement (**enterprise agreement or employer-employee agreement**). If one of those agreements is currently operating in the corporation, and if it applies to the job you are filling, the terms and conditions of employment for the new employee will have to be consistent with the terms of that agreement.

## STEP 5

Finally, the template has been drafted on the basis that one of the following Western Australian state awards applies to the employment:

- Shop and Warehouse (Wholesale & Retail Establishments) State Award 1977 (WA)

- Clerks' (Wholesale & Retail Establishments) Award
- Clerks (Commercial, Social and Professional Services) Award.

You need to make sure one of these awards does in fact apply to the employment.

The Western Australian Department of Commerce website can help you to confirm this at <https://www.commerce.wa.gov.au/labour-relations/wa-award-summaries>.

If you need more help, you can call Wageline on 1300 655 266.

### ***What is in the contract template?***

The template consists of three parts.

1. The **first part** is the contract of employment which needs to be filled in at various places by the corporation, and signed and dated by both the employer and the new employee.
2. The **second part** is Attachment 1 to the contract – the job description. The corporation needs to decide what goes into the job description at Attachment 1.
3. The **third part** is Attachment 2 to the contract – a summary of the Western Australian *Minimum Conditions of Employment Act 1993 (WA)* together with a summary of the main terms and conditions set out in the relevant award. Here the corporation needs to make sure that the correct summary is attached: that is, the one that relates to the relevant award (as opposed to another award that does not apply to the employment).

The relevant award summaries can be found here:

<https://www.commerce.wa.gov.au/publications/wa-award-summary-clerks-commercial-social-and-professional-services-award>

<https://www.commerce.wa.gov.au/publications/wa-award-summary-clerks-wholesale-and-retail-establishments-award>

<https://www.commerce.wa.gov.au/publications/wa-award-summary-shop-and-warehouse-award>

### ***Filling in the contract template***

**Clause 1:** you need to fill in the name of your corporation. This is defined in the contract as 'the Corporation', so you don't need to use the specific name of your corporation until you reach the signing page.

The document is just an offer, not a contract, until it is signed.

**Clause 2:** you need to fill in the commencement date for the employment. This is the date that you expect the employee to begin work.

**Clause 3** refers to the employee's position. You will need to fill out the role of the employee here. It also refers to Attachment 1 as setting out the Job Description. This describes what the employee will be doing. As noted above, the Job Description should be completed by the corporation.

Attachment 1 needs to be labelled 'Attachment 1'.

**Clause 4** of the contract deals with the period of probation. There are a few issues to consider here.

The first is the period of probation. The length of the probation is dependent on what the corporation needs. However, if the relevant award sets a maximum probation period, the probation period must be the same or less than the maximum probation set out in the award. For instance, the Shop and Warehouse (Wholesale & Retail Establishments) State Award 1977 provides that the maximum probation period is 2 months. This means that the corporation can set a probation period of 1 month, 2 months (or decide not to require a probation period), but it cannot require a probation period that is more than 2 months.

Once you have decided on the probation period, put this into the contract and also include the end date of the probation period (this is the date of commencement plus the probation period, minus one day) that is the end date of the probation. So, if two months of probation began on 20 August 2024, it would end at the end of 19 October 2024.

**Note** that if you make the period of probation 12 months, and you want to terminate the employee's employment on the very last day of that period, you need to give the employee two weeks' notice of termination, not one week's notice, as is specified in the template. If you terminate the employee's employment with *less* than one year of service, you only need to give one week's notice of termination.

The contract specifies two things that have to be satisfactory for the employee to 'pass' their probation. These are the employee's conduct and their performance. The corporation may wish to specify additional elements of probation in the contract.

**Clause 5.1** notes that the employee's conditions are set by the contract, the Western Australian *Minimum Conditions of Employment Act 1993* and other legislation. This clause includes a link to the MCE Act.

You will need to make sure that the award named here is the correct award for your employment. The final point of the preamble (page 1) tells you how to identify your award.

The template is set up on the basis that one of three Western Australian state awards applies to the employment – either the Clerks' (Wholesale & Retail Establishments) Award, the Clerks (Commercial, Social and Professional Services) Award, or the Shop and Warehouse (Wholesale & Retail Establishments) State Award 1977 (WA). Make sure that one of these awards applies to the employment and specify which one in this clause of the contract.

The clause also includes a link to the web page that lists and provides links to the Western Australian State awards, as well as a link to a summary of the Western Australian Minimum Conditions of Employment Act 1993 and a link to the full text of that Act.

You need to have a copy of the relevant award available in the employee's workplace.

**Clause 5.2** is possibly the most difficult for a corporation. You will need to work out the classification of the employee in terms of the award that applies. This means you need to check the classification clause of the relevant award, and see which classification most closely matches the duties and responsibilities of the position. You will need to specify the classification in the contract. As noted above there is help available to work out the right classification. The best places to look are at:

<https://www.commerce.wa.gov.au/labour-relations/wa-award-summaries>

<https://www.wairc.wa.gov.au/resources/awards?Letter=C#results>

If this does not answer the question you should call Wageline in Western Australia on 1300 655 266.

**Note** there are different paragraphs to be completed depending on whether the employee is part-time or full-time – the corporation should delete the clause that does not apply (ie delete the full-time clause if the employee is engaged part-time).

Next, you will need to specify the pay point within that classification, and the corresponding pay rate in the award for that pay point. Generally speaking, you would specify the first pay point – the lowest pay point – in the classification. Make sure you get this pay rate figure from an up-to-date version of the award – if you use the electronic link in the contract, it should always take you to the latest version of the award. You should be aware that the award rate is the minimum you can pay. The award rate is likely to be increased once every 12 months. The corporation should monitor these award pay rates to make sure it is always paying the right amount to employees.

The template provides for you to include the full-time pay rate for a part-time employee. The template for part-time employment says, 'You will be paid on a pro-rata basis ...' so in order to pay the employee the right amount, the corporation must

work out the weekly pay rate, as a proportion of the full-time weekly rate, based on what proportion of a 38 hour week the employee's ordinary hours are. So, if the part-time employee is working a 30 hour week, their pay should be 30/38 of the full-time weekly rate.

Alternatively, the corporation may choose to pay the new employee at a rate which is above the award rate. In order to do this, the corporation must not only specify a higher amount than the award rate but must also keep an eye on rate increases within the relevant award. It is important to make sure that, as time passes, the pay rate under the contract stays at or above the relevant award rate.

If the corporation is paying at the award rate, there is no need for a salary increase clause. This is taken care of by the award, although it will still be up to the corporation to make sure it is paying the right rate. If the corporation chooses to pay a rate above the award rate, it makes sense to include a pay increase clause in the contract, such as, 'The corporation will review the employee's rate of pay on [insert date] each year, and may increase it from the first pay period after that date.'

**Clause 5.3** says that the employment is permanent – that is, it does not have any specified end date – and that it is full-time or part-time.

The clause has two separate options depending on whether the employee is part-time or full-time. The corporation should delete the clause does not apply.

If the employee is part-time the corporation should specify the ordinary hours of work that the employee will do (or alternatively explain how these hours will be established – eg by a roster published in accordance with the relevant award).

You will need to carefully consider all of the requirements of the relevant award when setting the ordinary hours of work. Each of the awards contain different specific requirements in relation to minimum and maximum hours of work, and in relation to the pattern of hours.

**Clause 5.4** of the contract states that employees must have in writing an agreement with their employer, if they are to complete work for another employer.

**Clause 5.5** of the contract spells out the grounds of termination for an employer.

The corporation is to consider if there are any other relevant grounds specific to its industry that it would like to include in the contract, such as holding a particular qualification.

This clause sets out how much notice the corporation will give the employee if the corporation decides to terminate the employment (for reasons other than serious misconduct). The corporation will need to give, at a minimum, the notice that is

required by the NES or the Award (whichever is greater). However, the corporation could choose to offer a longer period of notice, if it wants to do so.

This clause also deals with resignation by the employee. The minimum notice required by an employee is often prescribed the Award. However, the corporation could consider if it would like to require greater notice from the employee than what is set out in the Award and can update the contract accordingly.

**Clause 5.6** states that the employee will not misuse or release the employer's confidential information.

**Clause 5.7** states that the employee agrees that the employee's intellectual property rights in the products they produce belong to the employer.

**Clause 5.8** states that the employee must comply with the corporation's relevant policies.

**Clause 6** of the contract spells out that the jurisdiction of Western Australia governs the contract.

**Clause 7** states that the contract spells out the entire agreement between both parties excluding contractual terms implied by the law.

**The signing page of the contract:** Affix the Common Seal of the corporation to the contract in the presence of two authorised officers of the corporation who will sign the contract. If the corporation does not have a Common Seal – some do not – you can use the second form of words supplied in the template. Either way, one of the two forms of words needs to be deleted.

The contract needs to be signed by the new employee and by a witness to the employee's signature. This does not all have to happen at the same time – each side can do its part separately.

**Attachment 1** to the contract is the job description. This is discussed above in the notes to clause 3.

This attachment should be labelled 'Attachment 1'.

**Attachment 2** to the contract is the summary of the Western Australian *Minimum Conditions of Employment Act 1993* and the relevant award. Having worked out which of the three likely awards applies to your employment, you need to attach the correct summary.

This attachment should be labelled 'Attachment 2'.