



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

Award-free

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 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

This guide (and the template contract) assumes the employment will be award-free – that is, it is not covered by a federal modern award or Western Australian state award. If you are in doubt about this you should seek legal advice.

You need to check – ideally, before you fill the position, if an award applies to this work in the employment of your corporation. One way to do this is to contact Wageline on 1300 655 266. Give them the details of your employment and see whether an award applies. Generally, they should be able to advise you on this. 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, 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 will need to fill in Attachment 1. The description of the job should be set out in this attachment. What goes into this is something for the corporation to work out.
3. The **third part** is Attachment 2 to the contract – a summary of the Western Australian *Minimum Conditions of Employment Act 1993* (WA) (MCE Act) and relevant entitlements under the *Fair Work Act 2009* (Cth) which apply to all employees, including employees covered by the Western Australian industrial relations system.

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 probation is dependent on what the corporation needs. Generally speaking, the more senior the job and the more responsibility it carries, the longer the period of probation. Corporations may want to

have a period of three, six months or even 12 months. Any longer than 12 months is quite unusual.

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). Hence if three months of probation began on 17 August 2024, it would end at the end of 16 November 2024.

Note that if you make the period of probation 12 months, and you 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 MCE Act and other legislation. This clause includes a link to the MCE Act.

Clause 5.2 is where you need to specify the employee's annual salary. This template assumes that the employee will be receiving a salary (not an hourly rate). If the employee is a part-time employee, specify the actual annual rate of pay – that is, the rate based on the part-time hours the employee will be working.

The salary must not be less than the minimum rate of pay under the MCE Act (see [Minimum pay rates for award free employees](https://www.commerce.wa.gov.au/labour-relations/minimum-pay-rates-award-free-employees-0) <https://www.commerce.wa.gov.au/labour-relations/minimum-pay-rates-award-free-employees-0>).

The second sentence of this clause refers to additional entitlements the employee may receive, such as a company vehicle or mobile phone. This is optional for the corporation to provide – if it does not suit the corporation to provide these items, this sentence should be deleted from the contract, or alternatively, include other entitlements that it is offering the employee.

Clause 5.3 says that the employment is permanent – that is, it does not have any specified end date.

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

Clause 5.4 is where you will specify the employee's ordinary hours of work per week. This should be 38 hours per week for a full-time employee, or less than 38 hours per week for a part-time employee.

You will also need to set out in this clause the pattern of work – that is, say what days of the week the employee will normally work, their start and finish times, and when they will take meal breaks.

The hours of work and the pattern of work can only be varied by making an arrangement in writing with the employee. If the corporation wants to be able to vary the pattern of work in some other way (eg by giving notice to the employee), you will need to make changes to this clause.

Clause 5.5 states that amount of annual leave accrued on a yearly basis. The corporation should consider whether it wishes to provide the employee with the minimum annual leave entitlement under the MCE Act (4 weeks), or provide a higher amount of annual leave.

Clause 5.6 states that employees must have an agreement in writing for outside employment.

Clause 5.7 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 after the end of the probation period (for reasons other than serious misconduct). The corporation will need to give, at a minimum, the notice that is required by the National Employment Standards. 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 corporation should consider how much notice it requires from the employee if they resign from their employment, and insert the notice period required.

Clause 5.8 states that the employee will not misuse or release the employer's confidential information.

Clause 5.9 is an optional clause that gives the corporation the right to require the employee to attend a medical examination for the purpose of deciding whether the employee is able to do their job or continue doing their job. A medical examination might be required either before the employee starts work, or after the employee starts work if the corporation has concerns about their fitness to perform their role.

Clause 5.10 states that the employee agrees that the employee's intellectual property rights in the products they produce belong to the employer.

Clause 5.11 states that the employee must comply with the corporation's relevant policies.

Clause 6 of the contract states 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 other applicable legislation). This attachment should be labelled 'Attachment 2'.