

Understand transitional provisions for fixed term temporary staff

Background

When amendments to the *Public Service Act 2008* (PS Act) came into effect on 14 September 2020, transitional provisions were included to help provide a smooth transition to the new requirements.

These transitional provisions are intended to provide a way to deal with unforeseen difficulties that may arise in the transition from the previous legislative framework to the new legislative framework established under the amended PS Act.

Importantly, the transitional provisions recognise that the conversion of employees potentially has resourcing and administrative implications for Queensland Government agencies. The provisions therefore allow additional time for employees to apply, and for agencies to determine conversion applications.

There are also some transitional provisions included in Commission Chief Executive directives that were amended to support the amendments to the PS Act. The provisions of these amended directives commenced on 25 September 2020.

The transitional provisions in the amended legislation and directives broadly deal with the following types of situations:

- If a case arose before the amendments were made—does the amended legislation/directive apply? Or is the case dealt with under the provisions of the previous legislation/directive?
- Are there any rights or expectations that an employee may still have under the previous legislation/directive, even though the amended legislation/directive has commenced?
- To what extent are things that were done under the previous legislation/directive to have an effect under the amended legislation/directive?

This information deals with the transitional provisions in the amended legislation and directives that deal with fixed term temporary employees who have been continuously employed.



Continuously employed is defined in the PS Act and, in relation to a person employed in a department for a period, as:

- (a) continuously as a fixed term temporary employee for the period or
- (b) as a casual employee on a regular and systematic basis during the period or
- (c) continuously as an employee mentioned in subparagraphs (a) and (b) for the period.

This means that if a person has been continuously employed on both a temporary basis and on a casual basis, those periods of service are totalled and together constitute the period of service that needs to be considered.

If a fixed term temporary employee was continuously employed by a department, then there are seven categories that the employee may fall into as at 14 September 2020:

1. An employee who has less than one year of continuous employment
2. An employee who has at least one year but not more than two years of continuous employment
3. An employee who has at least one year but not more than two years of continuous employment but the employee does not ask for a decision under section 293 of the PS Act and instead asks for a decision under section 294A
4. An employee who has two or more years of continuous employment
5. An employee who has two or more years of continuous employment and was entitled to a decision under the Act before it was amended
6. An employee who has two or more years of continuous employment and a deemed decision not to convert had been made under the Act before it was amended
7. An employee who has two or more years of continuous employment and had appealed a decision under the Act before it was amended

The table below illustrates each of these scenarios.





Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 1
Less than one year	<p>As at 13 of September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>as of 15 December 2020, the person would have been continuously employed as a temporary employee for a period of at least one year, if the amended PS Act had not commenced.</p>	<p>The person can apply under section 149(3) of the PS Act to have their employment basis converted to employment as a public service officer or general employee on tenure.</p> <p>The person must make the application either:</p> <ol style="list-style-type: none"> 1. On or before 14 December 2020 <p>or</p> <ol style="list-style-type: none"> 2. Within a longer period, providing that: <ol style="list-style-type: none"> a. the employee is a member of a class of employees, and b. the union for that class of employees has arranged a longer period, and c. that longer period has been agreed to by the 	<p>Section 293 PS Act—for transitional provisions.</p> <p>Section 149(3) of the PS Act—for how the decision must be made.</p>	<ul style="list-style-type: none"> • As at 13 September 2020, Edward was employed as a temporary employee in the department. • Edward had been continuously employed as a temporary employee in the department since 1 November 2019. • Edward continues to be employed in the department as a temporary employee, and on 31 October 2020 has been continuously employed as a temporary employee for a one year period. • On 31 of October 2020, Edward has met the conditions and can apply under section 149(3) of the PS Act to have his employment basis converted to employment as a





		<p>d. department's chief executive and the Commission Chief Executive of the PSC has approved the longer period.</p> <p>The chief executive of the department must decide the request within 28 days after the period above ends:</p> <ul style="list-style-type: none">• For the case outlined in one above—the decision must be made before 12 of January 2021.• For the case outlined in two above—the decision must be made within the longer period plus 28 days.		<p>public service officer.</p>
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Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 2
At least one year, but no more than two years	<p>As at 13 September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>on the 14 September 2020, the person had been continuously employed as a temporary employee for a period of at least one year, but not more than two years.</p>	<p>The person can apply under section 149(3) of the PS Act to have their employment basis converted to employment as a public service officer or general employee on tenure.</p> <p>The person must make the application either:</p> <ol style="list-style-type: none"> 1. On or before 14 December 2020 or 2. Within a longer period—see explanation in the column above for details. <p>The chief executive of the department must decide the request within 28 days after the period above ends:</p> <ul style="list-style-type: none"> • For the case outlined in one above—the decision must be made before 12 of January 2021. 	<p>Section 293 PS Act—for transitional provisions.</p> <p>Section 149(3) of the PS Act – for how the decision must be made.</p>	<ul style="list-style-type: none"> • As at 13 September 2020, Bonny was employed as a temporary employee in the department. • Bonny had been continuously employed as a temporary employee in the department since 13 July 2019. • This means that at 14 September 2020, Bonny had been continuously employed as a temporary employee for at least one year, but not more than two years. • Bonny meets the conditions and can apply under section 149(3) of the PS Act to have her employment basis converted to employment as a public service officer. • Under section 149(4), Bonny can only make





		<ul style="list-style-type: none">• For the case outlined in two above—the decision must be made within the longer period plus 28 days		<p>one request during a 12-month period.</p> <ul style="list-style-type: none">• Bonny decides to make her application to be converted on 30 October 2020. This means that if the department decided not to convert her, that Bonny would have to wait until 30 of October 2021 to make another application for conversion.• Noting—on 13 July 2021, if Bonny has been continuously employed as a temporary employee in the department, then under section 149B of the PS Act, the chief executive of the department must decide whether to:<ul style="list-style-type: none">○ Continue Bonny's employment according to the terms of her existing employment,or○ Offer to convert Bonny's employment
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				<p>basis to employment as a general employee on tenure or a public service officer.</p> <p>The combined effect of sections 149 and 149B means:</p> <ul style="list-style-type: none">• Bonny can initiate a review any time after she has been continuously employed in the department for one year or more the application anniversary date and• Bonny can then ask for a review every one year after that application anniversary date and also,• The department must review to see if they will convert Bonny once she has been continuously employed in the department for two or more years, the work anniversary date, and• The department must review every one
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				<p>year after that work anniversary date</p> <ul style="list-style-type: none">• Therefore, Bonny can potentially have up to two conversion reviews each year— one that she applies for under section 149, and one that the department must undertake under section 149B.
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Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 3
<p>At least one year, but no more than two years</p> <p>and</p> <p>The employee does not ask for a decision under Section 293</p> <p>and instead</p> <p>The employee asks for a decision under section 294A</p>	<p>As at 13 September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>on a date after 14 of September 2020, the person has been continuously employed as a temporary employee for two years</p> <p>and</p> <p>the person does not ask for a decision under section 293 (even though section 293 does apply to that person, because at 14 September 2020, the person has been continuously employed as a temporary employee for more than one year but less than two years—e.g. the date of two years of continuous employment occurs after 14 September.</p>	<p>Under section 149B of the PS Act, the chief executive of the department must decide whether to:</p> <ol style="list-style-type: none"> 1. continue the person’s employment according to the terms of the person’s existing employment <li style="text-align: center;">or 2. offer to convert the person’s employment basis to employment as a general employee on tenure or a public service officer. <p>The chief executive must make the decision within either:</p> <ol style="list-style-type: none"> 1. 28 days after the end of two years after the employee has been continuously employed as a fixed term temporary employee <li style="text-align: center;">or 	<p>Section 294A of the PS Act—for transitional provisions</p> <p>Section 149B of the PS Act—for how the decision must be made</p>	<ul style="list-style-type: none"> • As at 13 September 2020, Albert was employed as a temporary employee in the department. • Albert had been continuously employed as a temporary employee in the department since 20 September 2018. • Albert continues to be employed in the department as a temporary employee, and on 19 September 2020 has been continuously employed as a temporary employee for a two year period. • Albert decides he does not want to ask for a decision under section 293, because: <ul style="list-style-type: none"> ○ if he were to apply under section 293, he





		<p>2. 28 days after the end of a longer period which is stated in an industrial instrument within which the decision must be made.</p>		<p>may need to wait until 12 January 2021 before a decision is made. If section 294A is used instead, the decision will need to be made within 28 days of him becoming eligible, and</p> <ul style="list-style-type: none">○ if he applies under section 293, he will not be able to appeal the decision.● On 19 September 2020 Albert has met the conditions and the chief executive under section 149B of the PS Act must decide within 28 days (or 28 days after a longer period if relevant) if they are going to have
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				<p>Albert's employment basis converted to employment as a public service officer.</p> <p>Noting that if the department at the two year review decides not to convert Albert under section 149B, then the combined effect of sections 149 and 149B mean that:</p> <ul style="list-style-type: none">• Under section 149B, the department must review Albert's employment status every one year after the anniversary date of the first two year review and• Albert can initiate a review any time after he has been continuously employed in the department for one year or more (the application anniversary date) and• Albert can then ask for a review every one year after that application anniversary date .
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				<ul style="list-style-type: none">• Therefore, Albert can potentially have up to two conversion reviews each year—one that he applies for under section 149, and one that the department must undertake yearly under section 149B now that he has been in the department for more than two years and the department has done the initial two year review.
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Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 4
Two or more years	<p>As at 13 September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>on 14 September 2020, the person has been continuously employed as a temporary employee for two or more years</p> <p>and</p> <p>section 293 does not apply to that person, because on 14 of September 2020, the person had been continuously employed as a temporary employee for more than two years.</p>	<p>Under section 149B of the PS Act, the chief executive of the department must decide whether to:</p> <ol style="list-style-type: none"> 1. continue the person’s employment according to the terms of the person’s existing employment, or 2. offer to convert the person’s employment basis to employment as a general employee on tenure or a public service officer. <p>The chief executive must make the decision within either:</p> <ol style="list-style-type: none"> 3. 28 days after the end of two years after the employee has been continuously employed as a fixed term temporary employee. <p>or</p> <ol style="list-style-type: none"> 4. 28 days after the end of a longer period which is stated in an 	<p>Section 294A of the PS Act—for transitional provisions.</p> <p>Section 149B of the PS Act—for how the decision must be made.</p>	<ul style="list-style-type: none"> • As at 13 September 2020, Maria was employed as a temporary employee in the department. • On 14 September 2020, Maria had been continuously employed as a temporary employee in the department for more than two years. • Section 293 does not apply to Maria, as she has been continuously employed as a temporary employee for more than two years. • Maria meets the conditions of section 294A, and the department is required to review her employment status under section 149B of the PS Act to consider whether to convert her employment to employment as a





		industrial instrument within which the decision must be made.		public service officer.
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Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 5
<p>Two years plus one day, or more than two years</p> <p>and</p> <p>entitled to a decision under the Act before it was amended</p> <p>and</p> <p>decision has not yet been made as of 13 September 2020.</p>	<p>As at 13 September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>on 13 September 2020, the person was entitled to a decision by the chief executive under the previous section 149 of the PS Act about whether to have their employment basis converted to employment as a public service officer or general employee on tenure, because they had been continuously employed as a temporary employee for two years or more</p> <p>but</p> <ol style="list-style-type: none"> 1. On 14 of September 2020, the chief executive either: <ol style="list-style-type: none"> 1.1. had not commenced a review of the person's 	<p>The decision must be made under:</p> <ul style="list-style-type: none"> • the previous section 149 of the PS Act, and • the former <i>Directive 8/17: Temporary Employment</i>. 	<p>Section 294 of the PS Act, and clause 12.3 of <i>Directive 9/20– Fixed term temporary employment</i> –for transitional provisions.</p> <p>Section 149 of the <i>previous PS Act</i> and the <i>former Directive 8/17: Temporary Employment</i> –for how the decision must be made.</p>	<ul style="list-style-type: none"> • As at 1 September 2020, Jenny has been continuously employed in the department for more than two years. • On 5 September 2020, the chief executive of Jenny's department notified her that she was considering under (the then existing) section 149 of the PS Act whether to convert Jenny's basis of employment. • As at 13 September: <ul style="list-style-type: none"> ○ Jenny was still employed as a temporary employee with the department, and ○ the chief executive had not yet





	<p>employment basis, or</p> <p>1.2 had commenced a review of the person's employment basis but had not yet made a decision in relation to it.</p>			<p>made a decision.</p> <ul style="list-style-type: none">• The chief executive will need to make their decision about Jenny's employment basis under the previous section 149 of the PS Act, and the former <i>Directive 8/17: Temporary Employment</i>.
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Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 6
<p>Two years plus one day, or more than two years</p> <p>and</p> <p>entitled to a decision under the Act before it was amended</p> <p>and</p> <p>a deemed decision not to convert has been made at 13 September 2020.</p>	<p>As at 13 September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>on or before 13 September 2020, the person was entitled to a decision by the chief executive under the previous section 149 of the PS Act about whether to have their employment basis converted to employment as a public service officer or general employee on tenure, because they had been continuously employed as a temporary employee for two years or more</p> <p>but</p> <p>on or before 13 September 2020, the chief executive had not made a decision as required within the 28 day period in relation to</p>	<p>The decision is deemed to have been made under:</p> <ul style="list-style-type: none"> • the previous section 149 of the PS Act, and • the former <i>Directive 8/17: Temporary Employment</i> <p>The employee is entitled to appeal the decision.</p>	<p>Section 294 of the PS Act, and clause 12.3 of <i>Directive 9/20 – Fixed term temporary employment</i> –for transitional provisions</p> <p>Section 149 of the previous PS Act and the former <i>Directive 8/17: Temporary Employment</i> –for how the decision must be made</p>	<ul style="list-style-type: none"> • As at 10 August 2020, Jenny had been continuously employed in the department for more than two years. This means that the department had 28 days from that time to decide whether or not to convert Jenny. • The department did not review or make a decision about Jenny’s basis of employment under (the then existing) section 149 of the PS Act within that 28 day period. This means that (under the then existing PS Act) it was deemed that a decision not to convert Jenny’s basis of employment had been made • Jenny is entitled to: <ul style="list-style-type: none"> ○ appeal the deemed decision, and





	<p>the person's employment basis.</p> <p>Noting—this means that a deemed decision had been made not to convert the employee.</p>			<ul style="list-style-type: none">○ apply to be converted under new section 149 of the amended PS Act.
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Period of continuous employment as at 14 September 2020	Conditions that must be met	Transitional provisions that apply IF the conditions are met	Act/directive reference	Example 7
<p>Two or more years</p> <p>and</p> <p>has appealed a decision under the Act before 14 September 2020.</p>	<p>As at 13 September 2020, the person was employed as a temporary employee</p> <p>and</p> <p>on or before 13 September 2020, the employee has appealed a decision by the chief executive not to convert their basis of employment under the previous section 149 of the PS Act</p> <p>and</p> <p>on or before 13 September 2020, the appeal has not yet been decided</p> <p>and</p> <p>on or before 13 September 2020, the appeal had not been withdrawn.</p>	<p>Appeal must be heard and decided under Chapter 7 of PS Act as in force before 14 September 2020.</p> <p>The QIRC will continue to hear and decide these appeals under Chapter 3 part 5 of the PS Act as effective before 14 September 2020.</p>	<p>Sections 298 and 299 of the PS Act</p>	<ul style="list-style-type: none"> • As at 1 August 2020, Henry had been continuously employed in the department for more than two years. • On 20 August 2020, the chief executive of Henry's department notified him that he had decided under (the then existing) section 149 of the PS Act not to convert Henry's basis of employment. • Henry appealed this decision on 1 September 2020. • As at 13 September 2020: <ul style="list-style-type: none"> ○ Henry was still employed as a temporary employee with the department, and





				<ul style="list-style-type: none">○ the appeal had not yet been decided, and○ Henry had not withdrawn his appeal.● Henry's appeal will be heard and decided by the QIRC in accordance with the provisions of the previous PS Act.
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More information

- [Lodge a CaPE and HR Assist enquiry](#)

