

# Nature of project may be a genuine operational reason

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Notable case 91/19 | Date of decision: 4 July 2019

## Overview

An AO3 Administration officer working in a project role sought conversion from temporary to permanent employment.

The employee had worked as a temporary employee with the agency in another location and different role since at least April 2015 and moved to the project role in March 2017. The duties of the new role were specific to the project (migrating paper records to electronic records), and the role was limited to the completion of the project. Reductions in staff were to commence from 30 June 2019 following the transition to business as usual in May 2019.

The launch of the project was delayed, and the employee's temporary contract was extended, at the time of appeal, to September 2019.

The agency considered whether there were any substantive vacancies, the work being performed and the ongoing requirement for the work, concluding the employee was eligible for conversion, and in the short-term there was an ongoing role. However, it was known that the type of work performed would be ending and staff reductions would occur.

On this basis, the agency determined there were operational reasons not to convert the employee to permanent employment.

The employee appealed the decision.

## Decision

The appeal was dismissed.

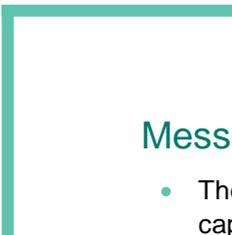
Determining that there is an ongoing role in terms of clause 9.6(a) of Directive 08/17 (the directive) does not automatically guarantee conversion.

The Queensland Industrial Relations Commission (QIRC) member found both parts of clause 9.6(a) were satisfied before looking at whether there were genuine operational reasons not to convert.

The actual duties undertaken were considered as part of comparing the capabilities of roles to determine whether they were the same or substantially the same roles. There were no ongoing opportunities identified in a role that was substantially the same. This can be compared with the [decision in \*Katae\*](#).

The QIRC member also found that there were material operational reasons not to convert, including:

- the reduction in the volume of scanning in the business unit following completion of the project would lead to a reduction in the number of employees required for the ongoing work
- the ongoing permanent FTE requirement for the agency was filled at the time of the review and remained filled at the time of the appeal.



## Messages and reminders for managers

- The duties of a specific position can be taken into account when considering the capabilities of a generically titled role that has a specific function e.g. a specific purpose project role. This can be compared with the decision in *Katae*.
- Genuine operational reasons for not converting an employee can exist where there is a short-term ongoing need for a temporary employee in a role. This needs to be considered on the particular facts and be supported by clear evidence of changing longer term circumstances related to the particular role. For example, if the role is required for a finite period and plans are in place for staff reductions after that time.