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| Notable Case | ­ |

#### Temporary employment – examination of other roles

#### Date of decision: 29 November 2017

#### Overview

An employee who was continuously employed within a specific branch of a department between February 2014 and early November 2017, appealed a decision by the Department to decline to convert their employment status from temporary to permanent.

Although it was agreed that the appellant had been employed in five or six distinct roles during their employment within the branch, there were discrepancies between the appellant’s and the department’s records. (Noting neither party was able to produce letters of appointment.)

The Department decided not to convert the employee given:

* the appellant’s role in the project had been completed and there was considerable uncertainty about the future of the project the employee had been working on
* it could not identify any permanent vacant roles that were substantially the same in the branch or the department into which the employee could be appointed
* it acknowledged that while future roles may arise which are substantially the same, the details of these future roles or projects were unknown at that time.

#### Decision

The Queensland Industrial Relations Commission (QIRC) summarised that the intent of the directive is to:

* permit the continuing arrangement of temporary employees to meet temporary circumstances;
* put in place a regime for the status of the employee to be reviewed; and
* allow for a temporary employment status to be converted to permanent, if the circumstances which warranted their initial employment as a temporary employee no longer exist.

The QIRC upheld the agency’s process, finding that:

* this was not a situation where the employee had just been rolled over from one contract to another in exactly the same role. Rather, the employee had been employed in various roles, each a separate project or program with a defined life and/or funded for a particular period
* it would be inappropriate for either the Department or the QIRC on appeal to speculate about what roles might become available in the future, and
* the decision-maker made relevant enquiries about any other available permanent roles, including consultation within the branch in which the employee was employed.

**Key messages and reminders for managers**

The decision provided a number of insights for agencies how to approach a temporary conversion under s.149 of the PS Act, including:

* A decision maker’s task is to consider any application for conversion from temporary employment to permanent at a point in time. It is inappropriate to consider whether roles might become available in the future.
* In this matter, as the employee was engaged in a specialised role, it was sufficient to only look at roles within the branch in which the appellant was employed for the purposes of considering roles that were substantially the same.
* In providing reasons for not converting an employee, there was no need to identify each and every vacant position that the decision maker considered. It is not the department’s responsibility to prove that there are no permanent roles to which the appellant could be appointed. (Specifically, this would not reflect the terms of the Directive nor the provisions of Division 2, Part 1, Chapter 7 of the Act – especially s 201(2) of the Act.)