***CONVERSION DECLINED – template - fixed term temporary employment***

*This template letter provides a range of options for advising the outcome not to convert a fixed term temporary employee following a conversion review at either one or two years service or subsequently, under the* [*Fixed term temporary employment Directive 09/20*](https://www.forgov.qld.gov.au/documents/directive/0920/fixed-term-temporary-employment)*. The letter is set out to ensure all the requirements of the Public Service Act 2008 and directive are considered. Headings throughout the letter guide selection of paragraphs appropriate for inclusion in the letter to the employee. (Delete this box when finalising the letter).*

«Title» «First\_Name» «Last\_Name».

***Email «Employee\_Email\_Address»***

Key points:

* You are not being converted to permanent employment and will continue as a fixed term temporary employee at this time. Your eligibility review date is [INSERT DATE]
* The reason for this decision is that [select appropriate option: you are not eligible for conversion/there is no continuing need for you in the role/it is not viable or appropriate to convert you having regard to genuine operational requirements, etc] which prevents your conversion at this time.
* Additional information about the decision-making framework and your appeal rights is at the end of this letter.

Dear «First\_Name»

I refer to my letter of [DATE] about the review of your fixed term temporary employment with [AGENCY]. [INSERT WHERE APPLICABLE – Thank you for your submissions regarding your conversion to permanent employment received [DATE].]

**Conversion review decision**

I have conducted a review of your employment status and have determined that

[WHERE NOT ELIGIBLE FOR CONVERSION]

you are not eligible for review at this time as you have not been continuously employed in this agency for the required period of time. Based on the information currently available, you are likely to be eligible for review on [INSERT DATE] if you remain employed with this agency. Your eligibility for review of your employment for conversion will be reconsidered at that time.

[WHERE DECISION IS NOT TO CONVERT]

your employment will remain as fixed term temporary at this time. You will continue in the role of [ROLE TITLE] until [END DATE OF FIXED TERM TEMPORARY ENGAGEMENT] when [REASON FOR END OF ENGAGEMENT e.g. the substantive incumbent returns from leave].

**Considerations when making the decision**

I have considered the requirements of the *Public Service Act 2008* (PS Act), the Fixed term temporary employment directive 09/20 and your employment history, including any previous conversion review decisions.

[WHERE NOT ELIGIBLE FOR CONVERSION]

You are not eligible for conversion to permanent employment because [SELECT ALL RELEVANT REASONS AND REFERENCE SUPPORTING FACTS]

* you are already a permanent employee [*reference permanent substantive role in the agency or another agency*]. The fixed term temporary employment directive does not apply to a permanent employee who is temporarily performing duties in a higher role. You may refer to the directive relating to appointing a public service employee to a higher classification level for more information about your entitlement to request a review.
* you have not yet been employed in this agency for one year *[reference why the one year continuous employment requirement has not been satisfied e.g. cumulative breaks in fixed term temporary employment of more than 6 weeks.]*
* you have not been employed in this agency for two years *[reference why the two-year continuous employment requirement has not been satisfied e.g. cumulative breaks in fixed term temporary employment of more than 12 weeks in the previous two years.]*

[WHERE DECISION IS NOT TO CONVERT – CONDITIONS IN PS ACT NOT MET]

There are two considerations for deciding whether to convert. These are that there is a continuing need for you to perform your role or a role that is substantially the same AND you satisfy the merit principle. I have addressed these two aspects below.

Merit

[WHERE MERIT IS SATISFIED]

Thank you for your performance in the role over the period [xx/yy/zz to xx/yy/zz]. You have demonstrated over this time that you satisfy the merit requirements for the role.

[WHERE MERIT IS NOT SATISFIED - THIS SHOULD ONLY BE A REASON FOR NOT CONVERTING THE EMPLOYEE WHERE THERE IS WRITTEN EVIDENCE OF AN UNFINALISED PERFORMANCE MATTER]

Thank you for your performance in the role over the period [xx/yy/zz to xx/yy/zz]. Unfortunately, you are not eligible for conversion to permanent employment because you do not satisfy the merit requirements for the role. [DOCUMENT REASONS *e.g. Your supervisor has advised that you are currently on a Performance Improvement Plan (PIP) or in discussions, which have been confirmed in writing, about current unresolved performance or conduct issues that are likely to lead to a PIP, disciplinary action or termination of your contract.*]

These conduct and performance matters have been raised with you by [insert form of communication and date] and have been confirmed in writing.

Continuing need

The decision not to permanently appoint you is based on continuing staffing needs at this time. Specifically, my reasons are [SELECT APPROPRIATE RESPONSE]

1. there is no continuing need for you to perform your current role because [DOCUMENT REASONS: e.g. substantive incumbent is returning to the role on a full-time basis; the role was temporary for a specified period and purpose which is now complete; the role is not continuing due to the implementation of documented organisational change]
2. there is no continuing need for you to perform a role that is substantially the same. [DOCUMENT REASONS including:
   * all roles considered and
   * any facts relied upon either to conclude the roles are not substantially the same, that the roles do not need to be filled on a continuing basis.
   * Consideration of the employment history of the employee and the length and nature of ongoing backfill in substantially the same roles and/or project roles. Where this has occurred over an extended period of time, there may be a continuing role for the employee even though there is no substantive vacancy. Where the fixed term temporary employee has been part-time, consider the continuing nature of any job-share arrangement and whether there is an opportunity for permanent part-time for both employees] [Reference attached summary of employment history and previous conversion reviews as relevant].

[*It is possible that a fixed term temporary employee could meet the conditions for continuing business need and not satisfy merit, preventing conversion until performance issues are resolved. It is expected that any performance issues would have been managed within the required one or two years’ service and if performance remains unsatisfactory, the fixed term temporary employment arrangement would have ended*].

*[GENUINE OPERATIONAL REQUIREMENTS NOT TO CONVERT ARE NOT RELEVANT WHERE THE THRESHOLD CONDITIONS FOR CONVERSION IN THE PS ACT ARE NOT SATISFIED]*

[WHERE DECISION IS NOT TO CONVERT – CONVERSION CONDITIONS ARE MET BUT IT IS NOT VIABLE OR APPROPRIATE HAVING REGARD TO THE GENUINE OPERATIONAL REQUIREMENTS OF THE AGENCY]

I have considered the conditions for conversion in the PS Act and determined that you have demonstrated merit and there is a continuing need for you to fill the role or a role that is substantially the same. However, there are genuine operational requirements of the agency that mean it is not viable or appropriate to convert you at this time. Specifically, [AGENCY NAME/BUSINESS UNIT] [insert reasons e.g. is undergoing significant workforce change and your role is one of a group identified as no longer required; your role is part of a project that is in the process of winding down; your role was part of a temporary business initiative that is coming to a close], as evidenced in [STRATEGIC/OPERATIONAL/WORKFORCE PLANNING documents].

I have included additional information about the process [DELETE FOLLOWING TEXT ABOUT APPEALS IF THIS DECISION WAS MADE UNDER SECTION 149] and appeal rights at the end of this letter.

[contact name] has been assigned as the contact for the review. Should you have any questions regarding this letter, please contact [contact], by email at [insert email] or by telephone on [insert phone number].

Yours sincerely

[DELEGATE NAME AND POSITION]

**Employment summary**

**(include any previous conversion review decisions and reasons)**

**Additional information**

**Decision making framework**

This review is conducted in accordance with the *Public Service Act 2008* (PS Act) and the Fixed term temporary employment directive 09/20. The PS Act is available at <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2008-038> and the directive is available at <https://www.forgov.qld.gov.au/documents/directive/0920/temporary-employment>.

**Eligibility for review – section 149, 149B**

To be eligible for a fixed term temporary to permanent employment review, you must

1. be a **fixed term temporary employee**
2. have been employed in the agency for either **one year or two years continuously** (including casual engagements)
3. have had **total breaks** in employment of **less than six weeks** in the previous year’s service **or 12 weeks** in the previous two years service.

**Conditions for fixed term temporary to permanent conversion – sections 149A,149B**

1. There is a **continuing need** for the fixed term temporary employee to be employed in the role in question or there is a continuing need for the fixed term temporary employee to be employed in a role which is the same or substantially the same.
2. **Merit** of the employee for the role has been established.
3. Any requirements of an industrial instrument are complied with in relation to the decision
4. The fixed term temporary employee should be converted to permanent unless it is **not viable or appropriate** having regard to the **genuine operational requirements** of the agency.

**Merit principle and merit criteria – sections 27, 28**

The **merit principle**

(1) The selection, under this Act, of an eligible person for an appointment or secondment as a public service employee must be based on merit alone (the merit principle).

(2) The merit principle applies subject to chapter 5, part 2, division 2 (Reappointment of particular election candidates).

(3) In this section — appointment does not include a transfer.

**Merit criteria**

In applying the merit principle to a person, the following must be taken into account—

(a) the extent to which the person has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties in question;

(b) if relevant—

(i) the way in which the person carried out any previous employment or occupational duties; and

(ii) the extent to which the person has potential for development.

**Continuously employed – section 149B(7A), Schedule 4 dictionary**

For working out how long the person has been continuously employed in the department—

(a) all periods of authorised leave are to be included; and

(b) the person is to be regarded as continuously employed even if there are periods during which the person is not employed in the department, if the periods of non-employment in the department total 12 weeks or less in the 2 years occurring immediately before the time when the duration of the person’s continuous employment is being worked out.

***continuously employed***, in relation to a person employed in a department for a period, means the person is employed in the department—

(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 (i) and (ii) for the period.

**Where a decision is not made – sections 149A(5), 149B(7)**

If the decision maker does not make a decision within 28 calendar days after the eligibility date, the decision maker is taken to have decided not to convert the fixed term temporary employee to permanent.

**Appeal rights – sections 194(1)(e), 196(e)**

A fixed term temporary employee not converted to permanent employment following a review under section 149B may appeal a decision not to convert.

There is no appeal available for a review decision not to convert made under section 149.

There are procedural requirements, including time limits, under the *Industrial Relations Act 2016* that you must fulfil in order to appeal this decision.Further information is available in the Queensland Industrial Relations Commission’s public service appeals guide found at: <https://www.qirc.qld.gov.au/public-service-appeals> .

**Human rights**

Under the *Human Rights Act 2019*, decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights.

If you consider that a relevant human right has not been taken into account in making this decision, you may make a complaint using your agency’s process for making a human rights complaint. If you appeal a decision, you can include information about your human rights complaint.

Further information about your human rights is available: <https://www.qhrc.qld.gov.au/your-rights/human-rights-law>.