Fixed term temporary Conversion Checklist

Review of the status of a fixed term temporary employee under the *Public Service Act 2008* and fixed term temporary employment directive

## Purpose

This checklist is designed to assist agencies to meet their obligations to review the status of a fixed term temporary employee under the *Public Service Act 2008* (PS Act) and the [Fixed term temporary employment directive 09/20](https://www.forgov.qld.gov.au/documents/directive/0920/fixed-term-temporary-employment). The checklist requires consideration of four elements:

1. One or two years of fixed term temporary employment in the same agency (which may include periods of casual employment),
2. merit,
3. continuing need,
4. whether permanent employment is not viable and appropriate, having regard to genuine operational requirements.

For an **employee-initiated review**, use the checklist to consider conversion after **one year** of temporary employment. A decision on an employee-initiated review must be made **within 28 days**. Only one employee-initiated review request can be made in each 12 month period. An employee-initiated review decision cannot be appealed to the Queensland Industrial Relations Commission (QIRC).

The conversion provisions of the PS Act do not apply to non-industrial instrument employees, including senior officers.

An offer to convert employment to permanent may only be made if any **requirements of an industrial instrument** are complied with in relation to the decision.

## Step one – eligibility for review

To be eligible for conversion, the employee must be a temporary employee who has been employed for a period of at least one year in the same agency without a break in employment. Both temporary and casual employment in the same agency are included when determining the employee’s eligibility for conversion review.

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| **1.1** Is the employee a fixed term temporary employee? | Yes  ***Go to 1.2*** | No  The employee is not eligible for review of fixed term temporary employment as they are not a fixed term temporary employee.  If the employee is a casual employee, consider whether a casual conversion review applies. |
| **1.2** For an employee-initiated review, has the employee been employed as a fixed term temporary employee for a period of **at least one year**?  For an employer-initiated review, has the employee been employed as a fixed term temporary employee for a period of **at least two years**? | Yes  ***Go to 1.3*** | No  The employee is not eligible for review of fixed term temporary employment as they do not have one years’ service.  ☐ No  The employee is not eligible for review of fixed term temporary employment as they do not have two years’ service. |
| **1.3** Has the employee been employed in the same agency?  Note: where a MOG has occurred, the same agency requirement may be met by employment in both the pre- and post-MOG agency. | Yes  ***Go to 1.4*** | No  The employee is not eligible for review of fixed term temporary employment as they have not been employed in the same agency. |
| **1.4** For an employee-initiated review, have there been breaks in fixed term temporary employment totalling 6 weeks or more in the previous twelve months?  For an employer-initiated review, have there been breaks in fixed term temporary employment totalling 12 weeks or more in the previous two years? | No  ***Go to step two*** | Yes  The employee is not eligible for review of fixed term temporary employment as their service is not continuous.  Advise the employee of their likely eligibility date if their employment continues. |

## Step two – merit

To be converted to permanent, a fixed term temporary employee must be eligible for appointment to the role having regard to the merit principle. Merit should only be a reason to refuse conversion to permanent employment where specific performance concerns have been raised in writing with the employee and they have had an opportunity to address the concerns. There is no comparative assessment of merit against other employees. The merit of the fixed term temporary employee for the role is the required consideration.

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| **2.1** Is the employee currently the subject of a formal performance improvement process? | No  ***Go to 2.2*** | Yes  The employee is not eligible for conversion as they have not met the merit requirements for the role. The decision maker must still consider whether there is a continuing need for the employee and whether the employee’s role is ongoing.  ***Merit not met, go to step three*** |
| **2.2** Is the employee currently the subject of any unresolved performance concerns? | No  ***Merit met, go to step three*** | Yes  ***Go to 2.3*** |
| **2.3** Have the unresolved performance concerns been raised with the employee in writing? | No  As the unresolved performance concerns have not been raised in writing, the decision maker cannot rely on merit to refuse conversion for the employee.  ***Merit met, go to step three*** | Yes  The employee is not eligible for conversion as they are not eligible for appointment having regard to the merit principle. The decision maker must still consider whether there is a continuing need for the employee.  ***Merit not met, go to step three*** |

## Step three – continuing need

Section 149A(2) of the PS Act requires that the chief executive may only offer to convert an employee to permanent if there is a continuing need for someone to be employed in the employee’s role or in a role that is substantially the same as the employee’s role.

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| **3.1** Is there a continuing need for someone to undertake the employee’s role or a role that is substantially the same as the role they are performing at the time of the conversion review? | No  A decision maker will require sufficient evidence that shows there is no continuing need for the employee in the same or a substantially the same role.  This evidence must be included in the reasons for not converting provided to the employee.  ***Go to 3.2*** | Yes  If merit met, the employee should be converted to permanent employment unless it is not viable and appropriate, having regard to genuine operational requirements.  ***Go to step four***  If merit not met, while there is a continuing need for the employee in a role, as the employee has not met merit for the role, they are not eligible for conversion. |
| **3.2** Consideration of evidence relevant to whether there is continuing need: | | |
| **3.2.1** Are there strategic and/or business plans that indicate the role will be continuing? | No | Yes |
| **3.2.2** Are there project business case documents and/or plans that indicate the role will be continuing? | No | Yes |
| **3.2.3** Has funding for the role become more certain or more likely? | No | Yes |
| **3.2.4** Does the reason for the fixed term temporary employment no longer exist (for example, has a substantive occupant returned to the role)? | Yes | No |
| **3.2.5** Any other factors that are relevant to whether there is a continuing need? | ☐ Yes | ☐ No |
| **3.3** Taking into account the responses in 3.2, overall, is there sufficient evidence that shows there is a continuing need for the employee in the same role or a role that is substantially the same? | No  *If merit met*, while the employee has demonstrated merit for the role, there is not a continuing need for the employee to be employed in the role or a role that is substantially the same. The employee is not eligible for conversion.  *If merit not met* the employee is not eligible for conversion as they have not demonstrated merit for the role, and there is no continuing need for the employee.  ***Go to step four*** to ensure all relevant considerations are addressed in the notice of decision.  ***Step five will not apply*** as the employee is not eligible for conversion. The notice of decision must include reasons for not converting and the information relied on in making that decision. | Yes  *If merit met,* and the conditions in step four are satisfied, the employee should be converted to permanent employment unless it is not viable or appropriate to do so, having regard to the genuine operational requirements of the department.  ***Go to step four***  *If merit not met*, while there is a continuing need for the employee in a role, as the employee has not met merit for the role, they are not eligible for conversion.  ***Go to step four*** to ensure all relevant considerations are addressed in the notice of decision. |

## Step four – pre-conditions for conversion

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| **4.1** Is there an industrial instrument with conditions that must be met in relation to the conversion? | No  ***Go to 4.2*** | Yes  Ensure the conditions have been met before proceeding with the conversion review.  ***Go to step 4.2*** |
| **4.2** Has a conversion review been undertaken previously for the employee? | No  ***Go to step five*** | Yes  Consider the previous conversion review(s). Note the previous decisions and include in the notice of conversion review decision to the employee.  If employee has not met the conditions for conversion based on steps one to four, decline conversion request. [Insert link to template letter declining conversion]  ***Where steps one to four support conversion, go to step five*** |

## Step five – Viable and appropriate, considering genuine operational requirements

Where a decision maker determines the employee is eligible for conversion to permanent employment, before converting, the decision maker must consider whether it is viable and appropriate to convert the employee, having regard to the genuine operational requirements of the department.

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| **4.1** Taking into account the agency’s workforce planning and other matters that may impact genuine operational requirements, is there sufficient evidence that shows that it is not viable or appropriate to convert the employee to permanent employment?  Consider, for example, significant workforce reform in progress, completion, termination or scaling down of significant projects, removal or reduction in funding. | Yes  The employee should not be converted to permanent employment as it is not viable or appropriate, having regard to the genuine operational requirements of the agency.  List the genuine operational requirements considered and why they mean it is not viable or appropriate to convert to permanent employment. The **notice to the employee** should include the information relied on and the reasons for the decision not to convert.  [Insert link to template letter declining conversion] | No  With the employee’s consent, they should be converted to permanent employment.  Consider clause 7 of the [Fixed term temporary employment directive 09/20](https://www.forgov.qld.gov.au/documents/directive/0920/fixed-term-temporary-employment) and offer permanent hours of work based on its requirements. |