

Non-permanent conversion checklist

Review the employment status of a non-permanent employee under the *Public Sector Act 2022* (Act) and the Review of non-permanent employment directive 02/23

Purpose

Use this checklist to assist you as a public sector entity to meet obligations to review the status of a non-permanent employee under the *Public Sector Act 2022* (the Act) and the [Review of non-permanent employment directive 02/23](#) (the directive). You should consider the following elements:

- one or two-years of continuous employment on a non-permanent basis in the same public sector entity
- continuing need in the role, or a role that is substantially the same
- if the employee is considered suitable to perform the role
- if permanent employment is not viable and appropriate having regard to genuine operational requirements.

As this checklist applies to both casual and fixed-term temporary employment, there is an additional consideration when reviewing casual employment, as noted in section 1.3 of the checklist table below.

The conversion provisions of the 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.

N.B: This checklist does not replace or substitute any obligations under the Act or the directive and should be read in conjunction when conducting a review to offer employment on a permanent basis.

Step one – eligibility for review

To be eligible for review, an employee must be a non-permanent employee who has been continuously employed in the public sector entity for the relevant eligibility period. Sections 113(3) and 115(7) of the Act set out the matters to be considered when working out how long the employee has been continuously employed.

<p>1.1 Is the employee a non-permanent employee?</p>	<p><input type="checkbox"/> Yes</p> <p>Go to 1.2</p>	<p><input type="checkbox"/> No</p> <p>The employee is <u>not eligible</u> for review of non-permanent employment, as they are not a non-permanent employee.</p>
<p>1.2 For an employee-initiated review, has the employee been employed in the same public sector entity for a period of at least one year?</p> <p>OR</p> <p>For an employer-initiated review, has the employee been employed in the same public sector entity for a period of at least two years?</p> <p>Note: Where a machinery-of-government (MOG) change has occurred, the same public sector entity requirement may be met by employment in both the pre- and post-MOG public sector entity.</p>	<p><input type="checkbox"/> Yes</p> <p>Go to 1.3</p>	<p><input type="checkbox"/> No</p> <p>The employee is <u>not eligible</u> to request a review of non-permanent employment under section 113 of the Act, as they do not have one year of service in the same public sector entity.</p> <p><input type="checkbox"/> No</p> <p>The employee is <u>not eligible</u> for review of non-permanent employment under section 115 of the Act, as they do not have two or more years' service in the same public sector entity.</p>
<p>1.3 Has the employee been continuously employed for the eligibility period:</p> <ul style="list-style-type: none"> • on non-permanent basis, other than on a casual basis, (for example, as a fixed-term temporary employee), or • on a non-permanent basis that is a casual basis on a regular and systematic basis, or • on a non-permanent basis that is a casual basis on a regular and systematic basis, and on a non-permanent basis that is not on a casual basis (for example, as a casual and fixed-term temporary employee)? <p>For working out how long an employee has been continuously employed in the public sector entity:</p> <ul style="list-style-type: none"> • all periods of authorised leave are to be included, and • periods of non-employment totalling less than six weeks for an employee-initiated review, and twelve weeks for an employer-initiated review do not interrupt the continuous employment (see step 1.4). 	<p><input type="checkbox"/> Yes</p> <p>Go to 1.4</p>	<p><input type="checkbox"/> No</p> <p>The employee is <u>not eligible</u> for review of non-permanent employment as they have not been continuously employed.</p>

<p>1.4 For an employee-initiated review, have there been no periods of non-employment for the non-permanent employee, totalling more than six weeks in the previous year?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No The employee is <u>not eligible</u> for review of non-permanent employment under section 113 or 115 of the Act, as employment has not been continuous for the required period.
<p>For an employer-initiated review, have there been no periods of non-employment for the non-permanent employee, totalling more than 12 weeks in the previous two-year period?</p>	<input type="checkbox"/> Yes The employee is eligible for review. Go to step 2	The employee should be advised of the date they are likely to become eligible for conversion review if their employment continues.

Step two – continuing need

Section 114(3) of the 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.

<p>2.1 Is there a continuing need for someone to be employed in 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?</p>	<input type="checkbox"/> Yes Go to 3	<input type="checkbox"/> 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 step 2.2
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2.2 Consideration of evidence relevant to continuing need

<p>2.2.1 Are there strategic and/or business plans that indicate the role will be continuing?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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<p>2.2.2 Are there project business case documents and/or plans that indicate the role will be continuing?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>2.2.3 Has funding for the role become more certain or more likely?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>2.2.4 Does the reason for the non-permanent employment no longer exist (for example, has a substantive occupant returned to the role)?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>2.2.5 Any other factors that are relevant to whether there is a continuing need?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>2.3 Considering responses in 3.2, is there sufficient evidence that shows there is a continuing need for someone to be employed in the employee’s role, or a role that is substantially the same?</p>	<input type="checkbox"/> Yes Go to step 3	<input type="checkbox"/> No <p>The employee’s employment <u>cannot be converted</u> to a permanent basis because there is no continuing need for someone to be employed in the employee’s role, or a role that is substantially the same.</p> <p>However, for completeness, the reviewer should still consider whether the person is suitable to perform the role they are currently in.</p> <p>Go to step 3</p>

Step three – suitable

If there is a continuing need for someone to be employed in the employee’s role, or a role that is substantially the same, a non-permanent employee must be considered to be suitable to perform the role (as per the meaning provided for in the directive relating to Review of non-permanent employment). There is no comparative assessment for this step against other employees. Being suitable to perform the role is the required consideration.

<p>3.1 Has the employee provided evidence of possessing any relevant mandatory qualification/s (as provided for in the role description)?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Not relevant. There are no mandatory qualifications</p> <p>Go to 3.2</p>	<p><input type="checkbox"/> No</p> <p>The employee's employment <u>cannot be converted</u> to a permanent basis as they are not considered to be suitable to perform the role. Use the Template letter declining conversion.</p> <p>However, for completeness the decision maker must have regard for the factors in step 4 and all information relied on in making their decision in the notice to the employee.</p> <p>Go to step 4</p>
<p>3.2 Has the employee met any relevant mandatory condition/s of the role (as provided for in the role description)?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> Not relevant. There are no mandatory conditions</p> <p>Go to 3.3</p>	<p><input type="checkbox"/> No</p> <p>The employee's employment <u>cannot be converted</u> to a permanent basis as they are not considered to be suitable to perform the role. Use the Template letter declining conversion.</p> <p>However, for completeness the decision maker must have regard for the factors in step 4 and all information relied on in making their decision in the notice to the employee.</p> <p>Go to step 4</p>
<p>3.3 Is the employee currently the subject of a formal and unresolved performance improvement or discipline process?</p>	<p><input type="checkbox"/> Yes</p> <p>The employee's employment <u>cannot be converted</u> to a permanent basis as they are not considered to be suitable to perform the role. Use the Template letter declining conversion.</p> <p>However, for completeness the decision maker must have regard for the factors in step 4 and all information relied on in making their decision in the notice to the employee.</p>	<p><input type="checkbox"/> No</p> <p>Go to step 3.4</p>

	Go to step 4	
3.4 Is the employee currently the subject of any unresolved conduct or performance concerns?	<input type="checkbox"/> Yes Go to 3.5	<input type="checkbox"/> No Considered suitable to perform the role, go to step 4
3.5 Have the unresolved conduct or performance concerns been raised with the employee in writing and, where relevant, managed in accordance with a relevant directive*? *for example, the directive relating to positive performance management or discipline.	<input type="checkbox"/> Yes The employee's employment cannot be converted to a permanent basis as they are not considered to be suitable to perform the role. Use the Template letter declining conversion . However, for completeness the decision maker must have regard for the factors in step 4 and all information relied on in making their decision in the notice to the employee. Go to step 4	<input type="checkbox"/> No As the unresolved conduct or performance concerns have not been raised in writing and, where relevant, managed in accordance with a relevant directive, the decision maker cannot rely on the requirement to be suitable to perform the role to refuse conversion for the employee. Considered suitable to perform the role, go to step 4 If the employee is considered to be suitable to perform the role, then they should be converted to permanent employment unless it is not viable and appropriate, having regard to genuine operational requirements.

Step four – viable and appropriate, having regard to genuine operational requirements

Where a decision maker determines the matters in steps one to four are satisfied, they must decide to offer to convert the employee's employment to a permanent basis, unless it is not viable or appropriate to do so, having regard to the genuine operational requirements of the public sector entity.

4.1 Considering the public sector entity's workforce planning and other matters that may impact genuine operational requirements, is there sufficient	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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<p>evidence that shows that it is not viable or appropriate to convert the employee to permanent employment?</p> <p>Consider, for example, significant workforce reform in progress, completion, termination or scaling down of significant projects, removal or reduction in funding.</p>	<p>The employee <u>should not be converted</u> to permanent employment as it is not viable or appropriate, having regard to the genuine operational requirements of the public sector entity.</p> <p>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.</p> <p>Go to step 6</p>	<p>With the employee's consent, they <u>should be converted</u> to permanent employment.</p> <p>Consider clause 11 of the review of non-permanent employment directive and offer permanent hours of work based on its requirements.</p> <p>Go to step 5</p>
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Step five – deciding the hours of work to be offered

Where a decision maker determines to convert the employee's employment to a permanent basis, they must decide on the hours of work to be offered.

<p>5.1 Are the hours being offered to the employee on a permanent basis the greater of:</p> <p>a) the hours worked by the employee in the continuing role, or role that is substantially the same, in the employee's work cycle or rostering period, whichever is applicable, immediately before the chief executive's decision</p> <p>or</p> <p>b) the average hours per week worked by the employee in the continuing role or role that is substantially the same, over the last two years.</p>	<p><input type="checkbox"/> Yes</p> <p>Hours worked by the employee in the work cycle or rostering period prior to the chief executive's decision:</p> <p>-----</p> <p>Average hours per week over the last two year:</p> <p>-----</p> <p>Ensure the conditions have been met before continuing with the conversion review.</p> <p>Go to step 6</p>	<p><input type="checkbox"/> No</p> <p>When deciding to offer hours less than that of clause 11.1, a chief executive must not offer hours that would unreasonably disadvantage the employee in the circumstance (for example, where an employee is ordinarily a full-time employee, however worked part-time hours during the eligibility period subsequent to returning to work from parental leave).</p> <p>Ensure the conditions have been met before continuing with the conversion review.</p> <p>Go to step 6</p>
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Step six – other factors to consider before making a conversion decision

Decision makers must ensure that the following pre-conditions for a conversion decision, if applicable, should be addressed during the review.

<p>6.1 Is there an industrial instrument with conditions that must be met in relation to the conversion?</p>	<p><input type="checkbox"/> Yes</p> <p>Ensure the conditions have been met before proceeding with the conversion review.</p> <p>Go to 6.2</p>	<p><input type="checkbox"/> No</p> <p>Go to step 6.2</p>
<p>6.2 Has a conversion review been undertaken previously for the employee?</p>	<p><input type="checkbox"/> Yes</p> <p>Consider the reasons for each decision previously made under same section of the Act. Note the previous decisions and include the information in the notice of conversion review decision to the employee.</p> <p>If employee has not met the conditions for conversion based on steps one to four, decline conversion request. Use the Template letter declining conversion.</p> <p>Go to step 7</p>	<p><input type="checkbox"/> No</p> <p>Use the Template letter offering conversion.</p> <p>Go to step 7</p>

Step seven – human rights assessment

Under the *Human Rights Act 2019* (HR Act), 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. Where a decision maker decides not to offer to convert a non-permanent employee's employment to a permanent basis, a human rights assessment should be undertaken and documented in accordance with the HR Act. Additional information and guidance can be found at [human rights resources](#).