

# Casual employment

Directive: 08/20

Effective date: 25/09/20

Supersedes: 01/17

## 1. Purpose

- 1.1 The *Public Service Act 2008* (PS Act) establishes employment on tenure is the default basis of employment in the public service, excluding non-industrial instrument employees and sets out the circumstances where employment on tenure is not viable or appropriate.
- 1.2 This directive:
  - (a) highlights key sections in the PS Act dealing with the employment and conversion of casual employees
  - (b) provides for the circumstances in which employment on tenure or a fixed term temporary employee is not viable or appropriate
  - (c) sets out procedures for reviews and requirements for decisions.

## 2. Authorising provisions

- 2.1 This directive is made pursuant to sections 53, 147, 148A, 149A, 149B of the PS Act.

## 3. Application

- 3.1 This directive applies to public service employees employed on a casual basis under sections 147(2)(b) or 148A of the PS Act.
- 3.2 This directive applies to the following entities (each entity being an 'agency' for this directive) and their employees:
  - (a) departments
  - (b) public service offices listed in schedule 1 of the PS Act
  - (c) an entity declared to be a public service office under a regulation and where the regulation applies this directive to the entity (sections 22-23 PS Act).
- 3.3 This directive does not apply to a non-industrial instrument employee.
- 3.4 Public service employees who are currently employed on a fixed term temporary basis under section 147 or 148 of the PS Act should refer to the fixed term temporary employment directive.
- 3.5 The requirement to advertise roles in the directive relating to recruitment and selection does not apply to the conversion of a casual employees under this directive. However, if an agency is seeking to permanently appoint an existing casual employee prior to the employee becoming eligible for conversion under section 149 of the PS Act, that is before 12 months of continuous service has been completed, the appointment must comply with the recruitment and selection directive.
- 3.6 Section 52 of the PS Act outlines the relationship between a directive and industrial instrument including how to deal with inconsistencies.

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## 4. Principles

- 4.1 Section 25(2) of the PS Act provides that employment on tenure is the default basis of employment in the public service, excluding non-industrial instrument employees. This section gives full effect to the government's employment security policy.
- 4.2 Agencies are to consult and comply with the PS Act when considering the employment or conversion of casual employees.
- 4.3 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.

## 5. Employment of casual employees

- 5.1 Section 148A of the PS Act (Appendix A) provides that casual employment should only be used when tenured or fixed term temporary employment is not viable or appropriate.
- 5.2 Use of tenured or fixed term temporary employment is generally not viable or appropriate where there is a need for short term employment, or to meet unpredictable, irregular or variable demand or in emergent situations, and casual employment may appropriately be used to meet these staffing needs. Examples of these types of circumstances include:
  - (a) backfilling tenured or fixed term temporary staff on short-term emergent leave
  - (b) covering short gaps in work rosters of tenured and fixed term temporary employees
  - (c) in a role where work patterns or work demand is variable and difficult to predict, with each engagement standing alone
  - (d) where needed to work irregular, informal, flexible, occasional or non-rostered hours.
- 5.3 Employment on tenure may be viable or appropriate if a person is required to be employed for a purpose mentioned in clause 5.2, such as covering gaps in various work rosters, on a regular and systematic basis.
- 5.4 Section 26 of the PS Act requires managers to ensure that public service employees are aware of the work performance and personal conduct expected of them and to proactively manage that performance and conduct, including by applying the positive performance management principles in section 25A of the PS Act (Appendix B). Casual employees who are engaged for a period of three months or more are required to participate in the formal performance management system of their agency. Participation in the formal system where a casual employee is engaged for less than three months is at the discretion of the agency.
- 5.5 An agency should periodically review the use of casual employees to appropriately limit casual employment in accordance with the provisions of the PS Act and to proactively manage its workforce planning.

## 6. Casual employee may request review of employment status after being continuously employed for one year

- 6.1 Section 149 of the PS Act (Appendix C) provides that a casual employee who has been continuously employed for one year or more may request a review for conversion to permanent employment. An employee may only make one request in a 12-month period.



- 6.2 An agency must set out information on its intranet about how to request a review.
- 6.3 Section 149(4A) sets out the matters to be considered when working out how long the employee has been continuously employed in the agency.
- 6.4 Under section 149A(1), the chief executive must decide a request made under section 149 within 28 days after receiving it.

## 7. Requirement to review employment status of a casual employee after being continuously employed for two years

- 7.1 Section 149B of the PS Act (Appendix C) provides that an agency must review the employment status of a casual employee for conversion to employment as a general employee on tenure or a public service officer:
- (a) under section 149B(4)(a), at the end of two years after the employee has been continuously employed as a casual employee, and
  - (b) under section 149B(4)(b), annually after the end of the initial two years during which the employee remains continuously employed.
- 7.2 For a review under section 149B, section 149B(7A) sets out the matters to be considered when working out how long the employee has been continuously employed in the agency.
- 7.3 Under section 149B(3), the chief executive must decide within 28 days whether to offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer, or continue the person's employment according to the terms of the person's existing employment.
- 7.4 Unless there are exceptional circumstances, when deciding the hours of work to be offered when converting an employee under section 149B(3)(b), the chief executive should offer hours of work no less than the greater of the following amounts:
- (a) the hours worked by the employee in the continuing role or a role that is substantially the same, in the week immediately before the chief executive's decision, or
  - (b) the average hours per week worked by the employee in the continuing role or a role that is substantially the same, over the last two years.

## 8. Decision on review of status

- 8.1 When deciding whether to offer permanent employment under section 149A or 149B, a chief executive must consider the criteria in section 149A(2):
- whether there is a continuing need for the employee to be employed in the role, or a role which is substantially the same
  - the merit of the casual employee for the role having regard to the merit principle in section 27 of the PS Act
  - whether any requirements of an industrial instrument are complied with in relation to the decision, and
  - the reasons for each decision previously made, or deemed to have been made, under sections 149A or 149B in relation to the employee during their period of continuous employment.
- 8.2 Sections 149A(3) and 149B(5) of the PS Act provide that where the criteria above are met, the chief executive must decide, within 28 days, to offer to convert the person's employment to permanent employment as a general employee on tenure or a public service officer unless it is not viable or appropriate having regard to the genuine operational requirements of the agency.



- 8.3 If the outcome is a decision to offer to convert the casual employee to employment as a general employee on tenure or a public service officer:
- (a) the written notification must include the terms and conditions of the offer to convert to permanent employment (e.g. full-time or part-time, days and hours of work, pay, location of the employment and any other changes to entitlements)
  - (b) where the employee is part-time, an explanation of the days and hours of work offered in the decision, and
  - (c) the chief executive cannot convert the casual employee unless they accept the terms and conditions of the offer to convert.
- 8.4 Notice of a decision not to convert a person's employment must comply with section 149A(4) for applications under section 149 or 149B(6) for reviews under section 149B. In accordance with section 27B of the *Acts Interpretation Act 1954*, the decision must:
- (a) set out the findings on material questions of fact, and
  - (b) refer to the evidence or other material on which those findings were based.
- 8.5 Sections 149A(5) and 149B(7) of the PS Act provide for a deemed decision not to convert where a decision is not made within the required timeframe.
- 8.6 Agencies are expected to consider each review as required by the PS Act and this directive and must not make an intentional decision to rely on a deemed decision referred to in clause 8.5.
- 8.7 Each agency must, upon request, give the Commission Chief Executive a report about the number of known deemed decisions.
- 8.8 A casual employee who is converted could be subject to a probationary period following conversion in accordance with section 126 of the PS Act. However, given that the casual employee has performed the required service with the agency, it would not be expected that agencies would apply probation other than in exceptional circumstances.

## 9. Appeals

- 9.1 A casual employee eligible for review under section 149B has a right of appeal provided for in section 194(1)(e) of the PS Act in relation to a decision not to convert.
- 9.2 In accordance with section 195(1)(i) of the PS Act, a casual employee does not have a right of appeal in relation to a decision not to convert them in response to an application made under section 149.
- 9.3 In accordance with section 194(1)(e)(ii), a casual employee may appeal an offer for conversion to permanent employment under section 149B(3)(b) as a general employee on tenure or a public service officer in the circumstances where the hours of work offered are less than the hours required to be offered by clause 7.4.

## 10. Transitional arrangements

- 10.1 Section 293 of the PS Act sets out the transitional arrangements for temporary or casual employees who may now be eligible to request a 12-month conversion review under section 149(3).
- 10.2 Section 294A sets out the transitional arrangements for temporary or casual employees who are eligible for review of their status after two years continuous employment under section 149B.
- 10.3 Reviews commenced before the date of effect of this directive are to be finalised in accordance with the provisions of Directive 01/17.

## 11. Definitions

**Agency**—see Application clause of this directive.

**Chief executive**: in the context of exercising a decision making power, includes a person to whom the chief executive has delegated the decision making power.

**Continuously employed** in relation to a person employed in a department for a period is defined in schedule 4 of the PS Act to mean the person is employed in the department:

- continuously as a fixed term temporary employee, or
- as a casual employee on a regular and systematic basis during the period, or
- in a combination of casual employment on a regular and systematic basis and continuous fixed term temporary employment.

**Conversion decision** in section 194(1)(e) is a decision under section 149B:

- not to convert the basis of employment of a fixed term temporary employee or casual employee
- to convert the basis of employment of an employee in a circumstance provided for under a directive made under section 149B.

**Conversion review** means a review of a casual employee's employment status for conversion to permanent employment under chapter 5, part 5 of the PS Act.

**Industrial instrument** has the same meaning as schedule 5 of the *Industrial Relations Act 2016*.

**Non-industrial instrument employee** means a person who works, or has worked, as a public service employee other than under an industrial instrument.

**Permanent employment** means employment as a general employee on tenure or a public service officer on a part-time or full-time basis.

## 12. Related resources and reference materials

This material does not form part of the directive but may assist in the interpretation and application of the directive and should be considered by decision makers.

- Chapter 5, part 5 contains related provisions of the PS Act relevant to casual employment decisions.
- [Recruitment and selection directive](#)
- [Fixed term temporary employment directive](#)
- [Employment Security Policy](#)
- [Template letters](#)
- [Decision making checklist](#)
- [Find resources about managing employees](#) in the Queensland Government
- The Appeals directive and QIRC information about [public service appeals](#)

Superseded by  
Directive 02/23



## Appendix A – section 148A

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### 148A Employment of casual employees

- (1) A chief executive may employ a person on a casual basis to perform work of a type ordinarily performed by a public service officer, other than a chief executive or senior executive, if employment of a person on tenure or as a fixed term temporary employee is not viable or appropriate.
- (2) A person employed under this section does not, only because of the employment, become a public service officer.
- (3) The commission chief executive must make a directive about the employment of casual employees employed under this section or [section 147](#), including the circumstances in which employment of a person on tenure or as a fixed term temporary employee is not viable or appropriate.

Superseded by  
Directive 02/23



## Appendix B – section 25A

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### 25A Positive performance management principles

- (1) For best practice human resource management and in recognition that public service employees are selected on merit under the merit principle, the management of public service employees must be directed towards the following—
  - (a) pro-actively managing the personal and professional development of public service employees with a view to continuously building expertise within the public service;
  - (b) ensuring regular and constructive communication between public service managers and employees in relation to the matters stated in [section 26](#);
  - (c) recognising the strengths, requirements and circumstances of individual employees and valuing their contributions;
  - (d) recognising performance that meets or exceeds expectations;
  - (e) providing opportunities and support to employees for improving performance;
  - (f) continuously improving performance through the provision of training and development;
  - (g) identifying at the earliest possible stage performance that does not meet expectations;
  - (h) integrating the matters mentioned in paragraphs (a) to (g) into management practices and policies.
- (2) The principles mentioned in subsection (1) are the *positive performance management principles*.
- (3) The commission chief executive must make a directive about how the positive performance management principles are to be applied.



## Appendix C – section 149

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### 149 Fixed term temporary employees and casual employees may ask for review of status after 1 year of continuous employment

- (1) This section applies to a person who is a fixed term temporary employee or casual employee, if the person has been continuously employed in the same department for 1 year or more.
- (2) However, this section does not apply to a non-industrial instrument employee.
- (3) The person may ask the department's chief executive to decide whether to—
  - (a) continue the person's employment according to the terms of the person's existing employment; or
  - (b) offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer.
- (4) A person can not make more than 1 request under subsection (3) in a 12-month period.
- (4A) 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 6 weeks or less in the year occurring immediately before the time when the duration of the person's continuous employment is being worked out.
- (5) In this section—

*fixed term temporary employee* includes a general employee employed under [section 147](#) on a temporary basis for a fixed term.

## Appendix C (cont.) – section 149A

### 149A Decision on review of status

- (1) The department's chief executive must decide a request made under [section 149](#) within 28 days after receiving it.
- (2) The department's chief executive may offer to convert the person's employment under [section 149\(3\)\(b\)](#) only if—
  - (a) the department's chief executive considers—
    - (i) there is a continuing need for someone to be employed in the person's role, or a role that is substantially the same as the person's role; and
    - (ii) the person is eligible for appointment having regard to the merit principle; and
  - (b) any requirements of an industrial instrument are complied with in relation to the decision.
- (3) If the matters in subsection (2) are satisfied, the department's chief executive must decide to offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer, unless it is not viable or appropriate to do so having regard to the genuine operational requirements of the department.
- (4) If the department's chief executive decides not to offer to convert the person's employment under subsection (3), the chief executive must give the person a notice stating—
  - (a) the reasons for the decision; and
  - (b) the total period for which the person has been continuously employed in the department under [section 149](#); and
  - (c) for a fixed term temporary employee—how many times the person's employment as a fixed term temporary employee has been extended.
- (5) If the department's chief executive does not make the decision within the period required under subsection (1), the chief executive is taken to have decided not to offer to convert the person's employment and to continue the person's employment as a fixed term temporary employee or casual employee according to the terms of the employee's existing employment.
- (6) The commission chief executive may make a directive about making a decision under this section.

## Appendix C (cont.) – section 149B

### 149B Review of status after 2 years continuous employment

- (1) This section applies in relation to a person who is a fixed term temporary employee or casual employee if the person has been continuously employed in the same department for 2 years or more.
- (2) However, this section does not apply to a non-industrial instrument employee.
- (3) The department's chief executive must decide whether to—
  - (a) continue the person's employment according to the terms of the person's existing employment; or
  - (b) offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer.
- (4) The department's chief executive must make the decision within the required period after—
  - (a) the end of 2 years after the employee has been continuously employed as a fixed term temporary employee or casual employee in the department; and
  - (b) each 1-year period after the end of the period mentioned in paragraph (a) during which the employee is continuously employed as a fixed term temporary employee or casual employee in the department.
- (5) In making the decision—
  - (a) [section 149A](#)(2) and (3) applies to the department's chief executive; and
  - (b) the department's chief executive must have regard to the reasons for each decision previously made, or taken to have been made, under this section or [section 149A](#) in relation to the person during the person's period of continuous employment.
- (6) If the department's chief executive decides not to offer to convert the person's employment under subsection (3), the chief executive must give the employee a notice stating—
  - (a) the reasons for the decision; and
  - (b) the total period for which the person has been continuously employed in the department; and
  - (c) for a fixed term temporary employee—how many times the person's employment as a fixed term temporary employee or casual employee has been extended; and
  - (d) each decision previously made, or taken to have been made, under this section or [section 149A](#) in relation to the person during the person's period of continuous employment.
- (7) If the department's chief executive does not make the decision within the required period, the chief executive is taken to have decided not to offer to convert the person's employment and to continue the person's employment as a fixed term temporary employee or casual employee according to the terms of the employee's existing employment.
- (7A) 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.
- (8) The commission chief executive must make a directive about making a decision under this section.
- (8A) The directive must provide for—
  - (a) the matters a department's chief executive must consider in deciding the hours of work to be offered in converting a person's employment under subsection (3)(b); and
  - (b) the circumstances in which a person may appeal against the decision about the hours of work offered in converting the person's employment.
- (9) In this section—

*fixed term temporary employee* includes a general employee employed under [section 147](#) on a temporary basis for a fixed term.

*required period*, for making a decision under subsection (3), means—
  - (a) the period stated in an industrial instrument within which the decision must be made; or
  - (b) if paragraph (a) does not apply—28 days after the end of the period mentioned in subsection (4)(a) or (b).

