

# Fixed term temporary employment

Directive: 09/20

Effective date: 25/09/20

Supersedes: 08/17

## 1. Purpose

1.1 The *Public Service Act 2008* (PS Act) establishes employment on tenure as the default basis of employment in the Queensland public service, excluding non-industrial instrument employees, and sets out the circumstances where employment on tenure is not viable or appropriate. The PS Act also sets out the matters a chief executive must consider when deciding whether to offer to convert the employment of a fixed term temporary employee to employment as a general employee on tenure or a public service officer.

The legislation indicates where employment on tenure may not be appropriate.

1.2 This directive:

- (a) sets out requirements relating to performance management when a fixed term temporary employee is engaged
- (b) highlights sections in the PS Act dealing with the employment and conversion of fixed term temporary employees
- (c) sets out procedures for reviews and requirements for decisions.

## 2. Authorising provisions

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

## 3. Application

3.1 This directive applies to public service employees who are employed on a full-time or part-time fixed term temporary basis under section 147(2)(a) or section 148 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 non-industrial instrument employees.

3.4 Public service employees who are currently employed on a casual basis under section 147 or 148A of the PS Act should refer to the casual employment directive.

- 3.5 The requirement to advertise roles in the directive relating to recruitment and selection does not apply to the conversion of fixed term temporary employees under this directive. However, if an agency is seeking to permanently appoint an existing fixed term temporary employee prior to the employee becoming eligible for review under section 149 of the PS Act, that is before one year 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.

## Directive

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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 Chief executives who are managing and deciding the employment or conversion of fixed term temporary employees must consult and comply with the relevant provisions of the PS Act, including sections 148 to 149B.
- 4.3 Section 148(1) of the PS Act (Appendix A) defines a fixed term temporary employee.
- 4.4 Sections 148(2) and 148(3) list purposes where employment of a person on tenure may not be viable or appropriate.
- 4.5 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. Fixed term temporary employee rights and responsibilities

- 5.1 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). Fixed term temporary 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 fixed term temporary employee is engaged for less than three months is at the discretion of the agency.
- 5.2 An agency must ensure that fixed term temporary employees are provided with:
  - (a) access to flexible working arrangements in accordance with the relevant industrial instruments, and
  - (b) a written notice of engagement for each separate period of engagement, including engagements which extend beyond the end date of the original engagement.

## 6. Application by employee for conversion of fixed term temporary to permanent employment after one year or more of continuous service—sections 149 and 149A (Appendix C)

- 6.1 Section 149 of the PS Act establishes that a fixed term temporary 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 For a review under section 149, 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. Review by agency of the status of a fixed term temporary employee after two years or more of continuous service—section 149B (Appendix C)

- 7.1 Section 149B of the PS Act requires and establishes criteria for an agency's chief executive to review the status of a fixed term temporary employee's employment where the employee has been continuously employed for two years or more in the same agency.
- 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 role that is substantially the same, in the week immediately before the chief executive's decision
  - (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.
- 7.5 Under section 149B(4)(b), a subsequent review must be conducted after each additional year where an employee remains continuously employed.

## 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 person to be employed in the role, or a role which is substantially the same
  - the merit of the fixed term temporary employee for the role having regard to the merit principle in section 27 of the PS Act



- whether any requirements of an industrial instrument need to be complied with in relation to making 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) provide that where the criteria above are met, the chief executive must decide 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 fixed term temporary employee to permanent employment:
- (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 fixed term temporary 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 (28 days).
- 8.6 Agencies are expected to undertake 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.

## 9. Employee's right to notify that a review is required under section 149B

- 9.1 A fixed term temporary employee may notify the employee's agency of its requirement to commence the review under section 149B and that the employee would like to be converted to permanent employment.
- 9.2 The notification may be made by the employee or the employee's representative provided it is not more than three months before the review must be undertaken in accordance with section of 149B of the PS Act.
- 9.3 An agency must set out information on its intranet about how to notify under this clause.
- 9.4 Where an employee does not notify their agency, the agency is still required to undertake the review in accordance with section 149B of the PS Act.



## 10. Notice to be given if the chief executive starts a review of the status of the fixed term temporary employee's employment

- 10.1 The agency must notify the employee when the agency starts a review of the status of the fixed term temporary employee's employment under section 149B of the PS Act.
- 10.2 The notification must be in writing and include:
- (a) the name and contact details of the agency contact for the review
  - (b) the date by which the decision must be made
  - (c) that the employee or their representative may choose to provide a written submission for consideration during the review process
  - (d) that if the chief executive does not make a decision within the required period as defined in section 149B(9), the chief executive is taken to have decided not to convert the fixed term temporary employee, and
  - (e) that section 194(1)(e) and 196(e) of the PS Act, provide that a conversion decision under section 149B may be appealed, and the timeframe for appeal.

## 11. Appeals

- 11.1 A fixed term temporary 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.
- 11.2 In accordance with section 195(1)(i) of the PS Act, a fixed term temporary employee does not have a right of appeal in relation to a decision not to convert in response to an application made under section 149.
- 11.3 In accordance with section 194(1)(e)(ii), a fixed term temporary employee may appeal an offer made under section 149B(3)(b) for conversion to permanent employment 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.

## 12. Transitional arrangements

- 12.1 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).
- 12.2 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.
- 12.3 Conversion reviews commenced before the date of effect of this directive are to be finalised in accordance with the provisions of Directive 08/17 consistent with the transitional arrangement in section 294 of the PS Act.

### 13. Definitions

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

**Continuously employed** is defined in schedule 4 of the PS Act.

**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 fixed term temporary 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 employees** means persons who work, or have worked, as public service employees 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.

### 14. 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 (general and temporary employees) are related provisions of the PS Act relevant to fixed term temporary employment decisions
- [Recruitment and selection directive](#)
- [Casual employment directive](#)
- [Employment security policy](#)
- [Template letters](#)
- [Decision making checklist](#)
- [Find Resources about managing employees](#) in the Queensland Government
- [Appeals directive](#) and QIRC information about [Public Service Appeals](#)



## Appendix A – section 148

### 148 Employment of fixed term temporary employees

- (1) A chief executive may employ a person (a *fixed term temporary employee*) for a fixed term to perform work of a type ordinarily performed by a public service officer, other than a chief executive or senior executive officer, if employment of a person on tenure is not viable or appropriate, having regard to human resource planning carried out by the chief executive under [section 98\(1\)\(d\)](#).
- (2) Without limiting subsection (1), employment of a person on tenure may not be viable or appropriate if the employment is for any of the following purposes—
  - (a) to fill a temporary vacancy arising because a person is absent for a known period;  
*Examples of absences for a known period—*
    - approved leave (including parental leave), a secondment
  - (b) to perform work for a particular project or purpose that has a known end date;  
*Examples—*
    - employment for a set period as part of a training program or placement program
  - (c) to fill a position for which funding is unlikely or unknown;  
*Examples—*
    - employment relating to performing work for which funding is subject to change or is not expected to be renewed
  - (d) to fill a short-term vacancy before a person is appointed on tenure;
  - (e) to perform work necessary to meet an unexpected short-term increase in workload.  
*Example—*
    - an unexpected increase in workload for disaster management and recovery
- (3) Also, without limiting subsection (1), employment on tenure may be viable or appropriate if a person is required to be employed for a purpose mentioned in subsection (2) on a frequent or regular basis.  
*Example—*
  - an ongoing requirement to backfill multiple absences because of approved leave (including parental leave) or secondments
- (4) The employment may be full-time or part-time.
- (5) A person employed under this section does not, only because of the employment, become a public service officer.
- (6) The commission chief executive may make a directive about employing fixed term temporary employees under this section.

## 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).