Template letter: Notice of review – non-permanent employment (two-years and subsequent years)

*The purpose of this template letter is to inform a non-permanent employee about the commencement of a review under section 115 of Public Sector Act 2022 and the Review of non-permanent employment Directive 02/23 or acknowledge their notice of eligibility for a review. It is essential to provide employees with fairness, including adequate time to make submissions about their conversion. [Delete before sending letter]*

[Address]

[Employee email address]

Dear [insert name],

Key points:

1. You are eligible for a review of your non-permanent employment to determine if you should be converted to permanent employment. Your review eligibility date is: [insert date]
2. You may choose to provide information for me to consider for your possible conversion to permanent employment.
3. The review will be conducted in accordance with [section 115](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.115) of the *Public Sector Act 2022* (Act) and the [Review of non-permanent employment (Directive 02/23](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/review-of-non-permanent-employment-directive-0223)) (the directive).
4. You will be advised in writing within 28 calendar days after the review eligibility date. If a decision is not made within this timeframe, it is deemed that you will not be converted to permanent employment.

[**Option one** – use this content when a public sector entity is notifying an employee of their eligibility for review]

You have been employed within the [insert department, agency or entity’s name] as a non-permanent employee for a period of [insert timeframe e.g. two years].

I would like to acknowledge your service and recognise and thank you for the role you have performed in the [insert department, agency or entity’s name].

Under section 115 of the Act and the directive, you are now eligible for a review to determine whether your employment should be converted to permanent.

[**Option two** – use this content when an employee has notified the department, agency or entity of their eligibility for review]

Thank you for your [insert method of submission] notifying me that you are now eligible for a review to determine whether your employment should be converted to permanent.

I would like to acknowledge your service and recognise the role you have performed in the [insert department, agency or entity’s name].

I confirm that your review date is [insert eligibility date].

The review will consider:

* whether there is a continuing need for you to be employed in your current role, or one that is substantially the same
* if you are suitable to perform the role as provided for in clause 10 of the Directive
* whether any requirements of an industrial instrument need to be complied with
* whether it is not viable or appropriate to convert you to permanent employment, having regard to any genuine operational requirements of the [insert department, agency or entity name].

You may choose to provide information for me to consider for your possible conversion to permanent employment, based on the conditions listed above.

Your union or other representative may assist you in this process.

To ensure your information is properly considered, please provide it to [insert name of contact and contact details] on or before [insert date – at least seven days after the date of this letter, or the eligibility date, whichever is the latter]. The [Review of non-permanent employment (Directive 02/23](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/review-of-non-permanent-employment-directive-0223)) may assist. [attach copy or provide web link]

Under the Act, a decision needs to be made within 28 days of your request date. I expect to make a decision within this timeframe.

However, if a decision is not made, it will be taken that your employment will not be converted to a permanent basis and that you will continue your existing employment arrangements.

You will be advised in writing of the outcome of your request, reasons for the decision and any appeal rights. I have included additional information about the process at the end of this letter.

[Insert contact name] has been assigned as the contact for the review. If you have any questions about the contents of this letter, please do not hesitate to contact [insert name of contact] on [insert telephone number].

Yours sincerely

Decision maker

[Address]

[Position]

**Additional information**

**Decision making framework**

This review is conducted in accordance with the [*Public Sector Act 2022*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034)(Act) and the [Review of non-permanent employment (Directive 02/23](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/review-of-non-permanent-employment-directive-0223)).

**Eligibility for review – section 113 and 115**

To be eligible for a non-permanent to permanent employment review, an employee must

1. be a non-permanent employee
2. have been employed in the agency for either one year or two years continuously
3. have had total breaks in employment of less than six weeks in the previous years’ service or 12 weeks in the previous two years’ service.

**Conditions and principles for status review after two years continuous employment – section 115(1-5) (employer-initiated review)**

1. If a public sector employee mentioned in [section 112](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.112)(1) has been continuously employed in the same public sector entity for at least two years, the employee’s chief executive must decide whether to:
   1. continue the employee’s employment according to the terms of the employee’s existing employment; or
   2. offer to convert the employee’s employment to a permanent basis.
2. The employee’s chief executive must make the decision within the required period after:
   1. the end of two years after the employee has been continuously employed on a non-permanent basis in the public sector entity; and
   2. each one-year period after the end of the period mentioned in paragraph (a) during which the employee is continuously employed on a non-permanent basis in the public sector entity.
3. In making the decision:
   1. [section 114](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.114)(3) and (4) applies to the employee’s chief executive; and
   2. the employee’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 114](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.114) in relation to the employee during the employee’s period of continuous employment.
4. If the employee’s chief executive decides not to offer to convert the employee’s employment to a permanent basis, the chief executive must give the employee a notice stating:
   1. the reasons for the decision; and
   2. the total period for which the employee has been continuously employed on a temporary basis for a fixed term or on a casual basis in the public sector entity; and
   3. how many times the employee’s employment on a non-permanent basis has been extended; and
   4. each decision previously made, or taken to have been made, under this section or [section 114](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.114) in relation to the employee during the employee’s period of continuous employment.
5. Subsection (4)(c) does not apply in relation to employment on a casual basis.

**Continuously employed – sections 111 and 115(7)**

Continuously employed, in relation to a person employed for a period in a public sector entity, means the person is employed in the entity—

(a) if the person is employed on a non-permanent basis other than a casual basis during the period—continuously for the period; or

(b) if the person is employed on a non-permanent basis that is a casual basis during the period—on a regular and systematic basis during the period; or

(c) if the person is employed on a non-permanent basis other than a casual basis, and on a casual basis, during the period—continuously under paragraphs (a) and (b) for the period.

For working out how long the employee has been continuously employed in the public sector entity:

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

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

**Permanent hours of work offered – Directive clause 11**

Unless there are exceptional circumstances, when deciding the hours of work to be offered when a decision is made to offer to convert an employee’s employment to a permanent basis under [chapter 3, part 9, division 1](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#ch.3-pt.9-div.1) of the Act, 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 work cycle or rostering period, whichever is applicable, 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.

**Where a decision is not made – sections 114 and 115**

If the decision maker does not decide within 28 calendar days after the eligibility date, the decision maker is taken to have decided not to convert the non-permanent employee to permanent.

**Appeal rights – sections 131(1)(a), 132(1)(j) and 133(a)**

A non-permanent employee not converted to permanent employment following an employer-initiated review (as per section 115 of the Act) after two years continuous employment may appeal a decision not to convert. However, if the review is undertaken following the employee making a request under section 113 of the Act (an employee-initiated review), there is no appeal available.

In accordance with [section 115](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.115)(9)(b) of the Act, a public sector employee may appeal an offer made under [section 115](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.115)(1)(b) to convert the employee’s employment to a permanent basis in the circumstances where the hours of work offered are less than the hours required to be offered by clause 10 of the review of non-permanent employment directive.

There are procedural requirements, including time limits, under the [*Industrial Relations Act 2016*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2016-063)that must be fulfilled in order to appeal this decision.Further information is available in the Commissioner Directive relating to appeals and the Queensland Industrial Relations Commission’s (QIRC) public service appeals guide found online at [www.qirc.qld.gov.au/public-service-appeals](file:///C:\Users\thompsons\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\FRYAHIXX\www.qirc.qld.gov.au\public-service-appeals). Additionally, the QIRC Industrial Registry can provide further information about public sector appeal procedures­­—visit [www.qirc.qld.gov.au](http://www.qirc.qld.gov.au), or telephone 1300 592 987 or (07) 3227 8060.

**Employee’s right to make additional request for review – section 116 (1-3)**

1. This section applies in relation to a public sector employee mentioned in [section 113](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.113)(1) if:
   1. both of the following apply—
      1. the employee’s chief executive has decided under [section 114](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.114) or [115](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.115) not to offer to convert the employee’s employment to a permanent basis because the chief executive considered the employee was not suitable to perform the role;
      2. the employee considers the employee may have become suitable to perform the role; or
   2. both of the following apply—
      1. the employee’s chief executive is taken to have made a decision under [section 114](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.114)(7) or [115](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.115)(6) not to offer to convert the employee’s employment to a permanent basis;
      2. the employee has not appealed against the decision under [section 130](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.130).
2. The public sector employee may ask the employee’s chief executive to decide whether to:
   1. continue the employee’s employment according to the terms of the employee’s existing employment; or
   2. offer to convert the employee’s employment to a permanent basis.
3. The public sector employee must make the request:
   1. for subsection (1)(a)—within three months after the employee considers the employee may have become suitable to perform the role; or
   2. for subsection (1)(b)—within three months after the chief executive is taken to have made the decision mentioned in subsection (1)(b)(i).

**Human rights**

Under the [*Human Rights Act 2019*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005), decision makers must 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 an employee considers that a relevant human right has not been taken into account in making this decision, they may make a complaint using their agency’s process for making a human rights complaint. If an employee appeals a decision, they can include information about their human rights complaint.

Further information about human rights is available online at [www.qhrc.qld.gov.au/your-rights/human-rights-law](file:///C:\Users\thompsons\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\FRYAHIXX\www.qhrc.qld.gov.au\your-rights\human-rights-law).