Template letter: Conversion declined – non-permanent employment

*This template letter provides a range of options for advising the outcome to not convert a non-permanent employee following a conversion review at either one or two years’ service or subsequently, under the Review of non-permanent employment (Directive 02/23). The letter is set out to ensure all the requirements of the Public Sector Act 2022 and directive are considered. Headings throughout the letter guide selection of paragraphs appropriate for inclusion in the letter to the employee.* [Delete before sending letter]

[Address]

[Employee email address]

Key points:

1. You are not being converted to permanent employment and will continue as a non-permanent employee at this time. Your eligibility review date is [insert date].
2. The reason for this decision is that [select appropriate option: there is no continuing need for you in the role/not suitable/it is not viable or appropriate to convert you having regard to genuine operational requirements] which prevents your conversion at this time.
3. Additional information about the decision-making framework and your appeal rights is at the end of this letter.

Dear [insert name],

I refer to my letter of [insert date] about the review of your non-permanent employment with [insert department, agency or entity’s name]. [Insert where applicable – Thank you for your submissions about your conversion to permanent employment, received (insert date)].

[**Option one** – use this content when an employee is not eligible for review.]

You are not eligible for conversion to permanent employment because: [select all relevant reasons and reference supporting facts]

* you are already a permanent employee [reference permanent substantive role in the department, agency or entity or another department, agency or entity]. The review of non-permanent directive does not apply to a permanent employee who is temporarily performing duties in a higher role. You may refer to the [Review of acting or secondment at higher classification level (Directive 03/23)](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/review-of-acting-or-secondment-at-a-higher-classification-level-directive-0323) for more information about your entitlement to request a review.
* you have not yet been employed in this entity for a continuous period of one year [reference why the one-year continuous employment requirement has not been satisfied e.g. cumulative breaks in non-permanent employment of more than six weeks.]
* you have not been employed in this agency for a continuous period of two years [reference why the two-year continuous employment requirement has not been satisfied e.g. cumulative breaks in non-permanent employment of more than 12 weeks in the previous two years.]

[If the employee is not eligible for review due to not meeting continuous period, use this content]

Based on the information currently available, you are likely to be eligible for review on [insert date] if you remain employed with this agency. Your eligibility for review of your employment for conversion will be reconsidered at that time.

[**Option two** – use this content with an employee is eligible for review and review has been conducted]

**[Conversion review decision]**

I have conducted a review of your employment status and have determined that your employment will remain as non-permanent at this time. You will continue in the role of [role title] until [end date of non-permanent engagement] when [reason for end of engagement e.g. the substantive incumbent returns from leave].

**[Considerations when making the decision]**

I have considered the requirements of the [*Public Sector Act 2022*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034) (Act), 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) and your employment history, including any previous conversion review decisions.

There are two considerations for deciding whether to convert from non-permanent to permanent employment:

* there is a continuing need for you to perform your role or a role that is substantially the same, and
* you satisfy being suitable to perform the role.

I have addressed these two aspects below.

**[Continuing need is established]**

I have determined that there is a continuing need for someone to be employed in the role you are currently employed in or a role that is substantially the same as the role you are currently employed in.

**[Decision not to convert is due to no continuing need]**

I have determined that there is no continuing need for someone to be employed in the role you are currently employed in, or a role that is substantially the same.

As such I have decided that I am unable to offer to convert your employment to a permanent basis. Specifically, my reasons are: [select appropriate response]

* there is no continuing need for you to perform your current role because [document reasons: e.g. substantive incumbent is returning to the role on a full-time basis; the role was temporary for a specified period and purpose which is now complete; the role is not continuing due to the implementation of documented organisational change]
* there is no continuing need for you to perform a role that is substantially the same. [Document reasons including:
  + all roles considered
  + any facts relied upon either to conclude the roles are not substantially the same, that the roles do not need to be filled on a continuing basis.
  + consideration of the employment history of the employee and the length and nature of ongoing backfill in substantially the same roles and/or project roles. Where this has occurred over an extended period, there may be a continuing role for the employee even though there is no substantive vacancy. Where the non-permanent employee has been part-time, consider the continuing nature of any job-share arrangement and whether there is an opportunity for permanent part-time for both employees.
  + reference attached summary of employment history and previous conversion reviews as relevant].

**[Suitable to perform the role is satisfied]**

Thank you for your performance in the role over the period [insert timeframe].You have demonstrated over this time that you satisfy the requirements for the role.

**[Suitable to perform the role is not satisfied due to not having the relevant mandatory requirements, or not meeting relevant mandatory conditions]**

Thank you for your performance in the role over the period [insert timeframe].

Unfortunately, I am unable to offer to convert your employment to a permanent basis because you do not satisfy the requirements for being suitable to perform the role. [Document one or more of the following reasons:

* the employee has not provided evidence of possessing any relevant mandatory qualification/s as provided in the role description
* the employee has not met any relevant mandatory condition/s of the role as provided for in the role description].

**[Suitable to perform the role is not satisfied due to conduct or performance issues]**

Thank you for your performance in the role over the period [insert timeframe].

Unfortunately, you are not eligible for conversion to permanent employment because you do not satisfy the requirements for being suitable to perform the role.

[Document reasons e.g. Your supervisor has advised that you are currently on a performance improvement plan (PIP) or in discussions, which have been confirmed to you in writing, about current unresolved performance or conduct issues that are likely to lead to a PIP, disciplinary action or termination of your contract, managed in accordance with directives such as positive performance management or discipline.]

These conduct and performance matters have been raised with you by [insert form of communication and date] and have been confirmed in writing.

[Note – genuine operational requirements are not relevant if the threshold conditions for conversion in the Act are not satisfied. For example continuing need/suitable to perform the role.]

**[Decision to not convert is because it is not viable or appropriate due to the genuine operational requirements of the agency. For example, continuing need and suitable conditions were satisfied.]**

I have considered the conditions for conversion in the Act and determined there is a continuing need for you to fill the role or a role that is substantially the same and you are suitable to perform the role.

However, there are genuine operational requirements of the agency that mean it is not viable or appropriate to convert you at this time.

Specifically, [insert department, agency or entity’s name/business unit] [insert reasons e.g. is undergoing significant workforce change and your role is one of a group identified as no longer required; your role is part of a project that is in the process of winding down; your role was part of a temporary business initiative that is coming to a close], as evidenced in [strategic/operational/workforce planning documents.]

I have included additional information about the process and rights to make additional request for review and appeal rights 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]

Attachment 1 – Employment summary (**include any previous conversion review decisions and reasons)**

**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/asmade/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, you must

1. be a non-permanent employee
2. have been employed in the agency for either one year or two years continuously (including casual engagements)
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 non-permanent to permanent conversion – section 114(1-6)**

1. This section applies if a public sector employee makes a request under [section 113](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.113).
2. The employee’s chief executive must decide the request within 28 days after receiving the request.
3. The employee’s chief executive may decide to offer to convert the employee’s employment to a permanent basis only if—
   1. the employee’s chief executive considers—
      1. there is a continuing need for someone to be employed in the employee’s role, or a role that is substantially the same as the employee’s role; and
      2. the employee is suitable to perform the role; and
   2. any requirements of an industrial instrument are complied with in relation to the decision.
4. If the matters in subsection (3) are satisfied, the employee’s chief executive 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.
5. 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 under [section 113](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034#sec.113)(3) in the public sector entity; and
   3. how many times the employee’s employment on a non-permanent basis has been extended.
6. Subsection (5)(c) does not apply in relation to employment on a casual basis.

**Conditions and principles for status review after 2 years continuous employment – section 115(1-5)**

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 2 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 2 years after the employee has been continuously employed on a non-permanent basis in the public sector entity; and
   2. each 1-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 2 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 make a decision 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 a review after two years continuous employment may appeal a decision not to convert. There is no appeal available for a review decision not to convert after one year of continuous employment.

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 you must fulfil in order to appeal this decision.Further information is available in the Queensland Industrial Relations Commission’s public service appeals guide found at: <https://www.qirc.qld.gov.au/public-service-appeals>.

**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 3 months after the employee considers the employee may have become suitable to perform the role; or
   2. for subsection (1)(b)—within 3 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 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.

If you consider that a relevant human right has not been taken into account in making this decision, you may make a complaint using your agency’s process for making a human rights complaint. If you appeal a decision, you can include information about your human rights complaint.

Further information about your human rights is available: <https://www.qhrc.qld.gov.au/your-rights/human-rights-law>.