Template letter: Decision to decline request for employment at higher classification level

*This template letter provides a range of options for advising the outcome to not convert employment on a permanent basis in a higher classification, under the Review of acting or secondment at higher classification level (Directive 03/23). 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 in the higher classification and will continue your current engagement.
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],

Thank you for your submissions received on [insert date] in relation to your request for employment on a permanent basis in the higher classification position of [position name], [insert department, agency or entity name] that you are currently [acting in/seconded to].

[**Option 1** – use this content when employee is not eligible for review]

You are not eligible for review under the provisions of [[section 120](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.120) or [section 121](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.121)] of the *Public Sector Act 2022* (the Act), relating to [Review of acting or secondment to 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) because [explain relevant reasons and reference supporting facts].

If you continue [acting/your secondment] in this role on the terms of your current engagement, you are likely to become eligible to request a review under these provisions on [insert date].

[**Option 2** – use this content when employee is eligible, and review has been undertaken]

I have considered your request. My decision and response is based on the requirements of [[section 120](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.120) or [section 121](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.121)] of the *Public Sector Act 2022* (the Act) and [Review of acting or secondment to 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).

You have been engaged at the higher classification level for a total of [insert total continuous period of acting in the higher level in the department]. Your engagement at this higher classification has been extended [insert number of times] times. A summary of your employment at the higher classification level is attached [attach summary if appropriate].

[**Option 3** – use this content when employee is not considered suitable]

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

Unfortunately, I am unable to offer to convert your employment to the position at the higher classification level on 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]:

 a) the employee has not provided evidence of possessing any relevant mandatory qualification/s (as provided for in the role description)

(b) the employee has not met any relevant mandatory condition/s of the role (as provided for in the role description)

[Or use for content for unresolved and documented performance concerns 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.

[**Option 4** – use this content if genuine operational requirements are basis for decision]

At this time, the genuine operational requirements of this entity do not support your permanent employment to the role you are currently performing as [insert specific reasons and supporting facts e.g. the substantive employee is returning to the role and two people are not required to perform the same role].

You will continue to be engaged according to the terms of your existing [acting/secondment] arrangement until [end date of engagement at higher classification level] when [reason for end of engagement e.g. the substantive incumbent returns from leave].

[Where more than two years you must provide detailed information about appeal rights.]

[Where less than two years you must provide information stating there is no appeal right.]

I have attached additional information about the decision-making framework and appeal rights at the end of this letter.

[Contact name] has been assigned as the contact for the review. Should you have any questions regarding this letter, please contact [insert name of contact] on [insert telephone number].

Yours sincerely

Decision maker

[Address]

**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)(the Act) and the [review of acting or secondment at higher classification level directive (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).

**Eligibility to request review – section 119 and 120**

A public service employee is eligible to request a review if:

* acting at, or seconded to (refer [section 160](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.160)), a higher classification level in the public sector entity in which the employee is employed (see [section 119](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2022-034#sec.119)(1)).
* acting at, or seconded to a higher classification level for a continuous period of at least 1 year (refer to clause 8 of the directive for meaning of continuous period)

A public service employee is not eligible to request review if:

* a casual employee
* a non-industrial instrument employee
* an employee who is acting at, or seconded to, a position that is ordinarily held by a non-industrial instrument employee.

**Decision making – section 120(3) and (4)**

The chief executive may decide to employ the employee in the position at the higher classification level on a permanent basis only if the chief executive considers the employee is suitable to perform the role. Clause 9 of the directive provides for the meaning of suitable.

In making the decision, the department’s chief executive must have regard to—

(a) the genuine operational requirements of the public sector entity; and

(b) the reasons for each decision previously made, or taken to have been made, under this section in relation to the person during the person’s continuous period of acting at, or secondment to, the higher classification level.

**Notice of decision – section 120(5)**

If the public sector entity’s chief executive decides to refuse the request, the chief executive must give the employee a notice stating:

(a) reasons for the decision

(b) the total continuous period for which the person has been acting at, or seconded to, the higher classification level in the public sector entity

(c) how many times the person’s acting arrangement or secondment has been extended

(d) each decision previously made, or taken to have been made, under this section in relation to the person during the person’s continuous period of acting at, or secondment to, the higher classification level.

**Appeal rights – sections 194(1)(e), 196(e)**

A public sector employee not permanently employed in the position the higher classification level following a review after acting at, or being seconded to, the higher classification level for a continuous period of at least two years may appeal the decision not to appoint at the higher level. There is no appeal of a one-year review decision not to appoint.

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.Refer to the [Appeals directive 04/23](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/appeals-directive-0423).

**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>.