SUPREME COURT OF QUEENSLAND

CITATION:	*Katae v State of Queensland & Anor* [2018] QSC 225
PARTIES:	**AGUSTIANA KATAE** (applicant) **v** **STATE OF QUEENSLAND** (first respondent) **And** **QUEENSLAND INDUSTRIAL RELATIONS COMMISSION** (second respondent)
FILE NO/S:	No 4616 of 2018
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 October 2018
DELIVERED AT:	Rockhampton
HEARING DATE:	31 August 2018
JUDGE:	Crow J
ORDER:	**1. The application is allowed.** **2. I will hear submissions as to the proper form of the order and costs**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GENERALLY – where a temporary employment decision pursuant to s 129 of the *Public Service Act* 2008 (Qld) determined that the applicant was unable to be converted from a temporary role to a permanent role in the public service – where the applicant lodged an appeal – where the appeal was subsequently dismissed – where the applicant filed an application for statutory order of review of the decisions at first instance decision pursuant to s 20 of the *Judicial Review Act* 1991 (Qld) – where the applicant alleges the decision of the second respondent involved errors of law – where the applicant contends that the decisions alternatively involved an improper exercise of power – whether the decision of the second respondent involved errors of law – whether the decisions involved an improper exercise of power *Acts Interpretation Act* 1954 (Qld) s 14B

Judicial Review Act 1991 (Qld) s 20, s 23
Public Service Act 2008 (Qld) s 53, s 148, s 149, s 194(1)(e)
Statutory Instruments Act 1992 (Qld) s 7

Minister for Aboriginal Affairs & Anor v Peko-Wallsend Ltd & Ors (1986) 162 CLR 24, considered
Minister for Immigration and Citizenship v Li (2013) 249 CLR 332, cited
Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323, cited
Page v Thomson & Anor [2014] QSC 252, cited

COUNSEL: S Keim SC with M Woodford for the applicant
C Murdoch QC with C Mark for the first respondent

SOLICITORS: Maurice Blackburn Lawyers for the applicant
Crown Solicitor for the first respondent

Temporary Employment Decision and Appeal

[1] In early February 2018, Michael Linnan, General Manager, Service Delivery, Housing and Homelessness Services, Department of Housing and Works made a temporary employment decision pursuant to s 149 of the *Public Service Act* 2008 (Qld) determining that the applicant, Ms Katae, was unable to be converted from a temporary role to a permanent role in the public service (temporary employment decision).

[2] On 22 February 2018, Ms Katae lodged an appeal notice in the industrial registry pursuant to s 194(1)(e) of the *Public Service Act* 2008 (Qld). On 3 April 2018, Linnane VP dismissed the appeal in a nine-page decision, attaching as schedule 1, a schedule of employment contracts (the appeal decision).

Judicial Review

[3] On 1 May 2018, Ms Katae filed an application for statutory order of review pursuant to s 20 of the *Judicial Review Act* 1991 (Qld). The applicant alleged the decision of the second respondent involved errors of law which had been refined in the written submissions of senior counsel for Ms Katae as follows:

> "34. The approach taken by both Mr Linnan at first instance and Linnane Vice President on appeal, may be characterised as involving errors of law under s.20(2)(f) of the *Judicial Review Act 1991* ("the JRA"):
>
> (a) in the interpretation of s.149 because each decision maker proceeded on the basis that s.9 of Directive 08/17 had no relevance to the matter; and
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> (b) in the interpretation of s.7 of Directive 08/17 because each decision maker proceeded on the basis that s.7.2 (bullet point one) mandated that the s.149(2) discretion be exercised against conversion to permanent employment when an

employee was employed in a backfill or chain of backfill positions, without it being necessary to consider the s.9 criteria.

3.5 The decisions may alternatively be viewed as an improper exercise of power, under s.20(2)((e) of the JRA, as a result of either:

(a) a failure to take into account the relevant considerations contained in s.9 of Directive 08/17 (s.23(b) of the JRA);

(b) the taking into account of irrelevant considerations, being ss.1(b) and 7.2 of Directive 08/17 (s.23(a) of the JRA); or

(c) the impermissible and inflexible application of a policy to the effect that the decision making power contained in s.149(2) must, if the temporary employee/s' engagement(s) has been in the nature of backfilling, be exercised to decline to convert a temporary employee to a permanent status, without a consideration of the merits of the case, assessed against the mandatory criteria set out in s.9 of Directive 08/17 (s.23(f) of the JRA)."

[4] The scope of the review required to be undertaken by Linnane VP should be determined as a matter of statutory interpretation. The correct approach is identified by Byrne SJA in *Page v Thomson & Anor*[1]. As Byrne SJA said:[2]

> "The words of s 201(2) should be taken as indicating the nature of the function the appeals officer is to perform: to decide whether the primary decision was 'fair and reasonable'."

Background Facts

[5] Ms Katae first found employment pursuant to a temporary contract with the Department of Housing and Public Works on 14 July 2014. The initial temporary role was as a business support officer with a role classification of AO4.

[6] On 25 February 2015, Ms Katae obtained a promotion to a contract manager's role, AO5 classification, because the incumbent in the office, employee A, was on secondment and Ms Katae backfilled employee A's role until 30 June 2015.

[7] On 1 July 2015 employee B was placed into a temporary project role and accordingly Ms Katae obtained a further temporary contract, backfilling employee B's duties from 1 July 2015 until 30 June 2016.

[8] From 1 July 2016 to 29 July 2016, Ms Katae obtained a temporary employment extension to backfill employee C's role as employee C was undertaking parental leave, however that parental leave role ceased on 29 July 2016.

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1 [2014] QSC 252 at [37]-[61].
2 At [61].

[9] Then from 1 August 2016 to 19 August 2016 Ms Katae performed a temporary employment contract officer AO5 role which was then vacant, requiring recruitment and selection duties.

[10] Upon that role ceasing and from 22 August 2016 until 9 January 2017, Ms Katae performed backfilling duties for employee B (who had been promoted to a temporary project role).

[11] When that role finished on 9 January 2017, and from 10 January 2017 until 22 February 2017, Ms Katae was employed as a contractor AO5 but on this occasion backfilling employee D's leave from 10 January 2017 until 22 February 2017.

[12] Between 23 February 2017 and 14 April 2017 Ms Katae continued to be employed as a contract officer AO5 but was designated as an additional resource.

[13] From 18 April 2017 until 27 May 2017 Ms Katae was employed as a temporary contract officer AO5 backfilling employee E's higher duties in two roles while employee E was on leave.

[14] From 28 May 2017 until 30 June 2017 Ms Katae took a separate temporary employment role as a contract officer AO5 backfilling employee F's duties, however that ceased on 30 June 2017.

[15] On 1 July 2017 until 10 July 2017 Ms Katae returned to backfilling employee C's parental leave as a contracts officer.

[16] From 10 July 2017 Ms Katae accepted a further promotion and temporary role as a senior project officer, subject matter expert, so as to assist with the delivery of a new housing management system to replace the current system. The temporary contract of 10 July 2017 was initially for 6 months but has since been extended twice.

[17] At the time of the temporary employment decision of Mr Linnan, that is, in February 2018, the project that Ms Katae was employed upon was programmed to cease upon 30 June 2018. That has not occurred. Had the project come to completion on 30 June 2018, Ms Katae would have been a "temporary" employee for 3 years and 50 weeks. Subsequent to the review decision on 3 April 2018, Ms Katae's temporary contract has been extended until 31 December 2018 and it may be extended again until sometime in 2019, as the completion date is uncertain. If this occurs, Mr Katae may be a "temporary" employee for 5 or 6 years.

[18] There is no suggestion that any performance concerns have ever been raised of Ms Katae. Rather an inference to the contrary can be made, particularly in light of Ms Katae's different roles and promotions. Indeed, Mr Linnan in his decision of February 2018 expressly said to Ms Katae "I would like to take this opportunity to thank you for your continued commitment and service to the department."

Statutory Context

[19] Departmental chief executives are empowered to employ people as temporary employees under s 148 of the *Public Service Act* 2008 (Qld), which provides, so far as is relevant:

"**148 Employment of temporary employees**

(1) To meet temporary circumstances, a chief executive may employ a person as a temporary employee to perform work of a type ordinarily performed by a public service officer other than a chief executive or senior executive.

…"

[20] Section 149 of the *Public Service Act* 2008 (Qld) imposes an obligation to consider employment conversion and the decision making power is in the following terms, so far as is relevant:[3]

"**149 Review of status of temporary employee**

(1) This section applies—

(a) at the end of 2 years after a temporary employee has been continuously employed as a temporary employee in a department; …

(2) The department's chief executive must, within the required period, decide whether the person's employment in the department is to—

(a) continue as a temporary employee according to the terms of the existing employment; or

(b) be as a general employee on tenure or a public service officer.

(3) In making the decision, the chief executive must—

(a) consider any criteria for the decision fixed under—

(i) a directive by the commission chief executive; …

(5) In this section—

continuously employed as a temporary employee has the meaning given under a commission chief executive directive or an industrial instrument. ..."

[21] In *Minister for Aboriginal Affairs & Anor v Peko-Wallsend Ltd & Ors*, Mason J said:[4]

> "… What factors a decision-maker is bound to consider in making the decision is determined by construction of the statute conferring the discretion. If the statute expressly states the considerations to be taken into account, it will often be necessary for the court to decide whether those enumerated factors are exhaustive or merely inclusive. If the relevant factors - and in this context I use this expression to refer to the factors which the decision-maker is bound to consider - are not expressly stated, they must be determined by implication from the subject matter, scope and purpose of the Act."

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3 Emphasis added.

4 (1986) 162 CLR 24 at 39-40. See also *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at 350 [26] per French CJ.

[22] A decision-maker who fails to take mandatory relevant considerations into account has not properly applied the law.[5]

[23] A plain and ordinary reading of s 149(3) indicates that it imposes a mandatory requirement upon the s 149(2) decision maker to consider any criteria fixed under a s 149(3) directive that has been made.

[24] *Directive 08/17 – Temporary Employment*[6] ("Directive 08/17") was made under the power supplied by s 53 of the *Public Service Act* 2008 (Qld) and as contemplated by s 149(3)(a)(i). It came into effect on 1 July 2017.

[25] The s 149(3) criteria are contained in ss 9.6-8 of Directive 08/17 in the following terms (with emphasis):[7]

> "9.6 When reviewing the status of a temporary employee's employment and deciding whether their employment is to be converted to permanent, the chief executive of an agency must consider the following criteria:
>
> a) whether there is a continuing need for the person to be employed in the role, or a role which is substantially the same, and the role is likely to be ongoing; and
>
> b) the merit of the temporary employee for the role by applying the merit criteria in section 28 of the PS Act.
>
> 9.7 A temporary employee should have their employment converted to permanent unless there are genuine operational reasons not to do so or the temporary employee does not consent.
>
> 9.8 Where the employee has performed the same role but at different classification levels, the employee should be considered for conversion at both classification levels and assessed applying the criteria in clause 9.6."

[26] Directive 08/17 is a "statutory instrument" under s 7 of the *Statutory Instruments Act* 1992 (Qld). Section 14B of the *Acts Interpretation Act* 1954 (Qld), which concerns the use of extrinsic material in the interpretation of a provision of an Act, applies to statutory instruments, via s 14 and Schedule 1 of the *Statutory Instruments Act* 1992 (Qld).

Decision of First Respondent – Temporary Employment Decision

[27] The department undertook a review of the applicant's temporary service under s 149 of the *Public Service Act* 2008 (Qld) and delivered to her correspondence containing its decision following that review. This was on or about 13 February 2018, under the hand of Michael Linnan, General Manager, Service Delivery.[8]

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5 *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at 348.
6 See *Directive 08/17 – Temporary Employment.*
7 See *Directive 08/17 – Temporary Employment*. Emphasis added.
8 See affidavit of Agustiana Katae, sworn 15 June 2018 at pp 37-38.

[28] The Department accepted that the applicant was eligible to be considered for review under s 149,[9] but decided that the applicant was unable to be converted to a permanent role. The reasons for decision were expressed as follows: [10]

> "Based on the above, I have determined that you are unable to be converted to permanent in the role of AO5, Contract Officer, Contract Management, or another role with the same or substantially the same capability requirements, for the following reasons:
>
> - the reasons for your temporary engagements as an AO5, Contract Officer were to backfill the substantive incumbents for a variety of reasons
> - on the return of the substantive incumbents to their role, the temporary circumstances underpinning your temporary engagement ceased
> - there are currently no other AO5, Contract Officer positions available within Contract Management, or another role with the same or substantially the same capability requirements, for you to be appointed to."

[29] Ms Katae appealed Mr Linnan's decision, however, on 3 April 2018 Linnane VP dismissed the appeal. Ms Katae seeks judicial review of Vice President's decision.

Consideration of Grounds of Appeal

[30] The first articulated ground of appeal is that in breach of s 20(2)(f) of the *Judicial Review Act* 1991 (Qld), the appeal decision involved an error of law as Linnane VP proceeded on the basis that s 9 of Directive 08/17 had no relevance to the matter. That ground cannot be accepted.

[31] In paragraph 9 of her decision of 3 April 2018, Linnane VP set out s 149 in full before stating "[w]hilst each of the provisions of the *Public Service Commission Directive 08/17: Temporary Employment* (Directive 08/17) have been considered, the following provisions have received particular attention…"[11]

[32] Linnane VP however set out the entirety of s 9 and each of the pertinent sections of the directive with the exception of s 14. In short, Linnane VP set out most of the relevant provisions, paid attention to them, and through her reasons[12] applied them. It appears Linnane VP accurately analysed the evidence and concluded that the appellant was backfilling positions, where the substantive occupant of those positions was either on other permanent duties, in another department or on leave. Linnane VP concluded[13] that each role was temporary, such the nature of engaging in backfilling permanent departmental employees and the more recent role as the senior project officer was "not

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9 See affidavit of Agustiana Katae, sworn 15 June 2018 at p 37; *Katae v State of Queensland* (Department of Housing and Public Works) PSA/2018/50 at [15] per Linnane VP.

10 See affidavit of Agustiana Katae, sworn 15 June 2018 at p 38.

11 At [10].

12 On pages 7 – 9.

13 At [17] – [19].

an ongoing project",[14] however, the phrase "ongoing project" is not a term used in the directive.

[33] With respect to the AO5 positions identified as contract officer positions in terms of paragraph 9.6(a) of the directive, the role was likely to be ongoing, however it could not be concluded that there was a continuing need for the appellant to be employed in that role, as the permanent officer holders returned to their roles. With respect to the employment as an AO6 commencing on 10 July 2017, the applicant says at paragraph 14 of her affidavit, that her employment involved "ongoing temporary contracts".

[34] The second basis for the alleged error of law under s 20(2)(f) of the *Judicial Review Act* 1991 (Qld) is that Linnane VP misinterpreted s 7 of the directive, interpreting it as proceeding on the basis that paragraph 7.2 and 8 of the directive be exercised against conversion to permanent employment, when an employee was employed in a backfill or chain of backfill positions without it being necessary to consider the s 9 criteria.

[35] A careful reading of the decisions of Linnane VP shows that Linnane VP did not proceed on such interpretation of s 7 of the directive. Whilst it may be accepted that paragraph 9.7 evinces an attention favouring conversion of temporary employees to permanent employees, the important rider are the words "unless there are genuine operational reasons not to do so". This must be interpreted together with paragraph 9.6(a), that is, whether there is a continuing need for the person to be employed in the same role or a substantially similar role. Secondly whether the role is likely to be "ongoing" is a critical consideration.

[36] In determining whether there is a continuing need or whether a role is likely to be ongoing, reference may be had to the indicators set out in paragraph 7.2. For example, where a person is employed on a temporary basis because a public servant is on parental leave (and there are no other substantially similar roles available) a decision ought not to be made granting a temporary employee the permanent employee's position.

[37] At paragraph 17 of her judgment, Linnane VP specifically refers to the second dot point of clause 7.2, that is, when skills are required for a one off project with a specific end date, with reference to the applicant's current AO6 role.

[38] The applicant alleges that Linnane VP, in breach of s 20(2)(e) of the *Judicial Review Act* 1991 (Qld) made a decision which was an improper exercise of the power by failing to take into account relevant considerations contained in s 9 of directive 08/17 (calling in aid s 23(b) of the *Judicial Review Act* 1991 (Qld)) and took into account irrelevant considerations (calling in the aid of s 23(a) of the *Judicial Review Act* 1991 (Qld)). That is, the applicant submits Linnane VP failed to take into account those relevant considerations referred to in paragraph 9 of the directive, but conversely took into account the irrelevant considerations referred to in paragraph 7.2 of the directive.

[39] An important part of the applicant's argument is that s 149(3)(a)(i) required the chief executive to consider the paragraph 14 dictionary definition of the "same role", which was not stated nor referred to in the Vice President's decision. Paragraph 14 of the directive states:

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[14] *Katae v State of Queensland* (Department of Housing and Public Works) PSA/2018/50 at [19] per Linnane VP.

> "The same role includes a role which has the same or substantially the same capability requirements, either at a level or at a higher classification (e.g. a payroll officer may provide a service to different client groups), or a role with a generic role description involving a range of duties (e.g. rotation through financial and payroll processing duties under a generic entry-level role description)."

[40] The phrase the "same role" is referred to in paragraphs 9.2, 9.3 and 9.4 of the directive as follows:[15]

> "9.2 An agency must review the status of a temporary employee's employment (including an entry-level temporary employee) where the employee has been continuously employed as a temporary employee for two years in the same role in an agency.
>
> 9.3 The requirement to review an employee's temporary status also applies where a temporary employee has performed a cumulative total of two years' service in the same role, provided that the breaks in employment do not exceed a total of three months in the previous two year period.
>
> 9.4 Where an employee remains temporary, a subsequent review must be conducted after each additional year of continuous service in that same role in accordance with section 149 of the PS Act and this directive. An agency can review earlier than this date if the agency considers it appropriate."

[41] This must be contrasted with paragraphs 9.6 and 9.8 which provide:[16]

> "9.6 When reviewing the status of a temporary employee's employment and deciding whether their employment is to be converted to permanent, the chief executive of an agency must consider the following criteria:
>
> a) whether there is a continuing need for the person to be employed in the role, or a role which is substantially the same, and the role is likely to be ongoing; and
>
> b) the merit of the temporary employee for the role by applying the merit criteria in section 28 of the PS Act.
>
> 9.8 Where the employee has performed the same role but at different classification levels, the employee should be considered for conversion at both classification levels and assessed applying the criteria in clause 9.6."

[42] It is curious that the phrase the "same role" is referred to in paragraphs 9.2, 9.3, 9.4 and 9.8 but not in paragraph 9.6. Furthermore, the phrase the "same role" does not have the confined meaning that one would ordinarily attribute to the literal words, but rather the

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15 Emphasis added.

16 Emphasis added.

expansive definition in s 14 which requires a consideration of whether two different types of roles have the same or "substantially the same" capability requirements.

[43] This may be demonstrated by reference to the capability requirements for an AO5 Contract Officer's role, which are set out as follows:

- Supports strategic direction
- Achieves results
- Supports productive working relationships
- Displays personal drive and integrity
- Communicates with influence

[44] The current AO6 role that Ms Katae has as Senior Project Officer has the capabilities set out as follows:

- Supports strategic direction
- Supports productive working relationships
- Displays personal drive and integrity
- Communicates with influence
- Technical/Role specific

[45] In terms therefore of the definition in s 14, it needs to be determined whether the capabilities are the same or substantially the same. It can be observed that four out of the five categories are either the same or substantially the same, namely support strategic decisions, supports productive working relationships, displays personal integrity and drive, and communicates with influence.

[46] There is one difference in the capabilities, namely that the contracts officer has a capability of "achieve results", whereas the higher AO6 position has a different fifth capability of "technical/role specific". Whilst it may be concluded that the capabilities are not precisely the same, they are, in my view, having regard to the fact that the legislation is remedial, substantially the same. The effect of this is that, through the expansive definition of "same role" in s 14 of Directive 08/17, "same role" may be interpreted to be quite different roles, as long as the roles have substantially the same capability requirements.

[47] This interpretation is in accordance with s 1(a) of Directive 08/17, that is, to encourage and maximise security of employment. There is also an interpretation which is in accordance with paragraph 9.7.

[48] It is to be recalled therefore that when the initial decision of Mr Linnan was undertaken, Ms Katae had moved from her contract officer's role AO5 to the higher AO6 role. What was required therefore of the decision maker in terms of paragraphs 9.6, 9.7 and 9.8 was to examine the requirements with reference to both the AO5 and AO6 roles. The decision of the Vice President reveals that the reasoning process was undertaken in respect of AO5 contract officer role, but not the AO6 senior project officer role. Insofar as the Vice President considered the appellant's "current engagement"[17] it was analysed in terms of paragraph 7.2 of Directive 08/17. Applying paragraph 9.6 of the directive in terms of AO6 would have fairly and reasonably required the Vice President to consider

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17 See *Katae v State of Queensland* (Department of Housing and Public Works) PSA/2018/50 at [17] per Linnane VP.

whether there was a continuing need for Ms Katae to be employed in her role as an AO6. At the time of the decision of Mr Linnan in February 2018 and at the time of the Vice President's decision on 14 March 2018, it was plain there was a continuing need for Ms Katae to continue to be employed in her role. The first element of paragraph 9.6(a) was thus satisfied.

[49] It is the second element of the 9.6(a) directive which is in issue, that is, whether "the role is likely to be ongoing". Whilst the Vice President acknowledged that the department was unable to guarantee that the end of the project would have been its set end date (30 June 2018), that is an insufficient basis upon which one could fairly and reasonably conclude that the role was not likely to be ongoing. What was required was an objective analysis of whether the role was likely to be ongoing, which depends upon the meaning given to the word "ongoing" and each of the circumstances which might affect the likelihood of the role being ongoing.

[50] As discussed with counsel, the word "ongoing" is defined in the Shorter Oxford English Dictionary as "the action of going on; proceeding; continued movement." Where reference is had to the Shorter Oxford English Dictionary, or any other dictionary, it must be concluded that the word "ongoing" is most imprecise. Whilst it certainly does not mean "permanent" neither does it mean "temporary". It is noteworthy that within Directive 08/17 the words "permanent" and "temporary" are used. Given that s 149 is remedial, it seems to me that the directive ought to be read in a remedial manner, and the meaning prescribed to the word "ongoing" ought to be its ordinary dictionary meaning; that is, "going on" or "proceeding" or "continuing".

[51] The phrase "ongoing employment" also appears at paragraph 7.1. Paragraph 7 of the directive is entitled "Principles". Paragraph 7.1 provides:

> 7.1 The Employment Security Policy outlines the Queensland Government's commitment to ongoing employment and limiting the use of temporary employment. Temporary employment should only be used when ongoing employment is not viable or appropriate. Where there is a need to employ a person on an ongoing basis, the chief executive of an agency should employ a person permanently rather than temporarily. In this regard, an agency should also take steps to proactively manage its workforce, including temporary employees, to ensure that workplace change can be managed effectively.

[52] It was shown in evidence that Ms Katae was a capable person, having been in receipt of numerous temporary contracts for a period of over 3.5 years at the time of the decision. Importantly, while the project had an end date of 30 June 2018, it ought not be presumed that it would end at that date, that is, not all projects end on time. That is a matter of common experience, both in private and public enterprises. Similarly when one is considering the broad definition of "roles", it can be taken into account that prior to the decision, the experience of Ms Katae had been for a period of more than 3.5 years and throughout that period she has found similar roles within the department. A fair and reasonable conclusion on the then-available evidence was that the "role" was likely to be "ongoing". It follows that it has been shown that the appealed decision was not fair and reasonable.

[53] Paragraph 9.7 of the directive evinces a presumption that temporary employees will be converted to permanent employees in the ordinary case. That is, ordinarily, where a person has been employed on a temporary basis for more than 2 years, there is a likelihood for the employment on an "ongoing basis". It is important to note that the criteria in paragraph 9.6(a) speaks of a role "likely to be ongoing" rather than a role being "permanent". In the present case, the materials placed before Linnane VP in respect of the senior project officer's role, show there was a continuing need for the applicant to be employed in that role or in a substantially similar role, and that role was likely to be ongoing.

[54] The final argument brought by the applicant is that there has been a breach of s 20(2)(e) of the *Judicial Review Act* 1991 (Qld) in that the appealed decision was made without regard to the merits of the particular case. It cannot be concluded that Linnane VP exercised a discretionary power without regard to the merits of the applicant's particular case. As is demonstrated by Linnane VP's reasons,[18] in respect of the contract officer roles, classification AO5, from 23 February 2015 to 10 July 2017, the roles in backfilling for employees A, B, C, D, E and F, that "those permanent departmental employees are the substantive occupants of the positions in which the appellant was engaged". In determining the merits of the particular case, Linnane VP has determined that Ms Katae was fulfilling the permanent positions of substantive occupants.

[55] The application is allowed.

[56] I will hear submissions as to the proper form of the order and costs.

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[18] At [18].